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

AGENDA

Thursday October 29, 2020 - 6:00 PM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-72

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*****Wildfire Update**

*****COVID-19 Update**

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

A. Health, Housing & Human Services

1. Approval for the Public Health Division to apply for the University of Baltimore - Combating Opioid Overdose through Community-Level Intervention Initiative (COOCLI). – *Public Health*
2. Approval of the Intra-Agency Agreement with the Clackamas County Emergency Communications (CCECD) – *Public Health*
3. Approval of Amendment #05 to the Personal Services Agreement with Advantage Nurse Staffing of Oregon, Inc. for temporary medical staffing in support of the COVID-19 response. – *Public Health*
4. Approval of a Cooperation Agreement between Clackamas County and Corvallis Neighborhood Housing Services Incorporated, dba DevNW for Acquisition of Vacant Land to Build 11 Tiny Ownership Homes Project – *Community Development*
5. Approval to Apply for HB2017 State Transportation Improvement Fund Discretionary Program Funds from Oregon Department of Transportation for 1-205 / Borland Rd / Bridgeport Village Transit Service – *Social Services*

B. Department of Transportation & Development

1. Approval of an Intergovernmental Agreement between Clackamas County and the City of Wilsonville to Transfer Permitting Authority and Maintenance Responsibility for Portions Frog Pond Lane (County Road #2362, DTD #30031) and Stafford Road (Market Road #12, DTD #30054) to the City
2. Board Order Authorizing Construction Activities for Heirloom Apartments
3. Approval of a Contract with IMG Rebel, Inc. to serve as a P3 Financial and Transactional Advisor - *Procurement*

C. Disaster Management

1. Authorization for Disaster Management Director to sign HUD COVID -19 Grant Applications and Grant Agreements

D. Business & Community Services

1. Approval of Amendment #5 to the Contract with Total Golf Management Services, LLC for Management Services for the Operation of Stone Creek Golf Club

E. Technology Services

1. Approval for a Service Level Agreement between Clackamas Broadband eXchange and Christ the King for a dark fiber connection

F. County Administration

1. Approval of a Contract with WTP America, LLC. DBA WT Partnership to serve as a P3 Technical Advisor - *Procurement*

II. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of Intergovernmental Agreement between North Clackamas Parks and Recreation District (NCPRD) and Clackamas Water Environment Services (WES)
2. Approval of an Intergovernmental Agreement Amendment #1 between North Clackamas Parks and Recreation District (NCPRD) and Metro for Mapping and Data Services

III. WATER ENVIRONMENT SERVICES

1. Approval of an Intergovernmental Agreement Between North Clackamas Parks and Recreation District and Water Environment Services
2. Approval of the Intergovernmental Agreement between Water Environment Services and Clean Water Services for Liquid Bio solids Management

IV. PUBLIC COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.*

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 29, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for the Public Health Division to apply for the University of Baltimore
– Combating Opioid Overdose through Community-Level Intervention Initiative (COOCLI).

Purpose/Outcomes	If awarded, funding will expand an existing collaborative project (Project Hope) between Clackamas County Public Health (CCPH), Clackamas County Behavioral Health, Clackamas Health Centers, Law Enforcement, and Community Paramedics from Clackamas Fire. Project Hope provides care coordination and recovery supports for opioid overdose survivors and those at risk of overdose, and aims to do the following: (1) reduce the number of people who overdose on opioids and other drugs; (2) reduce 911 calls and hospital readmission; (3) improve the quality of life for patients with substance use disorders; and (4) bridge gaps in care by connecting vulnerable patients to treatment and other social and health-related support services. If awarded, Project Hope will expand the existing model so more residents are served and incorporate comprehensive case management to help with care coordination.
Dollar Amount and Fiscal Impact	Maximum grant award is \$300,000. No matching funds required.
Funding Source	University of Baltimore Subaward from Office of National Drug Control Policy - No County General Funds are involved
Duration	December 2, 2020 – November 30, 2021
Strategic Plan Alignment	1. Improve Community Safety and Health 2. Ensure safe, healthy and secure communities in Clackamas County by preventing opioid misuse and overdose deaths
Counsel Review	NA
Procurement Review	This was not processed through Procurement because this item is a grant
Previous Board Action	None
Contact Person	Sherry Olson, Business Services Manager, 503.742.5342 (Primary) Philip Mason-Joyner, Public Health Division, Director 503.742.5956 (Secondary)

BACKGROUND:

The Public Health Division of the Health, Housing & Human Services Department, requests the approval to apply for the University of Baltimore – Combating Opioid Overdose through Community-Level Intervention Initiative (COOCLI) Program funding opportunity. Funding will be used to expand the capacity of Project Hope, which will enable additional opioid overdose prevention and care coordination services in Clackamas County. This project will include collaborative efforts between divisions in Health, Housing & Human Services (Public Health and Behavioral Health, Health Centers), law enforcement and community paramedics from Clackamas Fire. Public Health will act as the project lead and fiscal agent. No County General Funds are involved.

Project Hope

When looking at overdose data in Clackamas County, it is clear that local Emergency Medical Service agencies play a critical role in our communities' response to the opioid epidemic. In Clackamas County, Clackamas Fire responds to a significant portion of the opioid overdose calls received by 911 dispatch, saving hundreds of lives each year. Additionally, the program seeks to increase the community referral network and enhance coordination between patients and providers, as well as community resource navigation.

Over the last several years, CCPH has partnered with Clackamas Fire to build a more comprehensive opioid response model in our county through the creation of Project Hope. Project Hope begins with follow-up by a community paramedic after the overdose occurs. After an assessment is completed, patients are navigated to treatment and recovery services in the community (inpatient, outpatient and community-based services) with a longer-term plan established to prevent future substance use and potential overdose. In an effort to work more upstream and further de-silo our approach to the opioid crisis, Project Hope has expanded to include law enforcement as a partner to help connect individuals to treatment and recovery supports. By adding another pathway to treatment, Project Hope is working in a preventive role to divert eligible individuals away from the criminal justice system, link to treatment before an overdose occurs, and improve law enforcement relations in the community.

At this time, Project Hope has limited capacity to respond and provide ongoing follow-up to the many individuals needing support. In 2019, Clackamas County first responders from AMR and Clackamas Fire assisted over 250 people who survived an opioid overdose and nearly 300 individuals were discharged from an emergency department or urgent care setting due to an opioid overdose. These numbers are increasing and don't include individuals also suffering from a stimulant addiction. We cannot come close to meeting the demand with the current resources available. Of particular concern is the considerable impact that the COVID-19 pandemic and the recent wildfires has had on the well-being of Clackamas County community members. The layers of deep trauma resulting from recent events has contributed to an increase in substance abuse and limited access to critical services has made the risk of overdose even higher. Additional funding will expand the project by adding more personnel time and adding comprehensive case management to provide additional ongoing support.

Page 2 Staff Report
October 22, 2020
Approval to Apply – University of Baltimore

RECOMMENDATION:

Staff recommends the BCC approve CCPH's request to apply for the University of Baltimore – Combating Opioid Overdose through Community-Level Intervention Initiative (COOCLI).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard Swift, HHS deputy for". The signature is stylized and cursive.

Richard Swift, Director
Health, Housing and Human Services

UNIVERSITY OF BALTIMORE
FY 2020 Competitive Subaward Solicitation
Combating Opioid Overdose through Community-level Intervention
(COOCLI)

Notice of Funding Availability (NOFA)
Application Guidance



Center for Drug Policy and Prevention

Submission Deadline: November 2, 2020
Funded through:
Office of National Drug Control Policy
Catalog of Federal Domestic Assistance (CFDA) Number: 95.007

University of Baltimore
Center for Drug Policy and Prevention
1420 N. Charles St.
Baltimore, MD 21201-5779
410-837-6191

Kurt L. Schmoke, President
Roger Hartley, Ph.D., Dean, College of Public Affairs
Thomas H. Carr, Executive Director, Center for Drug Policy and Prevention

Getting Started

Thank you for applying for the **Combating Opioid Overdose through Community-level Intervention (COOCLI) Subaward from the University of Baltimore.**

The purpose of the Combating Opioid Overdose through Community-level Intervention Grant is two-fold:

1. Undertake innovative research and evaluation activities focused on implementing and evaluating community-based efforts to fight the opioid overdose epidemic or other types of drug overdose; and
2. Support and promote partnership of law enforcement and public health agencies. These partnerships are critical to reducing overdose and other harms of opioid (mis)use and other substance use.

Applicants must use evidence-based approaches to implement or enhance new or on-going community-based programs that aim to reduce opioid or other drug overdoses. Some applicants (Tier 2) must also evaluate these community-based efforts to assess their efficacy in reducing overdose and other harms of opioid (mis)use and other substance use. The COOCLI program targets regions of the United States with the highest rates of fatal and non-fatal overdoses.

Proposals must support and promote collaboration between public safety and public health agencies to ensure that overdose reduction efforts are robust and that communities benefit from a comprehensive and coordinated response.

If you need application assistance, please contact:

Sherae Lonick
Deputy Director for Finance
Center for Drug Policy and Prevention
301-489-1711

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I. BACKGROUND/ SCOPE

The United States continues to experience unprecedented numbers of drug overdose deaths. More than 67,000 Americans died from a drug overdose in 2018 and more than two thirds of these deaths involved at least one opioid. Overdose death remains the leading cause of injury-related death in the U.S. Preliminary data from 2019 indicate that nationwide overdose deaths increased between 2018 and 2019, with projected overdose totals exceeding 72,000. The drug crisis is being exacerbated by the COVID-19 pandemic.

Overdoses involving highly potent synthetic opioids such as illicitly manufactured fentanyl and overdoses involving psychostimulants such as methamphetamine and cocaine increased between 2017 and 2018, and 2019 provisional data indicate this increase is continuing. While opioid-involved overdoses declined 2% overall from 2017 to 2018, driven by overdoses involving prescription opioids and heroin, the age-adjusted rate of drug overdose deaths involving synthetic opioids other than methadone increased by 10% nationally. Overall, synthetic opioids were involved in 67.0% of all opioid overdose deaths in 2018. The largest increase in synthetic opioid-involved overdose deaths occurred in Arizona (92.5%) and West Virginia had the highest synthetic opioid-involved overdose death rate (34.0 per 100,000).

Fentanyl availability in illicit markets continues to increase across the country. All the while, fentanyl suppliers experiment with new synthetic opioids in an attempt to circumvent regulations imposed by the U.S. and China. China remains the primary source of fentanyl and fentanyl-related substances trafficked into the U.S., either through traditional Mexican drug trafficking organizations or through mail and express consignment. The Drug Enforcement Administration (DEA) reports inconsistencies in the amounts of fentanyl present in fentanyl-containing counterfeit pills and this contributes to their lethality. Of the seized exhibits examined in 2018 by DEA's Fentanyl Signature Profiling Program, the amount of fentanyl per tablet ranged from 0.02 to 4.84 milligrams—more than twice that of a potentially lethal dose.

While the opioid epidemic justifiably dominates national and state priorities, overdose deaths involving cocaine and psychostimulants are increasing too. The rate of overdose deaths involving cocaine more than tripled, and the rate of overdose deaths involving psychostimulants such as methamphetamine and amphetamine increased nearly five-fold between 2012 and 2018. Importantly, available data indicate that the rise in stimulant use, overdose deaths, and related harms are linked to the ongoing opioid crisis.

A growing proportion of opioid overdose deaths involve cocaine and methamphetamine now. Data from 25 states from July 2017 through June 2018 indicate that 34.0% of opioid overdose deaths involved co-occurring cocaine, and 12.1% involved methamphetamine. In 2018, approximately 75% of cocaine-involved overdose deaths involved opioids and 50% of psychostimulant-involved overdose deaths involved opioids. These trends are part of a pattern of increased stimulant use and polysubstance use in the midst of the opioid crisis.

Estimate are that between 2015 and 2018 the rate of past-year methamphetamine use was 6.6 per 1,000 adults in the U.S. The highest estimated rates of past-year methamphetamine use were in western states such as Arizona, Colorado, Oregon, and Nevada. Data among treatment admissions also shows high rates of opioid and stimulant use. Prior research consistently shows that individuals using both opioids and stimulants have suboptimal treatment outcomes and greater risk for overdose and death.

The resurgence of stimulant use and related harms stands to further challenge ongoing opioid overdose prevention, treatment, and response efforts and innovative strategies to combat this evolving dynamic are urgently needed.

While the fentanyl market and cocaine market appear to have limited overlap, the two states with the largest number of fentanyl National Forensic Laboratory Information System (NFLIS) reports, Ohio and New York, also had the most cocaine reports. Two of the top five states with the most cocaine reports also were the states with the most heroin and fentanyl reports in 2017.

Given the scope, scale, and complexity of this national crisis, collaboration across and among agencies and disciplines is essential. Nearly every sector of government has a role to play in stemming this crisis—whether implementing prevention activities, providing treatment to individuals with opioid use disorder, identifying and disrupting the flow of illicit opioids and other drugs into and across the country, or advancing research to increase our knowledge on promising practices.

In February 2020, the White House released the Administration’s National Drug Control Strategy, which establishes the President’s priorities for addressing the challenge of drug trafficking and use. The Strategy consists of three interrelated elements designed to build and foster a stronger, healthier, and drug-free society: prevention, treatment and recovery, and reducing the availability of drugs in America. As stated in the Strategy:

The single and most important criterion of success is saving American lives, and achieving that outcome requires the advance our Nation’s efforts to promote and maintain healthy Federal government to work with partners at the State, local, and Tribal levels; the healthcare sector; industry; foreign partners; and every concerned American citizen to lifestyles, and help build and grow safe communities free from the scourge of drug use and addiction.

Overall, these staggering figures and emerging trends illustrate the need to implement and/or enhance community-based efforts to reduce overdose deaths.

II. ELIGIBLE APPLICANT

The following entities are eligible to submit subaward applications, **providing the application includes a letter of support/commitment from the participating HIDTA signed by the sponsoring HIDTA Director. (See Section C-9. Letters of Support/Commitment)**

- **High Intensity Drug Trafficking Areas Programs**
- Public/State Controlled Institutions of Higher Education
- Private Institutions of Higher Education
- Nonprofits with 501(c) (3) IRS Status (Other than Institutions of Higher Education)
- Nonprofits without 501(c) (3) IRS Status (Other than Institutions of Higher Education)
- State Governments
- **County Governments**
- City or Township Governments
- Special District Governments
- Indian/Native American Tribal Governments (Federally Recognized)
- Indian/Native American Tribal Governments (Other than Federally Recognized)
- U.S. Territory or Possession
- Independent School Districts
- Public Housing Authorities/Indian Housing Authorities
- Native American Tribal Organizations (other than Federally recognized tribal governments)
- Faith-based or Community-based Organizations

III. ELIGIBILITY CRITERIA

- **Applicants must have expert knowledge and extensive experience in conducting research and analysis.**
- **Applicants must have expert knowledge and experience developing or enhancing new or ongoing programs that aim to reduce opioid or other drug overdose through strategic, evidence-based and promising approaches.**
- **Applicants must partner with a regional High Intensity Drug Trafficking Areas (HIDTA) program. Applications must include a letter of support/commitment from the participating HIDTA and signed by the sponsoring HIDTA Director.**

IV. APPLICATION PROCESS

Applicants are required to apply for subaward funding through the University of Baltimore (UB).

The UB must receive the emailed copy of the application no later than midnight, Eastern Standard Time, **November 2, 2020.**

V. APPLICATION REQUIREMENTS

Sub-recipient Organization Eligibility Requirements

The UB established criteria for the Combating Opioid Overdose through Community-level Intervention subaward that **must** be met by all organizations that receive these funds.

Sub-recipients must focus on opioid-involved overdoses or overdoses involving opioids and stimulants in the regions of the United States with the highest rates of fatal and non-fatal overdoses. Also, they must:

- Use evidence-based or promising approaches to implement or enhance new or on-going community-based programs that aim to reduce opioid or other drug overdoses.
- Once implemented, evaluate these community-based efforts to assess their efficacy in reducing overdose and other harms of opioid (mis)use and other substance use.
- Support and promote collaboration between public safety and public health agencies to ensure that overdose reduction efforts are aligned and that communities benefit from a comprehensive and coordinated response.

Each subcontract recipient organization **shall** meet the following requirements:

1. You must comply with the Government-wide Suspension and Debarment provision set forth at 2 CFR Part 180, dealing with all sub-awards and contracts issued under the grant.
2. Reporting Sub-award and Executive Compensation Information - This part provides guidance concerning requirements for Federal Funding Accountability and Transparency Act of 2006 (FFATA) reporting. ONDCP must report Federal fund awards of more than \$25,000. Subcontracts also fall under reporting requirements but please note that the definition of "Sub-contract" does not include your procurement of property and services needed to carry out the project. (See 2 CFR Part 170)
3. Requirements for Drug-Free Workplace (Financial Assistance) - This part requires that the award and administration of ONDCP grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug Free Workplace Act of 1988 (41 U.S.C. 701-707, as amended, hereafter referred to as "the Act") that applies to grants. (2 CFR Part 421)
4. Non Discrimination Statement: The UB and ONDCP prohibit discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political belief, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected

genetic information in employment or in any program or activity conducted or funded by the Agency. (Not all prohibited bases will apply to all programs and/or employment activities.)

5. **Compensation- Personnel Services:** This part requires that charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. (See 2 CFR 200.430)
6. **Financial Management:** This part requires that systems must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions, and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the award. (See 2 CFR 200.302)
7. **As specified in this notice of funding opportunity, recipient must:**
 - a. Establish and maintain effective internal controls over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with the guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States and the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
 - b. Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
 - c. Evaluate and monitor the non-Federal entity's compliance with statute, regulations, and the terms and conditions of the Federal awards.
 - d. Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
 - e. Take reasonable measures to safeguard protected personally identified information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.

Evidence-Based Practices and Promising Approaches

- Priority will also be given to applicants that propose to implement and/or evaluate an evidence-informed or promising strategy in order to create new information for prevention efforts. Specifically, for Tier 1, emphasis should be on developing and

implementing new approaches or adapting existing evidence-based practices/programs in new settings or with new populations. Priority for Tier 2 will be evaluating evidence-based or promising strategies after full implementation of the proposed program.

- Applicants are encouraged to review national best practices, evidence-based, and promising program examples when selecting a program for implementation and/or evaluation.
- Applicants should also provide details on how they will maintain fidelity to the proposed program or approach.

VI. FAITH-BASED/COMMUNITY ORGANIZATIONS

Faith-based organizations applying for COOCLI funds do not have to lose or modify their religious identity (i.e., removing religious symbols) to be considered an eligible applicant. However, these funds may not be used to fund any inherently religious activity, such as prayer or worship. Inherently religious activity is permissible, although it cannot occur during an activity funded with subaward funds; such religious activity must be separate (in time and/or place) from the subaward funded project. Further, participation in such religious activity by individuals receiving services must be voluntary.

Such organizations receiving Combating Opioid Overdose through Community-level Intervention funds must ensure that services are offered without regard to religious affiliation and that the receipt of services is not contingent upon participation in a religious activity or event.

VII. IMPORTANT DATES

- Deadline to Submit an Application: November 2, 2020.
- Sub-award Start Date: December 1, 2020
- Sub-award End Date: November 30, 2021

VIII. PROJECT PRIORITY AREAS

This Notice of Funding Availability will only give consideration to projects relative to the following priority areas:

1. Research activities that involve implementing and evaluating community-based efforts to fight the opioid overdose epidemic or other types of drug overdoses
2. Efforts that support and promote the partnership of law enforcement and public health agencies, whose collaboration is critical to reducing overdose and other harms of opioid use and other substance use

Funding Specifications: The UB will use a tier system when making subcontract awards.

Tier 1- up to \$150,000 per award: Awards in this category focus on innovative program development. Projects should be designed to support small, innovative projects that either: (a) develop, clarify, and implement a novel program, strategy, or approach that has not yet been evaluated; or (b) adapt an existing evidence-based strategy for use in new setting/s or with new population/s.

Requirements for application include a logic model for the programmatic approach, a clear articulation of the program elements (e.g., What is being delivered? By whom? How? What is the theory of change?), and proposed evaluation measures for each component. No other evaluation is necessary.

Tier 2-\$150,001 to \$300,000 per award: Awards in this category focus on implementation and evaluation of evidence-based or evidence-informed strategies. Projects should be designed to support medium sized innovative projects that already have some evidence base, but would benefit from full implementation and rigorous evaluation.

Requirements for application include a logic model, a clear articulation of the program elements, a plan for fidelity of implementation, and an evaluation plan that includes anticipated outputs and outcomes measures.

COOCLI projects funded in 2019-2020 and prior are eligible to apply for 2020-2021 funding; however, COOCLI projects funded in prior years must include a built-in evaluation component i.e., anticipated outputs, outcomes, and impact measures) to receive funding consideration in 2020-2021. COOCLI projects are eligible to apply for and receive up to two years additional funding (three years total).

IX. FUNDING EVALUATION

The UB will assess the worth of each organization's overall project based on the following:

- Problem Statement/ Needs Justification (10%)
- Project Description (5%)
- Project Priority Area (5%)
- Evaluation, Goals and Objectives, and Outcome-Based Performance Measures (35%)
- Strategy and Timeline (5%)
- Organization Management Capabilities/ Cooperating Agencies (5%)
- Covid-19 Statement (5%)
- Project Sustainability (5%)
- Budget (25%)

Additional factors UB will consider in making a funding evaluation are:

- The degree of innovation of the project
- Whether the project addresses the needs of the community where it will be implemented

- The use of evidence-based practices or promising and proven programs
- Geographic size and location of the project
- Whether new staff are required to implement the project and, if so, how quickly new staff can be hired
- Whether the project will require approval of an Institutional Review Board (IRB) and, if so, whether steps have been taken by the applicant to prepare for the IRB review process.
- Performance history with previous Combating Opioid Overdose through Community-level Intervention awards
- Audit Findings

The Combating Opioid Overdose through Community-level Intervention subaward includes a competitive application process. Applicants should ensure they address funding evaluation factors in the appropriate section/s of the narrative in their application. The UB will conduct a review of each application submitted in accordance with this Notice of Funding Availability.

X. FUNDING SPECIFICATIONS

A. Funding Cycle

Awards funded under the Combating Opioid Overdose through Community-level Intervention will commence on December 2, 2020 and end on November 30, 2021. This is a twelve (12) month award. Funds are paid on a reimbursable basis. **Note: Cost extensions for sub-recipients' projects will not be granted under any circumstances.**

B. Budget

Budgets must be clear, specific, and tie directly to performance measures. Budgets must reflect months of spending and, where applicable, be adjusted to reflect start date, state furlough days, and holidays. *The UB reserves the right to reduce budgets.*

The prioritization of line items is required for all applications having multiple line items.

Applicant requirements will be taken into consideration should budgets need to be reduced.

The justification sections must contain brief statements (1 to 2 sentences per line item) that explain each line item and their relevance to the project goals and objectives. Do not state "See Narrative, Goals, or Objectives".

C. Allowable Costs

The following is a listing of services, activities, and costs that are eligible for support with Combating Opioid Overdose through Community-level Intervention funds. Before these costs can be supported with Combating Opioid Overdose through Community-level Intervention funds, the applicant must agree that direct services cannot be offered without the support for these expenses; and that the sub-recipient has no other source of support for them:

- Personnel and Fringe Benefits
- Facilities
- Travel
- Contractual Services
- Services
- Supplies
- Equipment
- Indirect Costs

D. Unallowable Costs

The following services, activities, and costs, although not exhaustive, cannot be supported with Combating Opioid Overdose through Community-level Intervention subaward funds:

- Overtime
- Lobbying and Administrative Advocacy
- Perpetrator Rehabilitation and Counseling
- Audit Costs
- Property Insurance
- Food/Beverage for program staff
- Vehicle purchases
- Trinkets (items such as hats, mugs, portfolios, t-shirts, coins, gift bags, etc.)

E. Indirect Cost Rate

Applicants that intend to charge indirect costs through the use of an indirect cost rate must have a Federally-approved indirect cost agreement.

Please provide a copy of a current, signed Federally- approved indirect cost rate agreement.

Non-federal entities, other than State and local governments that have never received a Federally- approved indirect cost rate, may elect to charge a de minimis rate of 10% of modified total direct costs. If chosen, this methodology, once elected, must be used consistently for all Federal awards until such time as a non-federal entity chooses to negotiate for a rate.

Line item justification must include the agency/ organization's direct cost rate illustrating how the indirect cost rate was determined as well as the costs associated under this heading.

F. Consultant Rates

The limit for consultant rates is \$650 per day or \$81.25 per hour.

XI. DISTRIBUTION OF FUNDS & REPORTING REQUIREMENTS

The UB will distribute awarded funds to sub-recipients in conjunction with the timely submission of corresponding Fiscal and Programmatic Reports. These reports must be emailed to the UB. The programmatic reports are due within 15 calendar days following the end date of

the quarter; a financial report is due within 15 calendar days following the end of each month. All reporting activity occurs through email.

Electronic Funds Transfer (EFT) – The UB encourages the use of electronic funds transfer (EFT). To obtain the appropriate form, the address to submit the form, and a general overview, including FAQs, refer to the following website:

<https://www.marylandtaxes.gov/divisions/gad/eft-program.php>

XII. MATCH

There is no match requirement for this subaward.

XIII. SUPPLANTING, TRANSPARENCY AND ACCOUNTABILITY

Federal funds must be used to supplement existing state and local funds for project activities and must not replace those funds that have been appropriated for the same purpose. There are strict federal laws against the use of federal funds to supplant current funding of an existing project. Jurisdictions must provide assurances and certifications as to non-supplanting and the existence of proper administrative/financial procedures.

A strong emphasis is being placed on accountability and transparency. Award recipients must be prepared to track, report on, and document specific outcomes, benefits, and expenditures attributable to the use of subaward funds. Misuse of subaward funds may result in a range of penalties to include suspension of current and future funds and civil/criminal penalties.

XIV. APPLICATION

Notice to All Applicants:

The information collected on the subaward application form is collected for the purposes of the UB. Failure to provide all of this information may result in the denial of your application for funding. The UB is a government entity; upon submission, this application is considered public information. The UB does not sell collected subaward information. Under the Maryland Public Information Act (PIA) (MD State Government Code Ann. 10-617 (h) (5)), you may request in writing to review subaward award documentation. Please send those requests to

Margarita M. Cardona, MS, CRA
Assistant Provost, Sponsored Research
University of Baltimore
1420 N Charles St.
Baltimore, MD 21201-5779
410-837-6191
OSR@ubalt.edu

A. COVER SHEET INSTRUCTIONS

1. PROJECT TITLE

The project title should be brief, precise, and reflect what is being funded.

2. APPLICANT AGENCY

The organization or government agency that is eligible to apply for subaward funds (See Eligible Applicants).

If the Government, Township, or Board of Commissioners mandates that the County Executive, Mayor, or Commissioner sign all subaward award documents (for all subordinate agencies) then the Government, Township, or Board of Commissioners **MUST** be the APPLICANT Agency.

DUNS/SAM Registration: Provide your DUNS number and SAM.GOV. In an appendix, submit proof of your agency's current SAM registration from www.sam.gov. Include a screenshot of **just the page that lists your DUNS number and SAM.GOV expiration date**. Please do not include any additional pages (i.e., those containing banking information).

Access to SAM.GOV:

<https://www.sam.gov/SAM/>

Access to DUNS (D&B):

<http://fedgov.dnb.com/webform/displayHomePage.do;jsessionid=81407B1F03F2BDB123DD47D19158B75F>

3. IMPLEMENTING AGENCY

The name of the entity that is responsible for the operation of the project.

4. PROPOSED START/END DATES

Start and end date are determined by the parameters of the NOFA. Projects may not exceed twelve (12) months or commence before the NOFA defined start date.

5. PREPARER INFORMATION

Enter the name of the person completing the application, their mailing address, phone number and email address.

6. PROJECT DIRECTOR

Select the person who will be responsible for oversight and administration of the project on behalf of the applicant. Enter the name of the person, their mailing address, phone number and email address

7. FISCAL OFFICER

Identify the person who will be responsible for financial reporting and record keeping for the project. Enter the name of the person, their mailing address, phone number and email address.

8. CIVIL RIGHTS CONTACT

Select the agency's point of contact for handling internal civil rights violation complaints (usually a Human Resources or Personnel Manager).

B. SUMMARY INSTRUCTIONS

The Project Summary should provide a concise summary of your proposal and be limited to 150 words or less. Be sure to include the name of the implementing agency, the project's main function, and a brief explanation of the budget for the subaward.

Note: UB may use your summary for press releases should your application receive a subaward.

C. NARRATIVE INSTRUCTIONS

Provide a description of the project timeline, and potential for information sharing. The contents for the narrative are explained below. **The Narrative must be in an outline-styled format (retaining all numbering, lettering, and headers). The Project Narrative may not exceed 15 pages, excluding the Cover Sheet and Appendices. Applications that are incomplete and/or improperly formatted will not be considered for funding.**

- **Use a New *Roman* typeface and a font size of 12 points**
- **Use standard letter size (8 ½" x 11") sheets of paper**
- **Use at least one-inch margins (top, bottom, left, and right) for all pages**
- **All page limits specified refer to double-spaced format using the above formatting requirements**

1. Problem Statement: Include a description of the nature and extent of the problem to be addressed, target population, and geographical area served. Provide the latest statistical data to document the problem. Describe past effort made to address this problem. Explain how this project will address the identified problem.

2. Project Description: This section of the application should contain a general description of activities that justifies and describes the project to be implemented. The project description should include specific services that will be provided and explain what the project will accomplish.

3. Project Priority Areas, and Evidence-based and Promising Categories: This section must identify the Project Area Priority area/s and Evidence-based Category that the proposed project/ activity will fall under and specifically detail how the project relates to the priority area and evidence-based category.

Combating Opioid Overdose through Community-level Intervention priority areas:

1. Implementing and/or evaluating community-based efforts to fight the opioid overdose epidemic or other types of drug overdose

2. Supporting and promoting the partnership of law enforcement and public health agencies, whose collaboration is critical to reducing overdose and other harms of opioid use and other substance use
3. Both 1 & 2 above

Evidence-based and Promising Practices Categories:

- Drug use prevention
- Drug use early intervention – such as Adverse Childhood Experiences (ACEs), Trauma-informed responses for children and families (e.g. Handle with Care programs), school-based strategies
- Drug use treatment and strategies to retain people in treatment long-term
- Sustained drug use recovery
- Innovative strategies to prevent overdose under conditions of COVID-19
- Drug harm reduction (e.g., syringe services programs and linkage to care)
- Drug use policy
- Healthcare systems interventions
- Criminal justice interventions
- Drug-related innovative technologies
- Polysubstance use
- Methamphetamine and other stimulant misuse

4. Evaluation Plan, Goals and Objectives, and Outcome-Based Performance Measures: Each applicant must submit an evaluation plan that describes how the applicant intends to maintain records of services provided, how services are provided, and how the desired or intended changes and effects will be measured.

Tier 1 applications must include a logic model for the programmatic approach, a clear articulation of the program elements (e.g., What is being delivered? By whom? How? What is the theory of change?), and proposed evaluation measures for each component. No other evaluation is necessary.

Tier 2 applications must include a logic model for the programmatic approach, a clear articulation of the program elements, a plan for fidelity of implementation, and an evaluation plan that includes anticipated outputs and outcomes measures.

Logic Model: graphic depiction (chart) that presents the shared relationships among the resources, activities, outputs and outcomes for your program.

Each application must include clearly defined goals, objectives, and outcome-based performance measures and available data sources to use to track measures.

Goals: Provide a broad statement that conveys, in general terms, the project's intent to change, reduce, or eliminate the problem described. Goals identify the project's intended short and

long-term results for the anticipated funding year. Explain how the project will accomplish the goals.

Objectives: Objectives are specific, quantifiable statements of the project's desired results, and should include the target level of achievement, thereby further defining goals and providing the means to measure project performance.

Outcome-based Performance Measures: The UB encourages projects to focus on delivering products and services and show their efficiency and effectiveness via outcome measures.

5. Strategy and Timeline: This section details any planning process that was undertaken in developing the plan of response. Further, it should provide an overview of the strategy to be employed and the timeline for implementing the strategy. Include linkages to other programs, organizations, and stakeholders that will be involved in or impacted by your program.

Applicants must submit a detailed timeline/work plan. This timeline/work plan must include:

- Key tasks that must be carried out to implement the project successfully
- Person(s) responsible for seeing that each task is completed within the proposed timeline
- Target dates for task completion

6. Management Capabilities:

Qualifications and Experience: Provide a brief description of the experience and achievements that qualify the organization or agency to conduct the project.

Present and Proposed Staff: List the name of the project director and in an appendix provide a resume or curriculum vitae (no more than 3 pages) for this individual. List the names and provide a short professional biography of the key consultants, financial officer, and other professional staff members. Clearly identify, by name and title, requested personnel. Indicate how all requested staff are currently funded (i.e., name subaward fund or state that personnel are line items in the existing agency budget. If funded by more than one source, list percentages for each funding source).

7. COVID-19 Statement:

The UB recognizes the impact COVID-19 is having on exacerbating the opioid epidemic. The COVID-19 pandemic challenged the resources devoted to drug treatment, prevention and research and activities were curtailed and the work of practitioners in many communities was put on pause. CDPP staff believe this situation will continue into the near future and will consider this when reviewing funding proposals. Provide your plan to assure the UB that the proposed project can be completed in a timely fashion despite the adverse impact of COVID-19.

8. Project Evaluation & Sustainability:

Explain what prospects exist for continued financing of the project when subaward funds are terminated: What efforts have been or will be made to continue the methods, techniques, and

operational aspects of the project when the subaward funds are concluded? Indicate planned future sources of funding or proposed jurisdictional planning efforts.

9. Letters of support/commitment:

In an appendix, provide letters of commitment by partners who will participate in the execution of the project or whose cooperation and support are necessary to its success. **Letters of support/commitment are not optional. The participating HIDTA must provide a letter of support/commitment signed by the sponsoring HIDTA Director for this subaward application to receive consideration for funding.**

D. BUDGET INSTRUCTIONS

BUDGET – GENERAL REQUIREMENTS

You must complete a detailed budget for your proposed project. All 'Total Budget' fields must be rounded to the nearest whole dollar.

Budgets must be clear and specific. Budgets must reflect twelve (12) months of spending and where applicable, be adjusted to reflect start date, state furlough days, and holidays.

The subaward cycle will reflect twelve (12) months, December 2, 2020 to November 30, 2021. Each budget line item must include a justification entry. The justification sections must contain brief statements (1 to 2 sentences per line item) that explain each line item and their relevance to the project goals and objectives. **Do not state "See Narrative, Goals, or Objectives".**

PERSONNEL AND FRINGE BENEFITS

List the personnel/positions, salaries and fringe benefits for staff required to implement the project. Consultants must be listed in Contractual Services. **Either Time and Effort reports or Timesheets must be maintained for all personnel included in the subaward project.**

If you are paying an employee directly, they should be entered in the Personnel category. For each position, list salary and fringe benefits on separate line items.

- The 'Description of Position' field must contain the title of the position.
- Position line items (salary and fringe) are grouped via the 'Description of Position' field.
- After completing the first Position's line item, use the dropdown to add additional budget items to the position.
- The 'Description of Position' is used to select existing positions and to add new positions.
- For multiple staff in the same position, use a suffix (i.e., Position 1, Position 2, etc.)
- Multiple positions with the same hourly rate may be grouped.

Note: For each line item entered, you must include a justification that ties that item to the activities described in your narrative.

Example justifications based on the Personnel category:

Justification (line 1):

The Community Outreach Coordinator helps prepare, schedule, and develop trainings targeted for hospitals and other medical facilities.

Annual salary is \$60,000. She will be devoting 33% of her time to this project. We are requesting $\$60,000 \times .33 = \$20,000$ in subaward funds to support her time on this project.

Justification (line 2):

Fringe benefits @ 10% of salary. $\$20,000 \times .10 = \$2,000$

Justification (line 3):

The Community Outreach Trainer makes presentations at hospitals and other medical facilities.

Annual salary is \$40,000. She will be devoting 25% of her time to this project. We are requesting $\$40,000 \times .25 = \$10,000$ in subaward funds to support her time on this project.

Justification (line 4):

Fringe benefits @ 10% of salary. $\$10,000 \times .10 = \$1,000$

FACILITIES

Facilities refers to costs associated with leased space and rent. For each line item entered, you must include a justification that ties that item to the activities described in your narrative.

TRAVEL AND TRAINING

Travel expenses may include mileage and/or other transportation costs, meals and lodging consistent with the local jurisdiction's travel regulations and cannot exceed the State of Maryland reimbursement rate specified below. Training includes, but is not limited to, such costs as registration fees or tuition. For each line item entered, you must include a justification that ties that item to the activities described in your narrative.

Mileage maximum: \$.58 cents/mile as of 1/1/2019.

Maximum Per Diem/Meal Allowance is \$56/day (\$13 Breakfast, \$15 Lunch, \$28 Dinner).

***Lodging Per Diem must follow the GSA rate:**

<https://www.gsa.gov/portal/content/104877>

SERVICES

Services include, but are not limited to, costs associated with telephone, copier, and utility services. For each line item entered, you must include a justification that ties that item to the activities described in your narrative.

CONTRACTUAL SERVICES

Consultant contracts for training or evaluation should be included here and shall be consistent with federal guidelines. If you are paying an outside agency for an employee, they are Contractual. For the line item description, enter the agency (Consulting firm, temporary agency, etc.), a dash and then the nature of the service to be provided (e.g., Consultants ABC – analyze evaluation data). For each line item entered, you must include a justification that ties that item to the activities described in your narrative. A copy of all contracts associated with items listed in the Contractual Services category must be provided to UB within 30 days following receipt of subcontract award.

Construction projects are ineligible for funding under subaward projects and expenses for construction may not be included.

SUPPLIES

Supplies include those items with an expected life of less than one year and that cost less than \$5,000 per unit. Supplies include, but are not limited to, items such as lap top computers, telephones, recorders, projectors, cameras, calculators, pencils, paper, paper clips, staplers, and folders, etc. For each line item entered, you must include a justification that ties that item to the activities described in your narrative.

EQUIPMENT

Equipment is defined as having a useful life in excess of one year. Property Inventory Report Forms (PIRFs) will only be required for equipment that costs \$5,000 or more per unit cost. Costs include taxes, delivery, installation and similarly related charges. The procurement process used must be consistent with your written procurement guidelines. For each line item entered, you must include a justification that ties that item to the activities described in your narrative.

Maintaining internal inventory records for equipment procured under this subcontract is mandatory.

INDIRECT COSTS

Include the indirect costs and computations illustrating how the indirect costs were determined.

E. APPLICATION STATUS INSTRUCTIONS

After completing and reviewing all sections of the application, email your application to **OSR@ubalt.edu**, return receipt request. If the email is received by the UB, you will receive a receipt for your submission. Be sure to retain your receipt.

Your Application will be placed in a pending file while it is considered for funding. After the UB has considered your application, you will be notified by email whether your application was selected for funding.

F. DOCUMENTS INSTRUCTIONS

Included required forms (e.g. Letters of Support) and other required documents in an appendix to your application.

G. SIGNATURE PAGES

The Certified Assurances and Federal Anti-Lobbying Certification must be signed by the appropriate agency representative and included with the application. Both forms may only be signed by the Applicant Agency's Authorized Official or their duly assigned alternate signatory.

H. AUDIT FINDINGS / CORRECTIVE ACTION PLAN

Applicants must submit copies of any Audit Findings and Corrective Action Plans with the application. **Do not send a copy of your audited financial statements; ONLY** the applicable audit findings and/or corrective action plan is required.

XV. CERTIFIED ASSURANCES

- A. [Certification Regarding Lobbying](#)
- B. [Assurances – Non-Construction Programs](#)

Financial Assistance Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

** CONCEPTION **

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: H3S Public Health Division Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No

If renewal, complete sections 1, 2, & 4 only

If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity: Combating Opioid Overdose through Community-level Intervention Initiative (COOCLI)

Funding Source: Federal State Local

Requester Information (Name of staff person initiating form): Sherry Olson

Requestor Contact Information: 503.742.5342

Department Fiscal Representative: Sherry Olson

Program Name or Number (please specify): Opioid Misuse Prevention/8387

Brief Description of Project:

If awarded, the funding will be used to expand and enhance an existing community-level overdose prevention project (Project HOPE) between Clackamas County Public Health, Clackamas County Behavioral Health, Clackamas Health Centers, Clackamas Fire, Milwaukie Police, and several community based referral partners. Clackamas Fire will work with an array of partners to provide care coordination and recovery support. Project HOPE aims to (1) reduce the number of people who overdose on opioids and other drugs, (2) reduce 911 calls and hospital readmission, (3) improve the quality of life for patients with substance use disorders, and (4) bridge gaps in care by connecting vulnerable patients to treatment and other social and health-related support services. The second phase of Project HOPE will expand the existing model so more patients are served and bring on a Case Manager to help with care coordination.

Name of Funding Agency: University of Baltimore subaward through the ONDCP

Agency's Web Address for funding agency Guidelines and Contact Information:

http://www.ubalt.edu/about-ub/offices-and-services/provost/reporting-units/sponsored-research/ondcp_nofa.cfm

OR

Application Packet Attached: Yes No

Completed By: Armando Jimenez, Population Health Strategies Program Manager 10/12/20
Date

** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE **

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Application <input checked="" type="checkbox"/>	Non-Competing Application <input type="checkbox"/>	Other <input type="checkbox"/>	
CFDA(s), if applicable: <u>95.007</u>		Funding Agency Award Notification Date: <u>December 2020</u>	
Announcement Date: <u>Sept 8, 2020</u>		Announcement/Opportunity #: <u>N/A</u>	
Grant Category/Title: <u>Combating Opioid Overdose (COOCLI)</u>		Max Award Value: <u>\$300000</u>	
Allows Indirect/Rate: <u>Yes</u>		Match Requirement: <u>None</u>	
Application Deadline: <u>Nov 2, 2020</u>		Other Deadlines: <u>None</u>	
Award Start Date: <u>Dec 1 2020</u>		Other Deadline Description: <u>None</u>	
Award End Date: <u>November 30, 2021</u>			
Completed By: <u>Sherry Olson</u>		Program Income Requirement: <u>NA</u>	
Pre-Application Meeting Schedule: <u>October 8, 2020</u>			

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

This grant will support H3S's mission to ensure healthy families and strong communities in Clackamas County. A necessary component of this mission is preventing opioid misuse and overdose deaths. The grant will enable H3S to support our mission.

2. What, if any, are the community partners who might be better suited to perform this work?

N/A

3. What are the objectives of this funding opportunity? How will we meet these objectives?

See attached answer.

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

Yes - Project HOPE

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

Yes. Opioid project coordinator, peer support specialist, case manager, evaluation support, and epidemiologist are all within the Health, Housing and Human Services (H3S) Department.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

Yes. Clackamas Fire - Community Paramedic support, Milwaukie Police Department will be providing referrals, Kaiser Permanente will be providing clinical referrals.

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

Project HOPE is an existing project.

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

No

Collaboration

1. List County departments that will collaborate on this award, if any.

H3S (Public Health, Behavioral Health, Health Clinics) Clackamas County Sheriff Dept. Clackamas District Attorney.

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

Quarterly program reports are required to be submitted via e-mail to UOB.

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Opioid and other addictive substance overdoses will be tracked in addition to program performance measures. Data are available through existing systems and program data will be collected by service providers throughout the program span.

3. What are the fiscal reporting requirements for this funding?

Monthly fiscal reports are required to be submitted via e-mail to UOB.

Fiscal

1. Will we realize more benefit than this financial assistance will cost to administer?

Yes

2. Are other revenue sources required? Have they already been secured?

No

3. For applications with a match requirement, how much is required (in dollars), and what type of funding will be used to meet it (Cash-CGF, In-kind meaning the value from a 3rd party/non-county entity, Local Grant, etc.)?

N/A

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Yes. A de minimis rate of 10% is allowable for indirect costs. Per County policy, the de minimis rate will not be claimed in this application.

Program Approval:

Sherry L Olson

10/19/20

Sherry L Olson

Digitally signed by Sherry L Olson
Date: 2020.10.19 07:46:10 -07'00'

Name (Typed/Printed)

Date

Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

****ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.****

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Philip Mason-Joyner	10/19/2020	Philip Mason-Joyner <small>Digitally signed by Philip Mason-Joyner Date: 2020.10.19 08:27:25 -07'00'</small>
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Richard Swift	10/21/2020	Richard Swift <small>Digitally signed by Richard Swift Date: 2020.10.21 08:57:30 -07'00'</small>
Name (Typed/Printed)	Date	Signature

FINANCE SENIOR COMPLIANCE SPECIALIST		
Matt Westbrook	10/15/20	Matt Westbrook <small>Digitally signed by Matt Westbrook Date: 2020.10.15 16:52:07 -04'00'</small>
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

*(Required for all grant applications. If your grant is awarded, all grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

For applications greater than \$150,000 or which otherwise require BCC approval:

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

**County Administration: re-route to department contact when fully approved.
Department: keep original with your grant file.**

Section III, Mission Purpose, Question 3:

The grant aims to reduce opioid abuse and the number of overdose fatalities, as well as to mitigate the impacts on crime victims by supporting comprehensive, collaborative initiatives. The program also supports clinical decision making and works to prevent the abuse and diversion of controlled substances. Project objectives and deliverables are below. Public Health will achieve these objectives through regular communication and technical assistance with the funder.

- 1) Agree to work closely with University of Baltimore (UOB's) designated training and technical assistance (TTA) provider(s) that may assist with planning, implementation, and assessment of the sites.
- 2) Agree to work closely with a researcher/evaluator selected by UOB who may conduct a site-specific or cross-site evaluation in future years.
- 3) Identify a project coordinator to manage the day-to-day operations of the initiative.
- 4) Coordinate regularly with local implementation partners to refine and enhance referral pathways
- 5) Regularly collect and report program performance measures as well as conduct a comprehensive evaluation of the project.



Richard Swift
Director

October 29, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of the Intra-Agency Agreement with the
Clackamas County Emergency Communications (CCECD)

Purpose/Outcomes	To formalize the working relationship between the two agencies as it relates to the recruitment and supervision of the EMS Coordinator position and support of the EMS Coordinator and EMS Medical Director positions.
Dollar Amount and Fiscal Impact	This is an ongoing relationship, there is no contract maximum.
Funding Source	This is funded from the Emergency Medical Services Program within the Public Health Division. No County General Funds are involved.
Duration	Effective August 1, 2020 and continues until terminated.
Previous Board Action	No Previous Board Action
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on October 12, 2020
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	9692

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of the Intra-Agency Agreement with the Clackamas County Emergency Communications (CCECD). This Agreement outlines the roles of both parties as it relates to the recruitment and supervision of the EMS Coordinator position and support of the EMS Coordinator and EMS Medical Director positions.

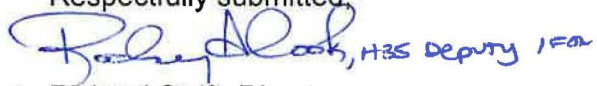
This contract is effective August 1, 2020 and continues until terminated.

Page 2 Staff Report
October 29, 2020
Agreement #9692

RECOMMENDATION:

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

Respectfully submitted,

Handwritten signature in blue ink, appearing to read "Richard Swift, H3S Deputy IFA".

Richard Swift, Director
Health, Housing, and Human Services

INTRA-AGENCY AGREEMENT
BETWEEN
CLACKAMAS COUNTY PUBLIC HEALTH DIVISION
AND
CLACKAMAS COUNTY EMERGENCY COMMUNICATIONS

Agreement #9692

I. Purpose

This agreement is made between **Clackamas County Public Health Division (CCPHD)** and **Clackamas County Emergency Communications Department (CCECD)**. The parties agree to collaborate on the working relationship between the two agencies as it relates to the Emergency Medical Services Program.

II. Scope of Work and Cooperation

A. *C-COM agrees to:*

1. Recruit and supervise the EMS Coordinator position.
2. Provide administrative support for the EMS Coordinator and EMS Medical Director positions, when needed. This includes review and approval of timesheets, mileage requests, conference & training requests, etc.
3. Provide a workstation (located at C-COM), chair, computer monitors, and additional technology required for the EMS Coordinator position.
4. Grant access to required databases and systems required for the EMS Coordinator position.
5. C-Com and all its employees agree to all applicable confidentiality and HIPAA laws.

B. *CCPHD agrees to:*

1. Provide leadership support in the recruitment and hiring of the Emergency Medical Services (EMS) Coordinator (Training & Quality Assurance Coordinator) and EMS Medical Director positions.
2. Meet at least semi-annually to develop and evaluate short and long-term goals for the EMS Coordinator position using the included Workload Analysis Worksheet (Exhibit A).
3. Provide input in the development of performance evaluations for the EMS Coordinator position.
4. Provide a workstation (located 3rd floor; PSB), laptop, computer monitors, chair, cellphone, and additional technology required for the EMS Coordinator position.
5. Provide a Medical Director for C-COM with responsibilities that include:
 - a. Evaluating each emergency medical dispatcher meets Oregon requirements for certification and maintenance of IAED certification

Clackamas County Emergency Communications Department

Intra-Agency Agreement # 9692

Page 2 of 3

and has the knowledge, skills and abilities to perform at the standards determined jointly by County and agency.

- b. Evaluating each EMD's skill performance annually.
- c. Reviewing and approving all emergency medical dispatch protocols, providing oversight for quality improvement processes, and case reviews
- d. Work in partnership with relevant stakeholders on advancing efforts to achieve accreditation through the International Academy of Emergency Medical Dispatch. Assure that the County's contracted private ambulance services provider is available to provide technical assistance and additional support.

III. Compensation

A. *CCPHD agrees to:*

1. Reimburse C-COM 100% of the cost of the EMS Coordinator employee (full-time) based on the current fiscal year's cost for salary, fringe, benefits and allocated costs.

B. *C-COM agrees to:*

1. C-COM will invoice CCPHD via monthly inter-fund. Time will be tracked in WFS.

This Agreement has no Maximum .

IV. Liaison Responsibility

Philip Mason-Joyner will act as liaison from CCPHD for this agreement.
Anthony Collins will act as liaison from C-COM for this project.

V. Special Requirements

NONE

VI. Amendments

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

VII. Term of Agreement

This agreement becomes effective August 1, 2020. This Agreement has no expiration date.

Clackamas County Emergency Communications Department

Intra-Agency Agreement # 9692

Page 3 of 3

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

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

This agreement consists of seven (7) sections.

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

**CLACKAMAS COUNTY EMERGENCY
COMMUNICATINS DEPARTMENT**

Cheryl Bledsoe (Virtual Signature)

Cheryl Bledsoe, Director

10/8/20

Date

**CLACKAMAS COUNTY
PUBLIC HEALTH DIVISION**

Philip Mason-

Joyner

Digitally signed by Philip Mason-

Joyner

Date: 2020.10.12 08:11:39 -07'00'

Philip Mason-Joyner, Director

Date

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

Richard Swift, Director

Date

S:\Admin\CONTRACTS\PUBLIC HEALTH\Expense\Clackamas County\Emergency Communications\EMS Coordinator\FY20-21\Contract\H3SPHClackamasCountyEmergencyCommunications9692.doc

October 29, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment #05 to the Personal Services Agreement with
Advantage Nurse Staffing of Oregon, Inc.
for temporary medical staffing in support of the COVID-19 response.

Purpose/Outcomes	Amendment #05 increases the maximum contract value by \$300,000.
Dollar Amount and Fiscal Impact	Contract Maximum value is \$900,000.
Funding Source	Public Health and Health Centers Administration No County General Funds are involved.
Duration	Effective upon signature – December 31, 2020.
Strategic Plan Alignment	1. Improved community safety and health. 2. Ensure safe, healthy and secure communities.
Previous Board Action	Previous action on May 20, 2020, July 15, 2020
County Counsel	County counsel and EOC Command has reviewed and approved this document on October 12, 2020
Contact Person	Philip Mason-Joyner, Public Health Director – 503-742-5956
Contract No.	2638-05

BACKGROUND:

Clackamas County Public Health Division (CCHPD) of the Health, Housing & Human Services Department requests the approval of Amendment #05 to the Personal Services Agreement with Advantage Nurse Staffing of Oregon, Inc. for temporary medical staffing in support of the COVID-19 response.

Amendment #05 is necessary to allow continued investigatory interviewing and contact tracing as part of the COVID -19 response and Re-open Oregon Plan. Continuing with current Contractor is essential to maintain continuity of the team, which have already been trained. If we were to start with a new Contractor, we would be starting at ground zero. This would result in loss of valuable time and resources. The contact investigations and tracing would be impacted and could result in increased COVID cases.

This Amendment increases the Agreement by \$300,000. Bringing the maximum value to \$900,000. This Agreement is effective upon signature and will terminate on December 31, 2020.

Page 2 County Administrator Memo
May 20, 2020
Agreement #2638 -05

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 blue ink that reads "Jeremy Ash, HHS Deputy / For". The signature is written in a cursive style.

Richard Swift, Director
Health, Housing, and Human Services

EOC Command and County Counsel Approval

From: Naylor, Andrew
Sent: Monday, October 12, 2020 3:01 PM
To: Weber, Jeanne <JWeber2@clackamas.us>; EOC, EOCCCommand <EOCCCommand@clackamas.us>
Cc: Mason-Joyner, Philip <PMason@clackamas.us>; Marlton, George <GMarlton@clackamas.us>
Subject: Re: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638

Ok, then with the edits it is approved as to form. However, this is not without risk. Another provider could challenge this as exceeding our authority under our Code as not allowing competition that is reasonable and appropriate under the circumstances. That is tempered somewhat because we are in the process of a RFP, though I don't know when that process was started.

In addition, it is possible that a federal audit could raise questions about these amendments. I don't have enough knowledge of that process or what is reviewed to know how stringently our processes will be reviewed or how much they will question the justifications for sole source decisions.

As long as you're comfortable proceeding with these risks, nothing further from my end.

Andrew R. Naylor
Assistant County Counsel
2051 Kaen Road
Oregon City, OR 97045
(503) 742-4623
Cell: (503) 881-2195
anaylor@clackamas.us

From: Weber, Jeanne
Sent: Monday, October 12, 2020 2:40 PM
To: Naylor, Andrew; EOC, EOCCCommand
Cc: Mason-Joyner, Philip; Marlton, George
Subject: RE: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638
Yes – we are looking at brining on 10 full time staff additional staff over the next 2 weeks. That is aproxo9imately \$286,000.
Regards,
Jeanne

From: Naylor, Andrew
Sent: Monday, October 12, 2020 2:32 PM
To: Weber, Jeanne <JWeber2@clackamas.us>; EOC, EOCCCommand <EOCCCommand@clackamas.us>
Cc: Mason-Joyner, Philip <PMason@clackamas.us>; Marlton, George <GMarlton@clackamas.us>
Subject: Re: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638
Do we need at \$300,000 worth of an amendment? That again seems very high. Are we expecting to incur \$300,000 in the time until the RFP is complete?

Andrew R. Naylor
Assistant County Counsel
2051 Kaen Road
Oregon City, OR 97045
(503) 742-4623
Cell: (503) 881-2195
anaylor@clackamas.us

From: Weber, Jeanne
Sent: Monday, October 12, 2020 2:30 PM
To: EOC, EOCCommand; Naylor, Andrew
Cc: Mason-Joyner, Philip; Marlton, George
Subject: RE: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638

Hi Andrew,

The original agreement was written from the emergency declaration. We are in the process of completing an RFP. The RFP has been written and has been posted. As cases have spiked it is necessary to hire additional staff now. Per consultation with George, I am adding funds to the current agreement to enable the response to continue until the RFP is completed.

This is Amendment #5 and I have corrected the typo.

Please let me know if you have additional questions.

Regards,
Jeanne

From: EOC, EOCCommand
Sent: Monday, October 12, 2020 2:06 PM
To: Weber, Jeanne <JWeber2@clackamas.us>
Cc: Mason-Joyner, Philip <PMason@clackamas.us>
Subject: FW: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638

Hi Jeanne,
Please see the attached and below.

Thank you,

Tiffany West
Pronouns: she/her/hers
Command Section Administrative Assistant
Clackamas County Emergency Operation Center
eoccommand@clackamas.us

From: Naylor, Andrew <ANaylor@clackamas.us>
Sent: Monday, October 12, 2020 2:03 PM
To: EOC, EOCCommand <EOCCommand@clackamas.us>
Cc: Mason-Joyner, Philip <PMason@clackamas.us>
Subject: Re: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638

I have some questions/concerns about this.

Andrew R. Naylor
Assistant County Counsel
2051 Kaen Road
Oregon City, OR 97045
(503) 742-4623
Cell: (503) 881-2195
anaylor@clackamas.us

From: EOC, EOCCCommand
Sent: Monday, October 12, 2020 1:45 PM
To: Naylor, Andrew
Cc: Mason-Joyner, Philip
Subject: FW: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638

Hi Andrew,
Please see the below and attached for review and approval.

Tiffany West
Pronouns: she/her/hers
Command Section Administrative Assistant
Clackamas County Emergency Operation Center
eoccommand@clackamas.us

From: Weber, Jeanne <JWeber2@clackamas.us>
Sent: Monday, October 12, 2020 12:15 PM
To: EOC, EOCCCommand <EOCCCommand@clackamas.us>
Cc: Marlton, George <GMarlton@clackamas.us>
Subject: HIGH PRIORITY - Amendment #05 to the Advantage Nurse Staffing Agreement #2638
Importance: High

Good Morning,

These items need County Counsel Review. This is a Board item as well, so there is some urgency.

Please let me know if you have any questions.

Regards,

Jeanne Weber, OPBC, OSPC, CATC
Sr. Management Analyst
Public Health Division
jweber2@co.clackamas.or.us
503-742-5350 Fax 503-742-5352

**AMENDMENT #5
TO THE CONTRACT DOCUMENTS WITH ADVANTAGE NURSE STAFFING OF OREGON, INC.
FOR TEMPORARY NURSE STAFFING.
Contract #2638**

This Amendment #5 is entered into between Advantage Nurse Staffing of Oregon, Inc. ("Contractor") and Clackamas County ("County") and shall become part of the Contract documents entered into between both parties on **March 5, 2020** ("Contract").

The Purpose of this Amendment #5 is to make the following changes to the Contract:

1. ARTICLE I, Section 3. **Consideration** is hereby amended as follows:

ORIGINAL CONTRACT	\$ 150,000.
AMENDMENT #1	Added Exhibit C - Additional Federal Terms and Conditions to the Contract
AMENDMENT #2	Amended Exhibit A to add the ED Nurse classification and billing rate to Exhibit A.
AMENDMENT #3	\$ 150,000.
AMENDMENT #4	\$ 300,000.
AMENDMENT #5	\$ 300,000.
TOTAL AMENDED CONTRACT	\$ 900,000.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #3, effective upon the date of the last signature below.

ADVANTAGE NURSE STAFFING OF OREGON, INC. CLACKAMAS COUNTY

By: Richard B. Evans
Richard B. Evans, VP/COO

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

10-13-20
Date

Street Address
Portland, OR 97204
City/State/Zip
503-432-1383
Phone / Fax

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing and Human Services

Date



Richard Swift
Director

October 29, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Cooperation Agreement between Clackamas County and
Corvallis Neighborhood Housing Services Incorporated, dba DevNW for
Acquisition of Vacant Land to Build 11 Tiny Ownership Homes Project**

Purpose/ Outcome	The Cooperation Agreement will allow for DevNW to purchase vacant land in Milwaukie to build 11 tiny homes for sale to low-moderate income families and individuals.
Dollar Amount and Fiscal Impact	Clackamas County Community Development Division (CD) has received allocated Federal U.S. Housing and Urban Development (HUD) funds in the amount of \$220,000 dollars for this acquisition project.
Funding Source	Community Development Block Grant (CDBG) funds: \$220,000 Corvallis Neighborhood Housing Services Incorporated dba DevNW: \$179,900 Pending Purchase Price: \$399,900 dollars No County General Funds will be used for this project.
Duration	November 2020 through November 2040 (Grant).
Previous Board Action/ Review	The BCC approved Action Plan for this Acquisition Project on May 5, 2019.
Strategic Plan Alignment	1. Ensure safe, healthy and sustainable communities. 2. Improved community safety and health.
Counsel Review	This Agreement has been reviewed by Counsel 1. Date of Counsel review: October 14, 2020. 2. A.N.
Contact Person(s)	Mark Sirois – Community Development Division: Ext. 5664
Contract No.	H3S 9913

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of this Cooperation Agreement with DevNW to allow for this acquisition of vacant land for low-moderate homeownership. The U.S. Housing and Urban Development (HUD) guidelines support the use of Community Development Block Grant funds for land acquisition in this manner. The Agreement determines the roles of DevNW and the County regarding use of the purchased property, contractual administration, purchase details as well as the duties of all parties involved with the acquisition process. The address is 16124 SE Webster Road, Milwaukie, Oregon 97267.

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

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

COOPERATION AGREEMENT

BETWEEN

CLACKAMAS COUNTY, OREGON

AND

CORVALLIS NEIGHBORHOOD HOUSING SERVICES INCORPORATED,

DOING BUSINESS AS DEVNW

I) Purpose:

- (A) This Cooperation Agreement (this “Agreement”) is entered into between Clackamas County a political subdivision of the State of Oregon (“County”) by and through its Health, Housing and Human Services Department, Community Development Division, and Corvallis Neighborhood Housing Services Incorporated, doing business as DevNW, an Oregon nonprofit corporation (“DevNW”) to provide a basis for a cooperative working relationship for purchasing vacant land within Clackamas County, State of Oregon. The vacant land will be purchased for the sole use to construct eleven (11) residential cottages and is generally described as 16124 SE Webster Road, Milwaukie, Oregon 97267 (the “Property”). The Property will be purchased with Community Development Block Grant (“CDBG”) funds and DevNW organizational funds. This Agreement and CDBG funds are only to be used for acquisition of the Property, not the future improvements (i.e. single family dwellings) which will be contracted by DevNW with a general contractor to build permitted single family dwellings to be affixed to the Property. DevNW will be the owner of the Property.
- (B) The Property will be subject to specific use restrictions and CDBG programmatic requirements contained herein and the associated Declaration of Land Use Restrictive Covenants for 20 years from the date of full execution of this Agreement.
- (C) This Project is defined as the County and DevNW working together to select, review and purchase vacant land for the purpose of building homes to support ownership to Low-to Moderate- Income Families or Individuals, as determined by the CDBG funding guidelines.

II) Scope of Responsibilities:

- (A) Under this Agreement the responsibilities of DevNW shall be as follows:
 - 1) DevNW shall use the CDBG funds for the purchase of the Property for the Project use described in Section 1A. The CDBG funds are solely to be used for the purchase of the Property.
 - 2) DevNW shall assist the County with due diligence to determine the feasibility of the purchase, which will include an appraisal of the Property with no less than three (3) comparable properties, as provided by a licensed appraiser within the State of Oregon.

- 3) DevNW shall assist the County with due diligence to ensure the use of the Property adheres to Land Use and Zoning requirements of the County, and all other applicable local, state, or federal laws, for residential use to construct 11 new cottages.
- 4) DevNW shall provide the County with a complete Phase I Environmental Review for the Property.
- 5) DevNW agrees to report to the County information on the race and head-of-household status for each client. The report shall cover the period between July 1 to June 30 for each year or partial year upon purchase and occupancy of the Property. The report which has been made a part of the Agreement, and is included as Attachment A, and shall be submitted to the County no later than the 31st day of August of each such year during the term of this Agreement.
- 6) DevNW shall be responsible for notifying the County for any and all work of substantial construction that exceeds a value of \$25,000 dollars or greater. Moreover, DevNW must provide written notice to County prior to work being started at the Property (land and improvements).
- 7) Any contractor working on the Property must have a current CCB License with the State of Oregon.
- 8) DevNW will require the hired contractor that will work on the Property to bear the risk of loss from fire, personal injury, extended coverage, and will purchase insurance on all affected DevNW properties, including the Property. DevNW will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. DevNW will keep insurance during the term of construction on the Property from the notice to proceed through completion of agreed construction work. DevNW will maintain, and will require its contractor to maintain, commercial general liability insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate, for the protection of the DevNW, its officers, appointed officials, agents, and employees.
- 9) DevNW shall be required to hire a State of Oregon licensed Title Company to perform the following:
 - a) Conduct a title search for the Property to ensure title is clear of encumbrances;
 - b) Provide an Escrow Account for the Property;
 - c) Prepare closing documents for the Property consistent with this Agreement;
 - d) Purchase and maintain an owner's title insurance policy for the Property at DevNW's expense in the amount of the purchase price paid for the Property; and
 - e) Provide the County copies of all closing documentation related to the Property transaction.
- 10) DevNW agrees to own the Property for a period of not less than twenty years (20) from the fully executed date of this Agreement. Immediately upon

acquisition of the Property, DevNW shall have a Declaration of Land Use Restrictive Covenants (“DLURC”) recorded with the County’s Recorders Office acknowledging the use of CDBG funds in the purchase of the Property and imposing restrictions on future use of the Property. A copy of the DLURC is attached hereto as Attachment B and incorporated by this reference herein.

- 11) DevNW agrees to provide written notice to the County prior to making any change in the use of the Property during the term of this Agreement. Notice will be in the form of a letter on letterhead. Should the new use not meet HUD eligibility criteria, and/or the clients no longer meet the HUD income guidelines, DevNW shall reimburse County as provided in 24 CFR 570.505, 24 CFR 570.506, and other applicable law. In no event will DevNW’s reimbursement obligations be less than the full amount of CDBG funds provided by the County under this Agreement.
 - 12) Should the Property be sold or converted at any time before the twenty year (20) period expiration date set forth in the DLURC to a non-qualifying use. DevNW agrees to reimburse the County as provided in 24 CFR 570.505, 24 CFR 570.506, and other applicable law. In no event will DevNW’s reimbursement obligations be less than the full amount of CDBG funds provided by the County under this Agreement.
 - 13) DevNW shall also adhere to the guidelines of 24 CFR Part 200.
 - 14) DevNW shall comply with and otherwise satisfy the national objective of the CDBG Program under the HUD guidelines. This Project meets a national objective via the Low-Mod Clientele (LMC) which supports housing for Low-to Moderate- Income Families or Individuals based on the 2020 HUD Income Limits for the CDBG Program.
 - 15) Contemporaneous with execution of this Agreement, DevNW shall complete the County’s CDBG Match Funds form which identifies other sources of funding allocated for the Project, substantially as attached hereto as Attachment C.
- (B) Under this Agreement the responsibilities of the County shall be as follows:
- 1) The County agrees to provide and administer available CDBG funds granted by the U.S. Department of Housing and Urban Development (“HUD”) to finance the Project.
 - 2) The County shall conduct necessary environmental reviews described in 24 CFR part 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.
 - 3) The County shall conduct due diligence to determine the feasibility of the purchase of the Property. The County will not distribute any CDBG funds for purchase of the Property if the County, in its sole discretion, determines that the Property is not feasible for the intended purposes described in this Agreement.

- 4) The County shall provide funding towards the purchase of the Property (vacant land) which may be improved as necessary by DevNW in order to provide home ownership to families and individuals that meet Low-to Moderate Income Limits as determined by HUD. The Income Limits for 2019 are shown below:

HUD Annual Income Limits for the Portland-Vancouver Metropolitan Area (As of July 2020)								
	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
Very Low Income	\$32,250	\$36,850	\$41,450	\$46,050	\$49,750	\$53,450	\$57,150	\$60,800
Low Income	\$51,600	\$59,000	\$66,350	\$73,700	\$79,600	\$85,500	\$91,400	\$97,300

The County will provide DevNW with updated income limits as they are made available from HUD.

- 5) The County shall adhere to the HUD guidelines pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (“URA”) to the extent applicable for the successful purchase of the Property.
- 6) The County shall provide reasonable and necessary staff for administration of this Agreement.

III) Budget and Financial

- (A) The County will provide up to **\$220,000** dollars of CDBG funds to DevNW for this project, allocated in the following manner: to be used for the purchase of the Property subject to the terms of this Agreement.

The obligations of the County are expressly subject to the County receiving funds from HUD for the Project, and in no event shall the County’s financial contribution exceed the amount finally granted, released and approved by HUD for this Project.

DevNW will be financially responsible for all funds needed for the purchase of the Property in excess of the \$220,000 in CDBG funds the County has made available. In order to meet its CDBG program match obligations, DevNW shall invest not less than **\$44,000** dollars towards the purchase of the Property. This amount is 20% beyond the CDBG funds amount.

- (B) The **\$220,000** of CDBG funds County will provide for the Project may only be used for eligible costs associated with the acquisition of the Property including the following: paying earnest money fees, appraisal fee for the Property, closing costs fees as well as down payment funds, provided the purchase of the Property will go through an Oregon Title Company.

IV) Liaison Responsibility

Adam Dallimore will act as liaison from DevNW for this Project. Steve Kelly will act as liaison from the County.

V) Special Requirements

- (A) Law and Regulations. The County and DevNW agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations. DevNW shall further comply

with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein.

- (B) Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220 through 279B.235 are incorporated by this reference as though fully set forth.
- (C) Relationship of Parties. Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- (D) Indemnification. DevNW agrees to indemnify, defend and hold harmless the County, its officers, elected officials, agents and employees from and against all liability, loss and costs arising from actions, suits, claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of DevNW or its employees or agents, in performance of this Agreement. DevNW further agrees to indemnify, defend and hold harmless the County, its officers, elected officials, agents and employees from and against all liability, loss and costs arising from actions, suits, claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon any claim by HUD regarding DevNW's use of the CDBG funds.
- (E) Notice of Claims. Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- (F) Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- (G) Access to Records. DevNW shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Agreement. County and its duly authorized representatives shall have access to the books, documents, papers, and records of DevNW, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. DevNW shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later..
- (H) Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the County are also expressly subject to the County receiving funds from HUD for this Project and in no event shall the County's financial contribution exceed the amount finally granted, released and approved by HUD for this Project or eighty percent of the costs of acquisition and renovation of the Property, whichever is less.

-
- (I) Conflict of Interest. No officer, elected official, board member, employee, or agent of DevNW or County who exercises any functions or responsibilities in connection with the planning and carrying out of the CDBG Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his or her services.
- (J) Insurance. DevNW will bear the risk of loss from fire, personal injury, extended coverage, and will purchase and maintain property insurance on all affected DevNW Property. DevNW will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. DevNW shall be required to maintain flood insurance. DevNW shall keep in effect during the term of this Agreement, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of the County, its officers, elected officials, agents, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement.
- (K) Nondiscrimination. DevNW and the County agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, religion, sex, sexual orientation, gender, identity, marital status, race, creed, color, religion, national origin, familial status, or the presence of any mental or physical disability. These requirements are specified in ORS chapter 659A; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- (L) Handicapped Accessibility. DevNW agrees that all structures and improvements made to the Property shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended, and other applicable state or federal law. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- (M) Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by DevNW to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- (N) Evaluation. DevNW agrees to participate with the County in any evaluation process or performance report, as designed by the County or the appropriate Federal department, and to make available all information required by any such evaluation process.
- (O) Reversion of Assets. DevNW shall ensure that the Property covered under this Agreement is used to meet at least one of the National Objectives in 24 CFR 570.208 for the full term of this Agreement. If the Property is not used to meet one of the National Objectives for the full term of this Agreement, DevNW shall pay to County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the Property.

-
- (P) **Terminations.** This Agreement may be terminated for the following reasons: (1) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (2) if DevNW breaches any Agreement provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- (Q) **Remedies.** Upon breach by DevNW, County shall have any remedy available to it in law or equity including, but not limited to, reimbursement of CDBG funds or reversion of assets, as provided for in this Agreement.

VI) Amendment

This Agreement may be amended at any time in writing with the concurrence of the Parties. Amendments become a part of this Agreement only after both Parties have signed the written amendment.

VII) Term of Agreement

- A) This Agreement becomes effective when it is signed by both Parties.
- B) The term of this Agreement is a period beginning when it becomes effective and ending twenty (20) years from the date the Property is purchased.
- C) In addition to all other remedies available to the County and HUD under this Agreement and all related documents, upon termination of this Agreement, any unexpended of CDBG funds shall remain with the County.
- D) Time is of the Essence. Time is of the essence, meaning HUD designates CDBG funds to be used for land acquisitions within a 24-month award period. If DevNW fails to acquire land in the 24-month award period, HUD will notify the County of this Project is a slow-moving Project and it can be closed, at the sole discretion of the County.

VIII. Additional Terms and Conditions

A. Integration.

This Agreement contains the entire agreement between DevNW and the County and supersedes all prior written or oral discussions.

B. Severability

If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such

provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

C. Oregon Law and Forum

This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and DevNW that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. DevNW, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

D. Waiver

DevNW and County shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

E. Survival.

All provisions in Sections II, III, V, VII, and VIII shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.

F. Necessary Acts and Further Assurances.

Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement. DevNW agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

G. Successors in Interest.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

H. Force Majeure.

Neither DevNW nor County shall be held responsible for delay or default caused by events outside of the DevNW or County's reasonable control including, but not limited

to, fire, terrorism, riot, acts of God, or war. However, DevNW shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

I. No Attorney Fees.

In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses

[Signature Page Follows]

The parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

**Corvallis Neighborhood Housing Services Inc.,
Dba DevNW**
212 Main Street
Springfield, Oregon 97477

CLACKAMAS COUNTY

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

Signing on Behalf of the Board



Emily Reiman, Chief Operations Officer

Richard Swift, Director
Health, Housing and Human Services
Department

10/14/2020

Date

Date

APPROVED TO FORM

County Counsel



Signature

10/14/20

Date

ATTACHMENT A

COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL PERFORMANCE REPORT

FOR THE PERIOD: JULY 1, _____ TO JUNE 30, _____

Project Name: DevNW / Cottage Cluster Acquisition Project - 16124 SE Webster Road, Milwaukie, OR 97267

Total Number Assisted (H or P)	Total of Columns C, D, and E	Income Categories			Female Headed Households
		Low/Mod (80% - 51%)	Very Low (50% - 30%)	Extremely Low (<30%)	
(A)	(B)	(C)	(D)	(E)	(F)

Females: _____

Persons with Disabilities: _____

Race Categories			Total #	# Hispanic
			(G)	(H)
(1)	White:			
(2)	Black/African American:			
(3)	Asian:			
(4)	American Indian/Alaskan Native:			
(5)	Native Hawaiian/Other Pacific Islander:			
(6)	American Indian/Alaskan Native & White:			
(7)	Asian & White:			
(8)	Black/African American & White:			
(9)	Am.Indian/Alaskan Native & Black/African Am:			
(10)	Other Multi-Racial:			

Signature

Date

Organization

INSTRUCTIONSTotal Number Assisted (Column A):

Enter the actual number of persons (or households) who received assistance. Indicate whether this number represents "households" or "persons" with either (H) or (P) respectively. Each household or person may be counted only once. The number of beneficiaries reported in Column A must reflect the total of the beneficiaries reported in Column G.

Total Low/Mod (<80% MFI) (Column B):

The total number of lower income households or persons being served (total of Columns C, D, and E) should be entered in this column.

Income Categories

Low/Mod (Column C) - The total number of persons or households assisted who have an annual household income of 51% to 80% Median Family Income.

Low (Column D) - The total number of persons or households assisted who have an annual household income of 30% to 50% Median Family Income.

Extremely Low (Column E) - The total number of persons or households assisted who have an annual household income of 30% Median Family Income or less.

Female-Headed Household (Column F)

Enter the number of female-headed households. If "persons" assisted is reported in Column A rather than "households" assisted, leave this column blank.

Race (Rows 1 through 10)

All persons/households served (including persons of Hispanic ethnicity) must indicate Race.

Enter the number of households or persons using the facility or service (Column G) who are the following:

White (Row 1) - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East. This category will generally include persons of Hispanic ethnicity but other categories may be chosen as appropriate.

Black or African American (Row 2) - A person having origins in any of the black racial groups of Africa.

Asian (Row 3) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

American Indian or Alaskan Native Origin (Row 4) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

Native Hawaiian or Other Pacific Islander (Row 5) - A person having origins in the Hawaiian Islands or other Pacific Islands.

American Indian or Alaska Native and White (Row 6)

Asian and White (Row 7)

Black or African American and White (Row 8)

American Indian or Alaska Native and Black or African American (Row 9)

Other Multi-Racial (Row 10) - The balance category will be used to report individuals that are not included in any of the single race categories or in any of the multiple race categories listed above.

Ethnicity - Hispanic (Column H)

Enter the total number of persons or households within each Race Category who indicate origins in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish culture or origin.

ATTACHMENT B**B.O. 2003 - 236**AFTER RECORDING RETURN TO:
AGENCY NAME / ADDRESSSTATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – within Recitals, Page 1

Declaration of Land Use Restrictive Covenants**Name of Project: DEVNW – VACANT LAND ACQUISITION**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (“Declaration”), is made this ___ day of _____, 2020, by CORVALLIS NEIGHBORHOOD HOUSING SERVICES, INCORPORATED, doing business as DEVNW, a community based, membership controlled, not-for-profit corporation with charitable status under IRS Code 501c(3) (“Owner”), is given as a condition precedent to the award of Community Development Block Grant (CDBG) Program funds by the CLACKAMAS COUNTY COMMUNITY DEVELOPMENT DIVISION, a political subdivision of the State of Oregon, together with any successor to its rights, duties, and obligations, (the “County”).

RECITALS

WHEREAS, the Owner is the owner of the land located at 16124 SE Webster Road, Milwaukie, Oregon 97267. The Project consists of: acquisition of vacant land, of the referenced address herein, using CDBG funds provided by the County under a separate agreement (the “Agreement”), after which DEVNW will hire a contractor to construct eleven (11) residential cottage homes. DEVNW will own the land, and the constructed residential cottage homes will be owned by the purchasers (i.e. income qualified families or individuals).

WHEREAS, the Legal Description of the Property (vacant land), Parcel Reference Number and Parcel Number on which the Project is located is as follows:

“Beginning at the Northwest corner of said Tract 8; thence South 40* 54’ East a distance of 465 feet, more or less, to an iron pipe and the Northwest corner of that tract described in deed to John M Hodgos, Jr., et us, recorded in Book 462, Page 8, Deed Records; thence North 66* 50’ East a distance of 101 feet; thence North 58* 46’ East a distance of 60.8 feet to an iron pipe, thence North 58* 46’ East a distance of 50.4 feet to the Easterly line of said Tract 8, thence North 217.72 feet, more or less, to the Northeast corner of said Tract 8; thence Westerly 485 feet, more or less, to the point of beginning.”

Parcel Reference Number: 22E08DC 09600

Parcel Number: 00470289

County and State: Clackamas, Oregon

WHEREAS, the federal United States Department of Housing and Urban Development (HUD) has made Community Development Block Grant (CDBG) funds available to the County as authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c)); and

WHEREAS, CDBG dollars are made available to the County and subsequently to the Owner as authorized by 24 CFR Part 570 (the "Regulations"), Owner agrees to comply with all requirements of the Regulations. Should anything in this document be construed to conflict with the Regulations, it is the Regulations which shall prevail.

WHEREAS, County seeks the maximum benefit from the use of such funds consistent with the CDBG Program and its objectives; and

WHEREAS, the Owner has applied to the County and entered into an Agreement for an award to the Project in an amount not to exceed **Two Hundred Twenty Thousand Dollars & no/cents (\$220,000.00)**; and

WHEREAS, the Owner is a not-for-profit corporation organized under IRS Code 501C (3) in response to a critical need to support low and moderate income persons in the County, and;

WHEREAS, the Owner, under this Declaration intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy, and transfer of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent Owners of the Project land for such term, and are not merely personal covenants of the Owner;

WHEREAS, the County requires as a condition precedent to the awarding of CDBG funds that the Owner execute, deliver and record this Declaration in the official land deed records of Clackamas County to create certain covenants running with the land for the purpose of enforcing the requirements of 24 CFR Part 200 by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

NOW, THEREFORE, in consideration of the Project, the promises contained herein and the financial assistance provided to Owner by County, the Owner agrees as follows:

SECTION 1 DEFINITION

All the words and phrases used in this Declaration shall have the same meaning as when used in 24 CFR Parts 570 and 200 unless the context requires otherwise.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (A) Upon execution of this Declaration by the Owner and the County, the Owner shall cause this Declaration and all amendments hereto to be recorded and filed in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the County an executed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) The Owner intends, declares, and covenants, on behalf of itself and all future owners of the Property and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Property (1) shall be and are covenants running with the land, encumbering the Property for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Property; (2) are not merely personal covenants of the Owner; and (3) shall bind the

Owner (and the benefits shall inure to the County and any past, present or prospective tenant of the Property) and its respective successors and assigns during the term of this Declaration. The Owner hereby agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Property. For the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.

- (C) The Owner covenants to obtain the consent of any prior recorded lien holder on the Project to this Declaration.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner, at all times, agrees to comply with the CDBG Program regulations of 24 CFR Part 570. The Owner hereby represents, covenants, and warrants as follows:

- (A) Owner will retain ownership of the Property for the term of this covenant.
2. Owner shall maintain records sufficient to meet the requirements of 24 CFR Part 570.505 thru 508. All records and reports required herein shall be retained and made accessible as provide in 24 CFR Part 570.506. Owner agrees to comply with all federal laws and regulations, except that the Owner does not assume County's responsibility for environmental review.
- (B) The housing must meet the accessibility requirements in the regulations referenced 24 CFR 5.105 (a), which implements the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended.
- (C) The Owner (1) is an Oregon non-profit corporation duly organized under the laws of the State of Oregon, and is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to execute and deliver this Declaration.
- (D) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (E) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the Property free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any loan documents relating to the Project or other permitted encumbrances).
- (F) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if

adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

- (G) The Owner warrants that it has not and will not execute any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 4 - INCOME RESTRICTIONS

The Owner represents, warrants, and covenants throughout the term of this Declaration and in order to satisfy the requirements of 24 CFR Part 570 that all families or individuals at this Property shall be of low to moderate income (80% on the Area Median Income (AMI) for an individual) at the time of home construction and purchase are first established through the closing process. An increase of an individual's income above the HUD limits after the purchase of a home will not be construed to be a breach of this section. When or if the homes are sold, the sales contract will include a 99-year affordability clause. When or if homeowners want to sell, they MUST sell to those who are at or below 80% of AMI, and buyers must agree to those terms (by signing a ground-lease with DevNW) when they purchase the house as well. This comes with DevNW owning the land underneath the homes in perpetuity.

SECTION 5 - TERM OF DECLARATION

This Declaration, and the Terms of Affordability specified herein, apply to the Property immediately upon recordation, and the Owner shall comply with all restrictive covenants herein no later than the first day in the Project period on which any building, which is part of the Project, is placed in service. This Declaration shall terminate **twenty (20)** years from the date this Declaration is executed by both parties.

SECTION 6 - ENFORCEMENT OF RESTRICTIONS

- (A) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the County, to inspect any books and records of the Owner regarding the Project.
- (B) The Owner shall submit any other information, documents, or certifications requested by the County which the County shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the restrictions specified in this Declaration.
- (C) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the County and all persons interested in Project compliance under 24 CFR Part 570 and the applicable regulations.
- (D) This Declaration and the Agreement of which it is a part may be enforced by the County or its designee in the event the Owner fails to satisfy any of the requirements herein. In the event the Owner fails to satisfy the requirements of this Declaration or the Agreement and legal costs are incurred by the County or one or more of the tenants or beneficiaries, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

_____ A 501(c)3 Non-Profit Organization
NAME OF ORGANIZATION

By : _____
NAME OF REPRESENTATIVE

ATTACHMENT C

CDBG Project Match Funds

For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for the DEVNW Acquisition of Vacant Land (Project):

2019-20 CDBG PROJECT FUNDS	\$220,000
----------------------------	------------------

SOURCES OF LOCAL MATCH:

Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)

	\$	
	\$	
	\$	
	\$	
	\$	

State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)

	\$	
	\$	
	\$	
	\$	
	\$	

Private (including recipient) Funding

Fund Raising/Cash	\$	
Loans	\$	
Building Value or Lease	\$	
Donated Goods	\$	
New Staff Salaries	\$	
Volunteers (\$5/hr)	\$	
Volunteer Medical/Legal	\$	
Other _____	\$	

Prepared By:
[Print Name]

Signature

Date

ATTACHMENT C

Excerpt from 24 CFR Part 570 **570.506 Records to be maintained.**

Each recipient shall establish and maintain sufficient records to enable the Secretary to determine whether the recipient has met the requirements of this part. At a minimum, the following records are needed:

(a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C under which it is eligible.

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in § 570.208. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as that used in the definitions of “low and moderate income person” and “low and moderate income household” (as applicable) at § 570.3, such as Job Training Partnership Act (JTPA) and welfare programs; or the recipient may substitute evidence that the assisted person is homeless; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with § 570.3; or the recipient may substitute a notice that the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low and moderate income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

(1) For each activity determined to benefit low and moderate income persons, the income limits applied and the point in time when the benefit was determined.

(2) For each activity determined to benefit low and moderate income persons based on the area served by the activity:

(i) The boundaries of the service area;

(ii) The income characteristics of families and unrelated individuals in the service area; and

(iii) If the percent of low and moderate income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at § 570.208(a)(1)(ii).

(3) For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use

October 29, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval to Apply for HB2017 State Transportation Improvement Fund Discretionary
Program Funds from Oregon Department of Transportation
for I-205 / Borland Rd / Bridgeport Village Transit Service

Purpose/Outcomes	The purpose of this grant is to fund transit service that connects Washington County and Clackamas County that serves populations between Tualatin (Bridgeport Village) and Clackamas Town Center.
Dollar Amount and Fiscal Impact	The maximum grant award is \$900,000. The grant would be funded through the Oregon Department of Transportation
Funding Source	HB2017 State Transportation Improvement Fund (STIF) funds are available to fund this grant. The match rate is 10% and will be paid with STIF Regional Coordination funds already awarded to Clackamas County and contributions from Washington County. County General Funds are not involved.
Duration	July 1, 2021 to June 30, 2023
Previous Board Action	None.
Strategic Plan Alignment	1. This aligns with the Social Service Division's strategic priority to provide services that allow individuals and families to remain in their own homes and communities. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	N/A
Procurement Review	1. Was this time processed through Procurement? No 2. If no, provide brief explanation: This is a State Grant. Not subject to Procurement Review.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	N/A

BACKGROUND:

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval to apply for HB2017 State Transportation Improvement Fund Discretionary Program Funds (STIF) from the Oregon Department of Transportation for implementation of transit service that connects Tualatin (Bridgeport Village) and Clackamas Town Center.

This new pilot transit connection is building off a feasibility study done in 2020 that looked at the need for transit along the I-205 corridor. This transit connection would provide a missing link in transit for both Clackamas County and Washington County. Partners for this project include Washington County, the City of Tualatin, the City of West Linn, the City of Oregon City, SMART

Healthy Families. Strong Communities.

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www.clackamas.us

Approval to Apply
CCTCA Development Grant
Page 2 of 2

and Ride Connection. The partners are looking to extend and connect current transportation options that would allow people to move from Bridgeport Village (Tualatin) to Oregon City, West Linn, and Clackamas Town Center and additionally connect to critical services off of Borland Rd.

The HB 2017 State Transportation Improvement Fund Discretionary grant is for \$810,000. The match requirement of \$90,000 will be paid by Washington County (\$56,000) and Clackamas County (\$34,000). STIF Regional Coordination Funds already awarded will pay Social Services' share (\$34,000). No County General Funds are involved.

RECOMMENDATION:

Staff recommends approval to apply for this grant and that Richard Swift, H3S Director, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, H3S Deputy / For

Richard Swift, Director
Health, Housing and Human Services Department

Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

** CONCEPTION **

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: H3S/SSD Application for: Subrecipient funds Direct Grant
Grant Renewal? Yes No

If renewal, complete sections 1, 2, & 4 only

Name of Funding Opportunity: Statewide Transportation Improvement Program Discretionary Funds FY22-23
Funding Source: Federal State Local: _____
Requestor Information (Name of staff person initiating form): Kristina Babcock
Requestor Contact Information: kbabcock@clackamas.us
Department Fiscal Representative: Jennifer Snook
Program Name or Number (please specify): Program 05358
Brief Description of Project:

Social Services seeks funds through the HB2017 STIF Discretionary Grant program to initiate transit service that connects Tualatin (Bridgeport Village) and Clackamas Town Center. This transit connection would provide a missing link in transit for both Clackamas County and Washington County; including the ability to reach services off of Borland Rd. on public transit. Partners for this project include Washington County, City of Tualatin, City of West Linn, City of Oregon City, Ride Connection, and SMART (City of Wilsonville).

Name of Funding (Granting) Agency: Oregon Dept. of Transportation, Rail and Public Transit Division

Agency's Web Address for Grant Guidelines and Contact Information:

<https://www.oregon.gov/ODOT/RPTD/Pages/Funding-Opportunities.aspx>

OR

Application Packet Attached: Yes No

Completed By: Kristina Babcock Date 9/29/2020

** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE **

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant Non-Competing Grant Other Funding Agency Award Notification Date: N/A
CFDA(s), if applicable: N/A
Announcement Date: September, 2020 Announcement/Opportunity #: N/A
Grant Category/Title: STIF Discretionary Max Award Value: \$900,000
Allows Indirect/Rate: N/A Match Requirement: 10.00%
Application Deadline: 11/2/2020 Other Deadlines: _____
Grant Start Date: 7/1/2021 Other Deadline Description: _____
Grant End Date: 6/30/2023
Completed By: Kristina Babcock Program Income Requirement: None
Pre-Application Meeting Schedule: _____ N/A

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant support the Department and/or Division's Mission/Purpose/Goals?

This grant would allow regional transit providers to provide coordinated service between Clackamas County and Washington County. The project will improve accessibility for low income riders and will provide valuable data that will assist with planning for future service enhancements.

2. What, if any, are the community partners who might be better suited to perform this work?

While Clackamas County cannot provide the actual transit service the County is in the best position to facilitate the partnerships necessary to ensure the connection is made between Tualatin and Clackamas Town Center.

3. What are the objectives of this grant? How will we meet these objectives?

The grant seeks to provide funding to projects that meet local needs while aligning with statewide priorities. Some of those priorities include improving connectivity between communities, especially in rural areas and coordination of services and programs. This grant will improve connectivity by minimizing barriers to transit use, especially in rural areas of the county.

4. Does the grant proposal fund an existing program? If yes, which program? If no, what is the purpose of the program?

No

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant timeframe?

Yes

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

The primary partner for this project is Washington County. Washington County has committed to providing match, as well as, working with Ride Connection for expansion of their current Tualatin Shuttle to connect Bridgeport Village to Borland Rd and eventually to SMART's commuter service along I-205. SMART would be providing service along I-205 with stops in West Linn, Oregon City, and Clackamas Town Center. Ride Connection and SMART have been identified

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funded, this grant would create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

N/A

Collaboration

1. List County departments that will collaborate on this award, if any.

N/A

Reporting Requirements

1. What are the program reporting requirements for this grant?

Quarterly reports to ODOT through the OPTIS system

2. How will grant performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Project performance will be evaluated through project deliverables and timelines. The data can be easily tracked.

3. What are the fiscal reporting requirements for this grant?

Quarterly reports to ODOT through the OPTIS system

Fiscal

1. Will we realize more benefit than this grant will cost to administer?

The grant will provide an invaluable tool to improve transit connections and accessibility county-wide and will have long ranging impacts on the delivery of transit services. The benefits outweigh the cost of administering the grant in the long run.

2. Are other revenue sources required? Have they already been secured?

The county's portion of match will be provided by HB 2017 STIF Regional Coordination funds and is readily available.

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

\$90,00 total match is required. The county's share will be \$34,000 and is already available in dedicated transportation fund balance.

4. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

No.

Program Approval:

Teresa Christopherson

10/8/2020

Teresa Christopherson

Name (Typed/Printed)

Date


Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

**** ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN. ****

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Brenda Durbin	10/9/2020	Brenda Durbin
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Richard Swift <u>RODNEY A. COOK</u>	10/14/20	
Name (Typed/Printed)	Date	Signature

FINANCE GRANT MANAGER (or designee, if applicable; FOR FEDERALLY-FUNDED APPLICATIONS ONLY)		
N/A		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

*(Required for all grant applications. If your grant is awarded, all grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

For applications greater than \$150,000 or which otherwise require BCC approval:

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

County Administration: re-route to department contact when fully approved.

Department: keep original with your grant file.

October 22, 2020

Commission Chair Bob Van Brocklin
Oregon Transportation Commission

Dear Mr. Brocklin

The Clackamas County Board of County Commissioners submits this letter of support for the STIF Discretionary Application associated with the I205 / Borland Rd / Bridgeport Village Transit Service. This service would fill a significant gap in the transit network in both Clackamas County and Washington County.

The transit service to be funded by this application is exactly what the Legislature had in mind when drafting House Bill 2017. This project meets the goals of the STIF Discretionary program by expanding service to vulnerable or disadvantaged people and improves statewide transit network connections. The approval of funding by TriMet's HB 2017 Transit Advisory Committee for continued funding of Clackamas County Regional Coordination projects further validates the need for transit service between Oregon City, West Linn, and Tualatin.

This project, as envisioned, would expand on the currently operating Tualatin Shuttle (operated by Ride Connection) to provide access to Meridian Park Hospital and services along Borland Rd. in Tualatin. Additionally, it would build on SMART's desire to provide service along I-205 (bus on shoulder), from Wilsonville to Clackamas Town Center. This project would improve access to jobs and essential services in Tualatin, Wilsonville, West Linn, Oregon City, and Clackamas for all income levels, but especially low-income and minority populations. The Board of Commissioners is excited about the opportunity to work collaboratively with Washington County, SMART, and Ride Connection.

The connections in Oregon City and Clackamas will tie into the current Last Mile shuttle efforts that are being studied and implemented in Clackamas County (Oregon City Last Mile Shuttle and Clackamas Industrial Shuttle). This proposed project supports the Oregon Public Transportation Plan goal to address accessibility and connectivity, by enhancing and identifying new public transportation connections and services. It also addresses strategies identified in the local Coordinated Transportation Plan for Seniors and Persons with Disabilities, to pursue innovative partnerships and collaboration.

We look forward to working with our partners to realize the long-term need of providing more local transit service that provides critical connections in Clackamas County.

Sincerely,

Jim Bernard, Chair
Clackamas County Board of Commissioners



DAN JOHNSON
DIRECTOR

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

October 29, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Wilsonville to Transfer Permitting Authority and Maintenance Responsibility for Portions Frog Pond Lane (County Road #2362, DTD #30031) and Stafford Road (Market Road #12, DTD #30054) to the City

Purpose/Outcomes	Transfers permitting authority and maintenance responsibility for construction on portions of Frog Pond Lane and Stafford Road to the City of Wilsonville.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway.
Funding Source	Road Fund
Duration	Upon execution; permanent
Previous Board Action	N/A
Strategic Plan Alignment	This transfer will build trust through good government by being efficient with County resources.
Counsel Review	Reviewed and approved by County Counsel on October 14, 2020
Procurement Review	Was this item processed through Procurement? No This item is an IGA related to a transfer of Jurisdiction
Contact Person	Michael Bays, Survey Cadd Supervisor; 503-742-46667

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of Frog Pond Lane and Stafford Road. This intergovernmental agreement addresses transferring rights and duties as “road authority,” including permitting authority, development of road standards, and maintenance responsibility to the City for portions of Frog Pond Lane and Stafford Road.

Transferring the rights and duties as road authority for these portions of Frog Pond Lane and Stafford Road to the City of Wilsonville will eliminate confusion and improve efficiencies of maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and maintenance; and review and issuance of street opening permits. The County will retain official

jurisdiction of this portion of the roadway until such time as the City of Wilsonville requests jurisdictional transfer as outlined in the previous agreement with the County.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Wilsonville to transfer rights and duties as road authority for portions of Frog Pond Lane and Stafford Road to the City.

Respectfully submitted,

Michael Bays

Michael Bays, Survey Cadd Supervisor
Attachments: IGA, Exhibit

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE
AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND
PERMITTING AUTHORITY ON PORTIONS OF STAFFORD ROAD AND FROG
POND LANE**

This agreement (the “Agreement”) is made on the date all required signatures have been obtained, between the City of Wilsonville (“CITY”), a municipal corporation, and Clackamas County (“COUNTY”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Intergovernmental Cooperation), collectively referred to as the “PARITES” and each a “PARTY.”

RECITALS

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform, including the authority to perform as the “Road Authority” related to maintenance and permitting responsibilities for roads;

WHEREAS, portions of Frog Pond Lane and Stafford Road are County Roads, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City.

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of portions of Frog Pond Lane and Stafford Road, measuring approximately 1,775 feet and 71,060 square feet in area collectively, as more particularly depicted on Exhibits “B-1” and “B-2” which are attached hereto and incorporated herein (collectively “Stafford Road and Frog Pond Lane”).

WHEREAS, transfer of responsibility with regards to Stafford Road and Frog Pond Lane will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which Party is responsible for the condition and maintenance of Stafford Road and Frog Pond Lane, which primarily serves the residents of the City;

WHEREAS, the Parties acknowledge that each will consider the full transfer of jurisdiction of Stafford Road and Frog Pond Lane to the City once Stafford Road and Frog Pond Lane are annexed into the City’s boundary, and that this Agreement will no longer be necessary if Stafford Road and Frog Pond Lane are annexed into the City; and

WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to Stafford Road and Frog Pond Lane as may be allowed under state law in order to grant the City control of Stafford Road and Frog Pond Lane prior to the annexation and potential jurisdictional transfer of Stafford Road and Frog Pond Lane.

AGREEMENT

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

1. **Term.** This Agreement shall be effective upon execution. This Agreement shall expire automatically at the time Stafford Road and Frog Pond Lane are annexed into the City and the City assumes jurisdiction of Stafford Road and Frog Pond Lane pursuant to ORS 368 and ORS 373.
2. **Transfer of Authority.**
 - A. Responsibility for Road Authority activities (as outlined in Section 3) for Stafford Road and Frog Pond Lane shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The only portions of Stafford Road and Frog Pond Lane subject to this Agreement measure approximately 1,775 feet and 71,060 square feet in area, as more particularly depicted on Exhibits “B-1” and “B-2” and more specifically described on Exhibits “A-1” and “A-2”
 - B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for Stafford Road and Frog Pond Lane, as described herein.
 - C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City as set forth in this Agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include those activities the City deems necessary in accordance with City standards, including but not necessarily limited to, the following:
 - A. Construction and reconstruction (including capital improvements);
 - B. Improvement or repair, and maintenance;
 - C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers;
 - D. Timely repair or mitigation of known hazards to the road users;
 - E. Issuance of permits for work or the establishment of roadway standards on Stafford Road and Frog Pond Lane; and
 - F. All other responsibilities the County may have under ORS 368 with regards to Stafford Road and Frog Pond Lane which may be assumed by the City under state law.
4. **Restrictions on Truck Traffic and Timing of Transfer Request.** On the portions of Stafford Road and Frog Pond Lane subject to this Agreement, the City agrees that it will not restrict truck movements without first consulting with the County with regard to the reasons for such limitation. The City will initiate the transfer of these portions of Stafford Road and

Frog Pond Lane within ninety (90) days of the annexation of any portion of the Frog Pond Ridge Development

5. **Maintenance Standard.** Any maintenance on Stafford Road and Frog Pond Lane required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City's jurisdiction.

6. **Termination.**

A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.

B. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.

C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination

7. **Indemnification.**

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

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

8. **General Provisions**

A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.

C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall

not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.

- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.

- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

- M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

CLACKAMAS COUNTY

CITY OF WILSONVILLE

Chair

City Manager

Date

Date

Recording Secretary

Recording Secretary

SW Frog Pond Lane Transfer of Jurisdiction
Clackamas County to the City of Wilsonville

Description

A portion of SW Frog Pond Lane (C.R. No. 2362), lying in the Southeast $\frac{1}{4}$ of Section 12, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County Oregon, and more particularly described as follows:

All of that portion of SW Frog Pond Lane (C.R. No. 2362) lying west of the westerly right of way of SW Stafford Road (Market Road No. 12) and East of the northerly extension of the easterly boundary line of that property described in Document No. 99-022102 of the Clackamas County Deed Records.

SW Stafford Road Transfer of Jurisdiction
Clackamas County to the City of Wilsonville

Description

A portion of SW Stafford Road (Market Road No. 12) lying in the Southeast $\frac{1}{4}$ of Section 12, Township 3 South, Range 1 West & in the Southwest $\frac{1}{4}$ of Section 7, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

All of that portion of SW Stafford Road (Market Road No. 12) lying South of an easterly extension of the Northerly right of way of Frog Pond Lane (C.R. No. 2362), and North of an easterly extension of the northerly boundary line of that property described in Document No. 2019-049723 of the Clackamas County Deed Records. Said line also being the northerly end of that portion of SW Stafford Road previously annexed and transferred by Board Order 2019-053.

EXHIBIT "B-1"

S 01°40'13" W
33.00'

SW STAFFORD RD. (MARKET RD. NO. 12 COUNTY RD. NO. 1208)

31W12D 00200

31W12D 01700

31W12D 01800

BEGIN TRANSFER
M.P. 0.00

31W12D 00401

1313.54'

1313.53'

31W12D 00402

S 88°35'30" E

N 88°35'30" W

CITY OF
WILSONVILLE

SW FROG POND LANE (C.R. 2362)

31W12D 00500

EAST LINE OF DOC. NO.
99-022102

END TRANSFER
M.P. 0.25

31W12D 00800

31W12D 01500

N 01°39'15" E
33.00'

LOCATED IN THE SE 1/4 OF SECTION
12, T.3S., R.1W. W.M.,
CLACKAMAS COUNTY, OREGON

PLAN
1"=150'



TRANSFERRED ROAD
AREA=43,346 Sq.Ft.

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

150 BEAVERCREEK ROAD
OREGON CITY, OR 97045



BY: BWP

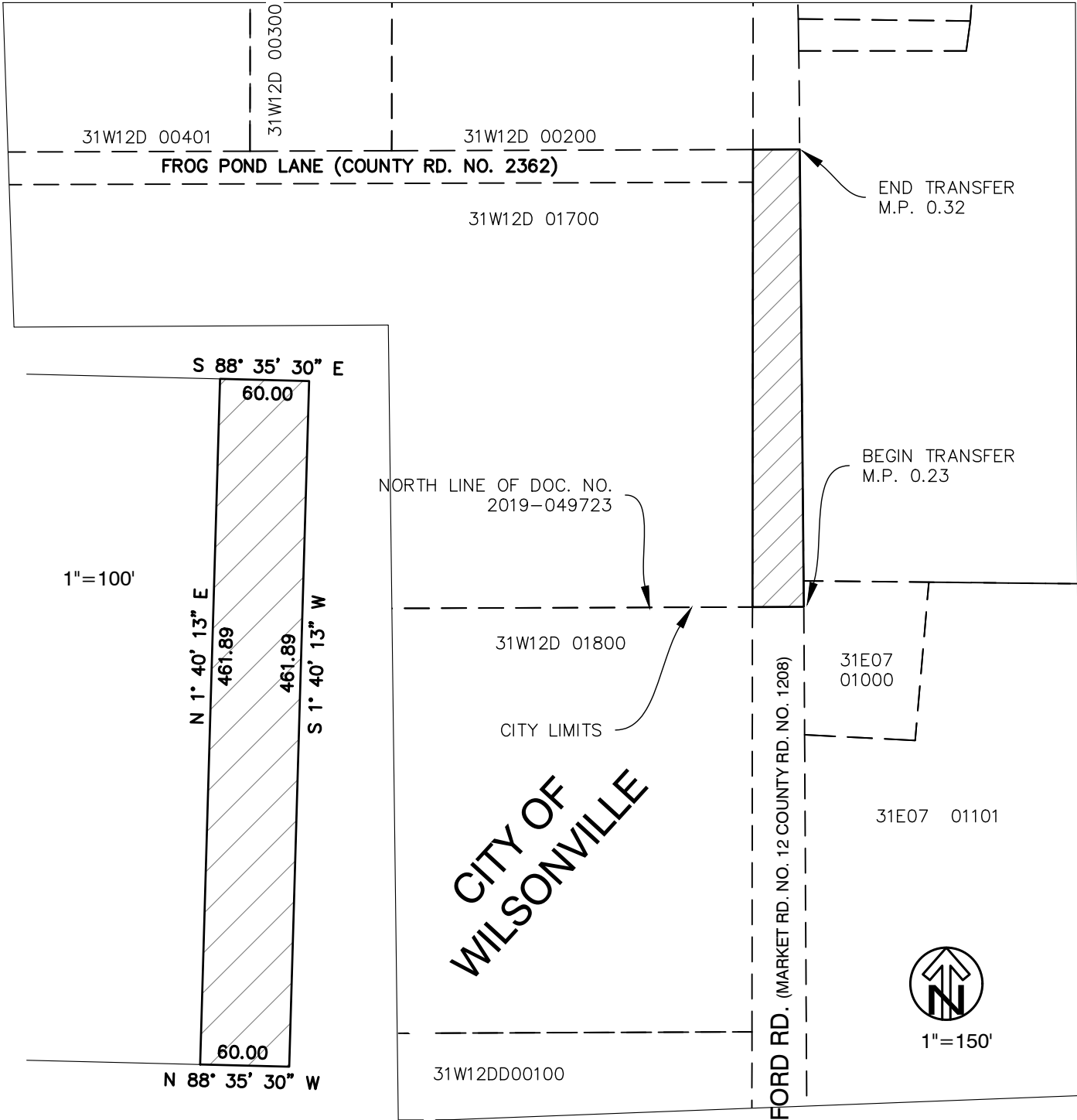
DATE: 08/18/2020


JURISDICTIONAL TRANSFER OF A
PORTION OF SW FROG POND
LANE

SHEET

1 OF 1

EXHIBIT "B-2"



 TRANSFERRED ROAD
AREA=27713 SQ. FT.

LOCATED IN THE SE 1/4 OF SECTION 12, T.3S., R.1W. W.M., AND THE SW 1/4 OF SECTION 7, T.3S., R.1E. W.M., CLACKAMAS COUNTY, OREGON



OFFICE OF COUNTY COUNSEL

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

Stephen L. Madkour
 County Counsel

October 29, 2020

Board of County Commissioners
 Clackamas County

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
 Assistants

Members of the Board:

BOARD ORDER AUTHORIZING VERTICAL CONSTRUCTION ACTIVITIES FOR HEIRLOOM APARTMENTS

Purpose/Outcomes	If approved, this Board Order would authorize vertical construction activities at Heirloom Apartments
Dollar Amount and Fiscal Impact	No cost to the County; economic benefits include permit fees, property taxes, construction wages, construction materials.
Funding Source	N/A
Duration	Until final land use approval is obtained in December 2020 or shortly thereafter
Previous Board Action	The Board was briefed on this matter at the executive session on October 20, 2020.
Strategic Plan Alignment	1. How does this item align with your department’s Strategic Business Plan goals? Timely and responsive legal support to County Departments and elected officials 2. How does this item align with the County’s Performance Clackamas goals? <ul style="list-style-type: none"> • Build public trust through good government • Grow a vibrant economy • Build a strong infrastructure • Ensure safe, healthy and secure communities
Counsel Review	If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review 1. Date of Counsel review: October 22, 2020 Initials of County Counsel performing review. SLM

Procurement Review	1. Was the item processed through Procurement? Yes ___ No <u>X</u> 2. If no, provide brief explanation. No services or materials subject to procurement
Contact Person	Stephen L. Madkour, County Counsel at 503/655-8362

Background:

County staff has received a request from the owners of the Heirloom Apartments development, which is located in the vicinity of Fred Meyer around 79th and Johnson Creek Blvd., to expedite the release of building permits to allow them to proceed with construction prior to receiving final land use approval. Ground level construction activities such as grading, footings and foundation have already taken place.

The development was previously approved by the County hearings officer, subject to various conditions of approval. That approval was appealed to LUBA, which dismissed the opponent's substantive objections to the development. LUBA's decision was then appealed to the Court of Appeals, which affirmed LUBA's decision without opinion. The decision has now been sent back to the County to address the few remaining issues related to traffic and to finalize the decision. The scope of the review on remand is relatively narrow, and approval of the development is very likely given LUBA's decision and the Court of Appeal's affirmance.

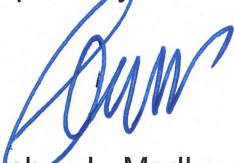
As noted above, the developer has not yet obtained final valid land use permit approval. That approval will likely occur in December. In an effort to maintain construction schedules and construction contracts and pricing, this Order authorizing vertical construction would allow the developer to continue with construction related activities on the site without further costs and delay.

The attached Order for the Board's consideration sets forth a number of considerations that rise to the level of compelling public interest and justify in this fact specific situation relief from the technical rigors of the County Code.

Recommendation:

Staff respectfully requests that the Board of County Commissioners approve the Board Order that authorizes the commencement of vertical construction activities at the Heirloom Apartments.

Respectfully submitted,



Stephen L. Madkour
County Counsel

Attachment: Board Order

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

In the Matter of Authorization to
Commence Vertical Construction
Activities for Heirloom Apartments



Order No. 2020 - ____
Page 1 of 2

Whereas, the Board of County Commissioners has identified a need for all types of additional affordable housing to serve all income levels by adopting Board Resolution (the “Resolution”) 2019-80 on August 1, 2019 declaring emergency measures to address the housing and homelessness crisis and the Board renewed the Resolution on August 4, 2020; and

Whereas, while the Resolution is primarily concerned with homelessness, it is also concerned with providing more housing and provides that the County may waive various County regulations and rules to address the housing crisis; and

Whereas, the Board acknowledges that it desires housing to be affordable to all County population groups and provided at various locations throughout the County; and

Whereas, the Board has before it a proposal to allow the start of vertical construction on a 286 multi-family dwelling unit rental project known as the Heirloom Apartments (the “Project”) located north of SE Johnson Creek Boulevard on SE 79th/80th Avenue; and

Whereas, the Project has been recommended for approval by the Department of Land Use Transportation and Development (the “DTD”) and approved by the Clackamas County Land Use Hearings Office (the “Hearings Officer”); and

Whereas, the Project has been remanded to the Hearings Officer to consider issues unrelated to the Project’s design, location or number of dwelling units and DTD expects the Hearings Officer to issue a decision on remand for the Project before the end of 2020; and

Whereas, allowing vertical construction to proceed before the decision on remand does not present a threat to the public health, safety and welfare because the DTD has reviewed and approved the building plans; and

Whereas, allowing vertical construction to begin before the Hearings Officer’s decision on remand is a compelling public interest for the following reasons; and

Whereas, the Applicant represents to the County that the Project will have 286 dwelling units to serve a variety of households with 158 one-bedroom dwelling units, 101 two-bedroom dwelling units and 27 three-bedroom dwelling units; and

Whereas, the market rents for the 286 dwelling units will be at rent levels to support Workforce Housing; and

Whereas, providing Workforce Housing in this location furthers the Board's policy of providing more affordable housing; and

Whereas, allowing vertical construction of the Project to begin now means that the dwelling units will become available sooner to County residents in need of Workforce Housing; and

Whereas, the Project will also benefit the public interest by generating \$5.23 million in County permit fees, approximately \$18.7 million in construction costs and construction-related wages for the 200 temporary construction jobs through the end of the construction period and, upon end of construction, will generate approximately \$600,000 in annual property taxes for the County and other units of government, including the North Clackamas School District; and

Whereas, the Project will result in the construction of SE 79th/80th Street segment shown on the County's Transportation System Plan and intersection of SE 80th and SE Johnson Creek Boulevard at a cost to the Applicant of approximately \$2.175 million; and

Whereas, the Project also achieves environmental benefits because it is designed in collaboration with the Energy Trust of Oregon "Sustainable Best Practices," including water saving fixtures, LED lighting, Energy Star appliances and other means to reduce energy consumption and the Project is designed to achieve LEED Gold Certification. Including solar and electric vehicle charging stations; and

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

1. The Board finds that a compelling public interest exists based on the facts recited herein to allow the start of vertical construction immediately.

DATED this 29th day of October 22, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with IMG Rebel, Inc.
to serve as a P3 Financial and Transactional Advisor**

Purpose/Outcome	Contract will provide P3 Financial and Transactional advisory services as part of a sub-team within the Technical Advisory Team ("TAT") implementing the county strategic goal of building a new Clackamas County courthouse.
Dollar Amount and Fiscal Impact	Contract total \$300,000 which is in the 2020/2021 FY adopted budget.
Funding Source	County General Fund for 50% of the contract amount with 50% match from the State General Fund through the Oregon Judicial Department
Duration	June 30, 2021
Previous Board Action/Review	July 7, 2020 Board Policy Session where Board directed staff to proceed with the P3 Procurement Preparation effort
Strategic Plan Alignment	The building of a new county courthouse is one of 12 Strategic Priorities of the county and is listed under the category Build Public Trust through Good Government. The project will take advantage of the State Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) legislation and ensure that essential court services are safe and accessible to all residents.
Counsel Review	1. 10/20/20 2. Counsel Initials: AN
Procurement Review	Was the item processed through Procurement? Yes
Contact Person	Gary Barth, Project Manager, 503-754-2050
Contract No.	3378

Background:

The Clackamas County Courthouse is home to the Fifth Circuit Court of the Oregon Judicial Department. The current courthouse was built in 1937 to house county offices and a single courtroom. The courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms. Due to the insufficient amount of space available in the building, services in support of the courthouse are located off-site, creating numerous operational inefficiencies. The courthouse is greater than 90 years old, requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services.

Recognizing the need for new county courthouses, the Oregon State Legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013 administered through the Oregon Judicial Department (the “OJD”). Counties that meet OCCCIF requirements and are approved will receive OCCCIF funding for 50% of the cost of a new county courthouse. Clackamas County (the “County”) applied to the OCCIF for its courthouse replacement project (the “Project”) and was approved by the state in 2017.

The County and the OJD have decided to utilize a Public-Private Partnership (“P3”) delivery approach to design, build, partially finance, operate and maintain (“DBfOM”) the Project. This determination was driven by a recently completed Value-for-Money (VFM) analysis that compared five project delivery approaches and showed the P3 Availability Model approach as providing the greatest Value-for-Money to the county and the state.

To execute the P3 procurement effort, Clackamas County is forming a Project Technical Advisory Team (“TAT”) to include representatives of the County, the OJD and external consultants with experience in the procurement and structuring of P3’s for similar social infrastructure projects.

The Financial and Transactional Advisor will assemble, lead, manage, and coordinate a sub-team within the TAT focused on the Technical tasks required in procuring a private-sector developer for the P3 Courthouse Project. The Technical Advisor will be TAT lead in refining the project scope and cost estimates that meet the affordability targets established by the Financial and Transactional subgroup of the TAT.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on August 17, 2020. Proposals were opened on September 15, 2020. The County received four (4) Proposals: Compelling Reason Consultants, LLC.; Ernst & Young Infrastructure Advisors, LLC.; IMG Rebel, Inc.; and Jones Lang LaSalle Americas, Inc. An evaluation committee comprised of three County personnel scored IMG Rebel, Inc. the highest.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with IMG Rebel, Inc. for the P3 Financial and Transactional Advisor contract.

Sincerely,

Gary Barth
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3378**

This Personal Services Contract (this “Contract”) is entered into between **IMG Rebel Advisory, Inc.** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Clackamas County Administration.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021.
- 2. Scope of Work.** Contractor shall provide the following personal services: **RFP #2020-62 P3 Financial and Transactional Advisor** (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **three hundred thousand dollars (\$300,000.00)**, for accomplishing the Work required under Phase 1. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Section 3. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Gary Barth.

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, and Exhibit C. Unless explicitly agreed to by the parties in this Contract, any additional terms and conditions that may be contained in Exhibit A are void.

7. Contractor and County Contacts.

Contractor	County
Administrator: Marcel Ham Phone: 240-204-2682 Email: marcel.ham@imgrebel.com	Administrator: Gary Barth Phone: 503-754-2050 Email: gbarth@clackamas.us

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

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all

claims and actions, up to the maximum limits of the Contractor's insurance incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this

Contact in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may

require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

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

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

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

ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND
CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

IMG Rebel Advisory, Inc.

Clackamas County Board of County Commissioners

Authorized Signature Date

Chair Date

Name / Title (Printed)

Recording Secretary

1597346-99
Oregon Business Registry #

Approved as to Form:

FBC/ Delaware
Entity Type / State of Formation

County Counsel Date

EXHIBIT A
SCOPE OF WORK
RFP #2020-62 P3 Financial Advisor
Issued September 8, 2020

**EXHIBIT B
VENDORS PROPOSAL**



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

October 29, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Authorization for Disaster Management Director to sign HUD COVID -19
Grant Applications and Grant Agreements**

Purpose/Outcomes	Approval of the application for CARES ACT CDBG CV3 COVID funds for Clackamas County
Dollar Amount and Fiscal Impact	Application for \$1,867,702 in Community Development Block Grant Coronavirus (CDBG CV3) COVID 19 funds.
Funding Source	U.S. Department of Housing and Urban Development (HUD) No County General Funds are involved.
Duration	Effective March 13, 2020 and terminates on June 30, 2025
Previous Board Action	Board members approved the first allocation of these funds at the May 7, 2020 business meeting
Counsel Review	N/A
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Contact Person	Nancy Bush, Director 503-655-8665
Contract No.	NA

BACKGROUND: In response to the Coronavirus public health crisis, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 was signed into law on March 27, 2020 to help respond to the coronavirus outbreak. The CARES Act allocated additional Community Development Block Grant COVID funding for Clackamas County to be used to prevent, prepare for, and respond to the Coronavirus (COVID-19).

The Department of Health, Housing and Human Services (H3S) Vulnerable Populations Planning group has been working with the Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis, which includes increases in homelessness, unemployment, and food insecurity. The current plan for use of this second allocation of Community Development Block Grant (CDBG CV3) COVID-19 funds is as follows:

\$1,567,702 of these CDBG CV3 COVID funds will be distributed to community based homeless services providers and county services as a combination of services for individuals and families impacted by the Coronavirus including:

- homeless prevention services,
- homeless shelter supplies (including the purchase of mobile shelter units),
- homeless shelter operations and staffing,



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

- hotel and motel vouchers

Up to \$300,000 of these funds will be to support grants administration, contract monitoring and HUD reporting.

All COVID-19 projects and funding levels will be determined in coordination with the County's COVID-19 Emergency Operations Center activated on February 28, 2020. Clackamas County CARES dollars will be accepted and monitored by Clackamas Disaster Management, the Emergency Operations Center and the Health Housing and Humans Services Department.

RECOMMENDATION:

Staff recommends that the Board take the following actions:

Authorize the Director of the Department of Disaster Management to sign on behalf of Clackamas County all documents necessary for submitting CARES Act COVID 19 CDBG CV3 funds applications, certifications, grant awards and amending applications for programs and projects to meet all grant requirements.

Respectfully submitted,

Nancy Bush, Director

Attachments: HUD CDBG CV3 Letter 9/11/2020
Grant Life Cycle Form



ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

NB

BOARD OF COMMISSIONERS

September 11, 2020

SEP 28 2020

Mr. Jim Bernard
Chairperson Elect of the Board of Commissioners of Clackamas County
2051 Kaen Road
Oregon City, OR 97045-4035

Dear Chairperson Elect of the Board of Commissioners Bernard:

I am pleased to inform you of a special allocation to your jurisdiction of Community Development Block Grant funds to be used to prevent, prepare for, and respond to the coronavirus (COVID-19). This allocation was authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, which was signed by President Trump on March 27, 2020, to respond to the growing effects of this historic public health crisis.

The CARES Act made available \$5 billion in Community Development Block Grant Coronavirus (CDBG-CV) funds. Of this amount, the Department immediately allocated \$2 billion on March 27, 2020, the same day President Trump signed the Act, based on the fiscal year 2020 CDBG formula; this constituted the first round of CDBG-CV funds. Next, \$1 billion was required by the Act to be allocated to States and insular areas within 45 days of enactment of the Act; HUD accomplished this on May 11, 2020, and this constituted the second round of CDBG-CV funds. Finally, the remaining \$2 billion in CDBG-CV funds was required by the Act to be allocated to states and local governments at the discretion of the Secretary on a rolling basis; HUD accomplished this on September 11, 2020, and this constituted the third round of CDBG-CV funds. Additionally, up to \$10 million will be set aside for technical assistance.

Accordingly, this letter informs you that your jurisdiction's allocation for the third round is \$1,867,702. Your cumulative amount for all allocation rounds is \$3,196,424.

The CARES Act adds additional flexibility for both the CDBG-CV grant and, in some cases, for the annual FY2019 and FY2020 CDBG grants in these unprecedented times. The public comment period is reduced to not less than 5 days, grantees may use virtual public hearings when necessary for public health reasons, the public services cap is suspended during the emergency, and States and local governments may reimburse costs of eligible activities incurred for pandemic response regardless of the date.

In addition, the CARES Act authorizes the HUD Secretary to grant waivers and alternative requirements of statutes and regulations the HUD Secretary administers in connection with the use of CDBG-CV funds and fiscal year 2019 and 2020 CDBG funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements can be granted when necessary to expedite and facilitate the use of funds to prevent,

prepare for, and respond to coronavirus.

The CDBG CARES Act Federal Register Notice (FR-6218-N-01) was released on August 10, 2020. The notice describes the allocations and grant procedures applicable to the CDBG-CV grants. It also describes the program flexibilities, waivers, and alternative requirements that apply to the CDBG-CV grants as well as the fiscal year 2019 and 2020 CDBG grants. As further such flexibilities become available, they will be posted on HUD's website and distributed to grantees. The Department will also support grantees with technical assistance.

As you develop your plan for the use of these grant funds, we encourage you to consider approaches that prioritize the unique needs of low- and moderate-income persons and the development of partnerships between all levels of government and the private for-profit and non-profit sectors. You should coordinate with state and local health authorities before undertaking any activity to support state or local pandemic response. CDBG-CV grants will be subject to oversight, reporting, and the requirement that each grantee have adequate procedures to prevent the duplication of benefits (DOB). HUD will provide guidance and technical assistance on DOB, the prevention of fraud, waste, and abuse, and on documenting the impact of this program for beneficiaries.

Reminder, all CPD Grantees must ensure they maintain active Dun and Bradstreet Numbering System (DUNS) numbers in the System for Award Management (SAM) system. Entities must have an active and unexpired DUNS before execution of grant agreements to avoid delays in the obligation of funds- which will delay your ability to drawdown funds in the Integrated Disbursement & Information System (IDIS). Grantees are required to maintain an active SAMs registration by re-activating their DUNS number annually in the SAM system for the entire drawdown period of their grants. DUNS numbers can be registered and renewed each year at the following website: <https://www.sam.gov/SAM/>.

The Office of Community Planning and Development (CPD) is looking forward to working with you to successfully meet the urgent and complex challenges faced by our communities. If you or any member of your staff has questions, please contact your local CPD Field Office Director or CPDQuestionsAnswered@hud.gov.

Sincerely,



John Gibbs
Acting Assistant Secretary
for Community Planning and Development
U.S. Department of Housing and Urban Development

Financial Assistance Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**** CONCEPTION ****

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: HEALTH HOUSING AND HUMAN SERVICES
Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No
If renewal, complete sections 1, 2, & 4 only
If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity: CARES COMMUNITY DEVELOPMENT BLOCK GRANT

Funding Source: Federal State Local

Requestor Information (Name of staff person initiating form): MARK SIROIS

Requestor Contact Information: marksir@dackamas.us

Department Fiscal Representative: Ed Johnson

Program Name or Number (please specify): CFDA 14.218 COMMUNITY DEVELOPMENT BLOCK GRANT COVID (CDBG CV3)

Brief Description of Project:

The Department of Health, Housing and Human Services (HHS) Vulnerable Populations Planning group has been working with the Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis, which includes increases in homelessness, unemployment, and food insecurity. The current plan for use of this second allocation of Community Development Block Grant (CDBG CV3) COVID-19 funds is as follows:

\$1,567,702 of these CDBG CV3 COVID funds will be distributed to community based homeless services providers and county services as a combination of services for individuals and families impacted by the Coronavirus including:

- homeless prevention services,
- homeless shelter supplies (including the purchase of mobile shelter units),
- homeless shelter operations and staffing,
- hotel and motel vouchers

Up to \$300,000 of these funds will be to support grants administration, contract monitoring and HUD reporting.

Name of Funding Agency: U.S Department of Housing and Urban Development (HUD)

Agency's Web Address for funding agency Guidelines and Contact Information:

https://www.hud.gov/program_offices/comm_planning/covid-19

OR

Application Packet Attached: Yes No

Completed By: Mark Sirois October 14, 2020
Date

**** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE ****

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Application <input type="checkbox"/>	Non-Competing Application <input checked="" type="checkbox"/>	Other <input type="checkbox"/>	
CFDA(s), if applicable:	<u>CFDA 14 218</u>	Funding Agency Award Notification Date:	<u>September 11, 2020</u>
Announcement Date:	<u>September 11, 2020</u>	Announcement/Opportunity #:	<u>NA</u>
Grant Category/Title:	<u>Community Development Block Grant</u>	Max Award Value:	<u>\$1,867,702</u>
Allows Indirect/Rate:	<u>yes</u>	Match Requirement:	<u>None</u>
Application Deadline:	<u>NA</u>	Other Deadlines:	<u>NA</u>
Award Start Date:	<u>When SF 424 signed by HUD</u>	Other Deadline Description:	<u>NA</u>
Award End Date:	<u>80% spent by 2023, all by 2026</u>		
Completed By:	<u>Mark Sirois</u>	Program Income Requirement:	<u>None expected - Any program income goes back into CDBG activities</u>
Pre-Application Meeting Schedule:	<u>NA</u>		

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

The Department of Health, Housing and Human Services (H3S) Vulnerable Populations Planning group has been working with the Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis which includes increases in homelessness, unemployment, and food insecurity.

2. What, if any, are the community partners who might be better suited to perform this work?

The H3S will work with community partners and the Emergency Operations Center to select the best allowable use of these funds for public services and projects in response to the coronavirus.

3. What are the objectives of this funding opportunity? How will we meet these objectives?

The Community Development Block Grant (CDBG) funds may be used for a range of eligible activities including projects and services that prevent and respond to the spread of infectious diseases such as the coronavirus.

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

No, this would be new additional homeless services in response to COVID. The Community Development Division has an annual allocation of CDBG non-covid funding.

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

The Department H3S working with County EOC command numerous divisions and community organizations are adequately staffed to utilize these COVID response funds as intended by HUD.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

No partnerships are required however contracts will be established with community based organizations. It is recommended that the County work with local health authorities to determine needs, select services and projects and distribute funds.

3. If this is a pilot project, what is the plan for sunsetting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

Not a pilot project.

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

This is onetime funding. The services will end once CDBG CV3 funding is expended.

Collaboration

1. List County departments that will collaborate on this award, if any.

Department of Health, Housing and Human Services (several divisions), County Emergency Operations Center

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

The Community Development Division will coordinate reporting. Project setup in the HUD Database: Integrated Disbursement and Information System (IDIS), financial reporting and project accomplishment reports in IDIS.

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Each activity funded will be tracked in the HUD Database: Integrated Disbursement and Information System (IDIS), financial reporting and project accomplishment reports in IDIS.

3. What are the fiscal reporting requirements for this funding?

Financial reporting will be completed in the HUD IDIS system. County Finance will provide information on expenditures.

Fiscal

1. Will we realize more benefit than this financial assistance will cost to administer?

Yes. County staff costs charged to this grant will increase the county's allocated costs revenue.

2. Are other revenue sources required? Have they already been secured?

No other revenues are required.

3. For applications with a match requirement, how much is required (in dollars), and what type of funding will be used to meet it (Cash-CGF, In-kind meaning the value from a 3rd party/non-county entity, Local Grant, etc.)?

No match requirement

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Yes the grant does cover indirect costs through administration/staff costs

Program Approval:

Mark Sirois

October 14, 2020

Mark Sirois

Digitally signed by Mark Sirois
DN: cn=Mark Sirois, o=Clackamas County, ou=Community
Development Division, email=msirois@clackamas.us, c=US
Date: 2020.10.14 14:43:41 -0700

Name (Typed/Printed)

Date

Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

****ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.****

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Mark Sirois	10/15/2020	Mark Sirois
Name (Typed/Printed)	Date	Signature

Digitally signed by Mark Sirois
DN: cn=Mark Sirois, ou=Clatsop County, ou=Community
Development Division, email=msirois@clatsopcounty.or.us
Date: 2020.10.15 09:22:31 -0700

DEPARTMENT DIRECTOR (or designee, if applicable)		
ROD COOK FOR RICH SWIFT	10/20/2020	<i>[Signature]</i>
Name (Typed/Printed)	Date	Signature

*HBS Deputy / For
RICHARD SWIFT*

FINANCE GRANT MANAGER		
Matt Westbrook	10/21/20	<i>[Signature]</i>
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Nancy Bush	10/20/20	<i>Nancy Bush</i>
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)
For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

For applications greater than \$150,000 or which otherwise require BCC approval:

BCC Agenda item #: Date:

OR

Policy Session Date:

County Administration Attestation

County Administration: re-route to department contact when fully approved.
 Department: keep original with your grant file.



October 29, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Amendment #5 to the Contract with Total Golf Management Services, LLC for Management Services for the Operation of Stone Creek Golf Club

Purpose/Outcomes	The purpose is to extend the term of the current Contract with Total Golf Management Services, LLC for the Operation of Stone Creek Golf Club for five years through September 30, 2025 and make minor housekeeping amendments to the current contract. This extension was approved unanimously by the Parks Advisory Board at their October 20, 2020 meeting.
Dollar Amount and Fiscal Impact	The annual budgeted operating expenditures for Stone Creek Golf Club for fiscal year 20/21 are approximately \$3.1 million. Total estimated expenditures over a five-year period are approximately \$15.5 million.
Funding Source	Golf course sales and fees.
Duration	The contract was originally executed on January 13, 2005 and with this amendment #5 will expire on September 30, 2025.
Strategic Plan Alignment	<ul style="list-style-type: none"> • This agreement supports the BCC goal of growing a vibrant economy by enhancing our local community with a sought-after municipal golf course. • This agreement also supports the BCS Economic Development goal of providing services to policymakers, community partners and businesses so they can locate or expand their business in Clackamas County by maintaining public features that attract businesses and residents to Clackamas County.
Previous Board Action	<ul style="list-style-type: none"> • Initial contract signed on January 13, 2005, and continued for an initial period of five years with the opportunity for mutually agreeable five year extensions. • Amendment #1 was signed by former BCS Director Dan Zinzer on behalf of the Board of County Commissioners (BCC) on June 30, 2009 and extended the term from January 1, 2010 through December 31, 2014. • Amendment #2 extending the contract term was signed by BCC Board Chair John Ludlow on December 18, 2014, extending the term from January 1, 2015 through June 30, 2020. • Amendment #3 extending the contract term was signed by BCC Board Chair Jim Bernard on July 16, 2020, extending the term through September 30, 2020. • Amendment #4 extending the contract term was signed by BCC Board Chair Jim Bernard on September 24, 2020, extending the term through November 20, 2020.
Counsel Review	This amendment #5 was reviewed and approved as to form by County Counsel on September 8, 2020. ARN
Contact Person	Laura Zentner, BCS Director, 503-742-4351 Sarah Eckman, BCS Deputy Director, 503-742-4303

BACKGROUND:

Clackamas County has had a contract with Total Golf Management Services, LLC (TGMS) for management services for the operation of Stone Creek Golf Club since 2005. TGMS has done an exceptional job of managing the operations of the golf course and associated facilities.

Prior to this five-year extension, the agreement has had two five-year extensions. Business and Community Services intends to go out for a Request for Proposals for golf course operations prior to September 30, 2025, making this the last five-year extension of the current contract.

Business and Community Services staff presented this extension to the Parks Advisory Board (PAB) at their October 20, 2020 meeting where it was approved unanimously.

RECOMMENDATION:

Staff respectfully recommends the Board approve the attached Amendment #5 to the contract with Total Golf Management Services LLC for Management Services for the Operation of Stone Creek Golf Club and authorize BCS Director, Laura Zentner, or BCS Deputy Director, Sarah Eckman, to sign on their behalf.

ATTACHMENTS:

- Stone Creek Contract Amendment #5
- Stone Creek – TGM – Management of Stone Creek Golf Club – Original
- Stone Creek – TGM – Management Services for the Operation of Stone Creek Golf Course – Amendment #1
- Stone Creek – TGM – Management Services for the Operation of Stone Creek Golf Course – Amendment #2
- Stone Creek Contract Amendment #3
- Stone Creek Contract Amendment #4

Respectfully submitted,



Laura Zentner, CPA
Director, Business & Community Services

AMENDMENT #5

TO THE CONTRACT DOCUMENTS WITH TOTAL GOLF MANAGEMENT SERVICES, LLC FOR THE MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF COURSE

This Amendment #5 is entered into by and between Clackamas County, a political subdivision of the State of Oregon (“County”), and Total Golf Management Services, LLC (“TGMS”) and shall become part of the Contract entered into between both parties on May 1, 2014 (“Contract”).

The Purpose of the Amendment #5 is to make the following changes to the Contract:

1. ARTICLE 1, Section 1.1.5.2, **Additional Benefits**, is deleted and replaced with the following:

Subject to the County’s prior written approval, TGMS may provide no more than five (5) complimentary rounds of golf certificates per year. TGMS may offer charity rounds anytime between Monday through Friday, and on weekends or holidays any time after 2:00 p.m.

2. ARTICLE 1, Section 1.1.5.8, **Emergency Action**, is hereby amended to add the following:

The County has sole discretion to determine whether or not the Golf Course should continue to operate during an emergency. As used in this subsection, “emergency” means any emergency declared by either the State or the County under applicable law. In the event the County determines that the Golf Course should be closed during the pendency of an emergency, TGMS will take all reasonably necessary action to ensure the Golf Course is closed and secured to the maximum extent practicable. In the event the Golf Course is closed for a period of thirty (30) days or more, the parties will negotiate in good faith to amend the Agreement to adjust management fees, monthly expenses and reimbursements, costs, and other provisions impacted by the closure of the Golf Course. If the parties are unable to reach an agreement as to the terms of the amendment, either party may terminate the Agreement.

3. ARTICLE 1, Section 1.6.4, **County to Supply Working Capital**, is hereby deleted and replaced with the following:

The County shall furnish to TGMS an amount not to exceed \$150,000 to serve as working capital for the operation of the Golf Course. For purposes of this Agreement the term working capital shall mean an amount sufficient to pay, as they come due on a current basis, all approved accounts payable and other approved obligations for the operation of the Golf Course.

The parties will annually evaluate whether the not to exceed working capital amount needs to be adjusted. Any such adjustment will be made by execution of a written amendment on terms acceptable to both parties.

4. ARTICLE 2, Section 2.7.1. **Term of Agreement** is hereby amended as follows:

The Contract termination date is hereby changed from September 30, 2020 to **September 30, 2025**.

5. ARTICL 2, Section 2.7, **Term of Agreement**, is hereby amended to add the following:

2.7.7. **Non-Cause Termination.** The County may terminate this Agreement upon thirty (30) days' written notice if County fails to receive expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement; or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.

6. The Contract is hereby amended to add the following new sections:

3. **ARTICLE 3: ADDITIONAL TERMS AND CONDITIONS.**

6.1 Termination. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties; (B) County may terminate this Contract effective upon delivery of notice to TGMS, or at such later date as may be established by the County, if federal, state, or local 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; and (C) This Contract may be terminated for breach of contract pursuant to Section 33 of the Contract.

6.2 Tax Compliance Certification. TGMS shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. TGMS represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

6.3 PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, TGMS shall:

- 6.3.1** Make payments promptly, as due, to all persons supplying to TGMS labor or materials for the prosecution of the work provided for in the Contract.
- 6.3.2** Pay all contributions or amounts due the Industrial Accident Fund from such TGMS or subcontractor incurred in the performance of the Contract.
- 6.3.3** Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- 6.3.4** Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 6.3.5** As applicable, TGMS shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. TGMS shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

6.3.6 If the Work involves lawn and landscape maintenance, TGMS shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

6.4 Force majeure. Neither County nor TGMS shall be held responsible for delay or default caused by events outside the County or TGMS's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, TGMS shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

6.5 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

6.6 Personal Property. Upon termination of this Agreement, TGMS will convey, assign, or otherwise transfer all of its rights, title, or interest in any personal property, leases, contracts, subcontracts, or other property acquired in performance of the Agreement including, but not limited to, any Golf Course equipment or Oregon Liquor Control Commission licenses, to the extent such conveyance, assignment, or transfer is permitted by applicable law.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #5, effective upon the date of the last signature below.

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS	Total Golf Management Services, LLC
_____	<i>G. B. Tolbert</i>
James Bernard, Chair	By: <u>Gordon B Tolbert</u>
_____	Its: <u>President</u>
Date	<u>10.21.2020</u>
ATTEST:	Date

Clerk of the Board	
APPROVED AS TO FORM:	

County Counsel	

MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF CLUB

This Agreement ("Agreement") is by and between Clackamas County, a political subdivision of the State of Oregon (the "County"), and Total Golf Management Services, LLC, an Oregon limited liability company ("TGMS").

Recitals

A. The County owns certain real property located in Clackamas County, Oregon, and more particularly described as Stone Creek Golf Club (an 18 hole golf course) and golf related amenities (collectively, the "Golf Course").

B. The County desires to engage TGMS to provide consulting services regarding the operation and maintenance of the Golf Course. The County further desires to engage TGMS as the on site operator of the Golf Course for the purpose of operating and maintaining the Golf Course and the facilities and equipment associated therewith.

C. TGMS represents that they are an experienced professional management company, knowledgeable in the management, operation and maintenance of golf courses.

NOW, THEREFORE, in consideration of the foregoing recitals and representations, and in consideration of the mutual promises herein set forth and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1 ARTICLE I: MANAGEMENT

This Article I shall become effective upon the Commencement Date defined in Article II, Section 2.5 of this Agreement.

1.1 Operation of the Golf Course

1.1.1 Services to Be Performed by TGMS/County Control. Subject to the terms of this Agreement, the County directs TGMS as an agent of the County, on a fee for services basis, to direct, supervise, and operate the Golf Course including the playing and practice facilities, the clubhouse, restaurant, and all other related facilities. TGMS will employ all personnel necessary for these operations, and perform all other activities necessary to operate and maintain the Golf Course. TGMS agrees to operate and maintain the Golf Course pursuant to this Agreement and for County's account and shall determine the programs and policies to be followed in connection therewith. Such policies and programs shall be consistent with the standards set forth in Article I, Section 1.1.3, and shall be formulated in consultation with County and subject to County approval. After

granting such approval, County agrees to delegate to TGMS implementation of the approved programs and policies, subject to County review and oversight.

1.1.2 Preparation for Commercial Operation. Promptly upon execution of this Agreement, TGMS will prepare the Golf Course for commercial operation and fully equip the Golf Course with a reasonable stock of equipment, merchandise, supplies, spare parts and consumables necessary to operate the Golf Course in accordance with this Agreement.

1.1.3 Standards for Performance of Services. TGMS will:

1.1.3.1 Operate and maintain the Golf Course in a clean, safe, efficient and Environmentally Acceptable manner and in accordance with Prudent Industry Practices;

(i) "Environmentally Acceptable" means complying with all applicable federal, state and local laws, ordinances and regulations relating to Hazardous Substances.

(ii) "Prudent Industry Practices" means the practices, methods, level of care and equipment, as changed from time to time, that are commonly used to operate and maintain safely and consistently with applicable statutes, regulations and codes golf course developments of approximately the same size, quality and type as the Golf Course.

(iii) "Hazardous Substance" means:

(a) any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) and the rules and regulations promulgated thereunder, as each may be amended from time to time;

(b) any material which by reason of its composition or characteristics is a hazardous waste as defined in the Resource Conservation and Recovery Act (42 U. S.C. § 6901 et. seq.) and the rules and regulations promulgated thereunder, as each may be amended from time to time;

(c) any pesticide, insecticide, fungicide, rodenticide or other material or substance used for preventing, destroying, repelling or mitigating any pest, including any insect, rodent, nematode, fungus or weed;

(d) petroleum or any petroleum byproduct; and

(e) any other material, substance or waste described or defined as a “pollutant” or a “contaminant” or described as “hazardous”, “toxic”, or “radioactive” or by words of similar import under any applicable federal, state or local laws, rules or regulations, as each may be amended from time to time.

1.1.3.2 Perform the services to be provided hereunder in all material respects in a prudent and efficient manner and in accordance with:

- (i) all manufacturer’s warranties, the Operation and Maintenance Procedure Manuals and the Administrative Procedures Manual;
- (ii) all applicable rules, laws, regulations, codes, permits, licenses and standards;
- (iii) the Project Agreements; and
- (iv) this Agreement;

1.1.3.3 Use diligent efforts to perform in accordance with the applicable Annual Operating Plan;

1.1.3.4 Except as otherwise specified in this Agreement, obtain all licenses and permits required to allow TGMS to do business in the jurisdictions where its services are to be performed;

1.1.3.5 Use generally accepted practices and technologies with the object of (i) optimizing Golf Course revenues, (ii) optimizing the useful life of the Golf Course and equipment at the Golf Course, and (iii) minimizing the costs of operating the Golf Course; and

1.1.3.6 Devote such time and personnel as is reasonably necessary or advisable to perform its duties under this Agreement.

1.1.4 Representatives. The County designates the Transportation Engineering, Park & Property Management Manager as the representative who will act as principal operating liaison between County and TGMS. TGMS shall also designate in writing an officer or representative of TGMS, who will have responsibility for supervising the Golf Course and implementing this Agreement on behalf of TGMS. All matters and questions pertinent to this Agreement and the operation of the Golf Course shall be transmitted through the respective designees.

1.1.5 TGMS’s Responsibilities. County grants authority to perform and TGMS accepts responsibility to perform the following tasks:

1.1.5.1 Hiring. TGMS will employ, pay, supervise, and discharge all employees

and personnel necessary for the operation of the Golf Course. The County will reimburse TGMS for all reasonable payroll and benefit expenses and the payroll and related taxes of the employees hired by TGMS for the operation of the Golf Course. All employees hired by TGMS shall be employees of TGMS and not employees of the County.

1.1.5.2 Additional Benefits. TGMS may provide gratuitous food and other Golf Course use benefits consistent with industry standards and agreed upon by the County's authorized representative. The direct cost of providing these benefits shall be an operating expense of the Golf Course.

1.1.5.3 Books and Records. TGMS will maintain current, complete and accurate books, including the books of account and accounting procedures of the Golf Course, operating logs, records and reports documenting the operation and maintenance of the Golf Course, and current versions of all drawings, specifications, lists and other technical material consistent with industry standards and as required to operate and maintain the Golf Course.

1.1.5.4 Authority to Contract. Subject to the County's approval, TGMS may negotiate leases, licenses and concession agreements for the Golf Course. All such leases, licenses, or concessions will be in County's name, except as otherwise agreed by the County and TGMS or where prohibited by law, and will be executed only by officers of County or officers of TGMS. TGMS will obtain a license from the Oregon Liquor Control Commission to sell alcoholic beverages on the Golf Course.

1.1.5.5 Maintenance and Repair. With the funds available and subject to the approved budget described in Article I, Section 1.7.4, TGMS will maintain the Golf Course and all, furniture and equipment and operating supplies in good order, repair, and condition (ordinary wear and tear excepted), including without limitation, making necessary replacements, improvements, additions, and substitutions, to the end that the Golf Course shall be maintained and adequately furnished as a first-class, modern Golf Course.

1.1.5.6 Service Contracts and Utilities. TGMS will negotiate on behalf of County and in County's name, service contracts required in the ordinary course of business in operating the Golf Course, including, without limitation, contracts for electricity, gas, telephone, security agency protection, vermin extermination, housekeeping, maintenance, and other services which TGMS deems advisable and necessary. However, TGMS will not enter any contract that involves an expenditure of more than Five Thousand Dollars (\$5,000.00) in the aggregate or that is not terminable at will upon thirty (30) day's notice without County's approval.

1.1.5.7 Supervision of Purchasing. TGMS will supervise the purchase in the most economical manner of all inventories, provisions, and operating supplies, which in

the normal course of business are necessary and proper to maintain and operate the Golf Course.

1.1.5.8 Emergency Action. If an emergency occurs which affects the safety or protection of persons or endangers the Golf Course or property located at the Golf Course, TGMS shall take prompt action to attempt to prevent such threatened damage, injury or loss, and shall, as soon as practicable, notify County of the emergency. Reasonable costs incurred in such an emergency shall be operating and maintenance expenses. In considering the reasonableness of costs incurred during an emergency the parties will consider that the priorities during an emergency are the safety of the public, the safety of workers, the operation of the Golf Course in an Environmentally Acceptable manner and the continuing operation and preservation of the Golf Course, acknowledging that time may not permit the opportunity to obtain the lowest price for goods or services.

1.1.6 Subcontracting. TGMS may contract with any third party for the performance of any service work required by this Agreement, but no such contract shall relieve TGMS of its obligations to County hereunder.

1.1.7 Limitations on Authority. TGMS will not have the authority to undertake any of the following actions unless: (i) they are approved in the Annual Operating Plan, (ii) TGMS has received the prior written approval of County; or (iii) such actions are expressly authorized by this Agreement:

1.1.7.1 Disposition of Assets. The sale, lease, pledge, mortgage, conveyance, license, exchange or other transfer or disposition of any property or assets of County, including any tangible personal property acquired by TGMS under this Agreement, except for the consumption of supplies in the ordinary course of business and the replacement of equipment in the ordinary course of business.

1.1.7.2 Contracting. Making, entering into, executing, amending, waiving any rights, modifying or supplementing any oral or written contract, agreement or commitment on behalf of, binding upon, or in the name of County, or agreeing to do any of the foregoing.

1.1.7.3 Expenditures. Making any expenditure (if not provided for in the Annual Budget), unless an emergency or other event occurs which (i) may affect the safety of Persons, (ii) involves a release or threatened release of a Hazardous Substance or (iii) may endanger the full operating capacity of the Golf Course or property located at the Golf Course, in which case, TGMS may, without prior approval from County, take all reasonable actions to prevent the threatened damage, injury or loss and must promptly notify County of any such action. Reasonable costs incurred in this regard will be operating and maintenance expenses. In such an emergency, the County will not unreasonably withhold or delay approval of any necessary expenditure not provided in the Annual Budget and requested by TGMS.

1.1.7.4 Other Actions. Taking or agreeing to take any other action in material variance with the applicable Annual Operating Plan or the Annual Budget.

1.1.7.5 Lawsuits and Settlements. The settling, compromising, assigning, pledging, transferring, releasing or consenting to the same of any claim, suit, debt, demand or judgment against or due by County, TGMS on behalf of County, or submitting any such claim, dispute or controversy to arbitration, mediation or judicial process, or stipulating to a judgment, or consent to do the same. TGMS agrees that County shall retain sole control of any such claim, suit, debt or demand and any other litigation regarding the projects, except as to TGMS's individual liability.

1.1.7.6 Transactions on Behalf of Others. Engaging in any other transaction on behalf of County in contravention of this Agreement.

1.1.7.7 Governmental Licenses or Permits. Agreeing to any penalty, assessment or fine for violation of any permit.

1.2 Marketing

TGMS shall, at County's expense and subject to County's approval of an overall marketing plan, arrange for and conduct all advertising and promotion that TGMS reasonably deems necessary to maintain adequate Golf Course use levels consistent with budgeted revenue objectives.

1.3 Expenses Borne By County

1.3.1 Expenses. All expenses properly incurred by TGMS for and on behalf of County pursuant to this Agreement shall be borne by County from the operating revenue of the Golf Course or from any reserve fund the County may establish for that purpose.

1.3.2 Debts and Liabilities. All debts and liabilities of the County and all properly authorized debts arising in the course of business of the Golf Course shall be the obligation of County, and TGMS shall not be liable for any such obligations by reason of its management, supervision, and operation of the Golf Course undertaken in good faith and within the scope of this Agreement. Subject to certain limits, County shall defend, save harmless and indemnify TGMS, as an agent of the County, against tort claims or demands arising out of an alleged act or omission occurring in the performance of its duty under this Agreement, as more fully explained in Article II, Section 2.2.

1.3.3 Reimbursement for Expenses. TGMS shall be reimbursed monthly for reasonable expenses of any of its officers or employees which are incurred for travel as required for Golf Course business, and for meals, lodging, and out-of-pocket expenses incurred while on Golf Course business. TGMS will keep such expenses chargeable to the Golf Course operation at a minimum, and consistent with the approved budget.

1.3.4 Procedure for Reimbursement. County will reimburse TGMS for those expenses which are reimbursable under this Agreement subject to the funding procedures established by County.

1.4 Expenses Borne by TGMS

1.4.1 Supervisory Services. The supervisory services to be rendered by the personnel and staff of TGMS in connection with the operation of the Golf Course (exclusive of any mutually agreed upon specific projects not included in this Agreement), shall be provided by TGMS at its own expense and not charged to County.

1.4.2 Overhead. County shall not be charged with the general overhead, general administrative expense, salaries or wages of any officers, directors or employees of TGMS or any of its or their affiliated or subsidiary companies, except as otherwise specifically provided for in this Agreement.

1.5 Compliance With Laws

1.5.1 Compliance with Laws. TGMS shall ensure that the Golf Course complies with all laws, rules, regulations, requirements, orders, notices, determinations, and ordinances of any federal, state, or municipal authority relating to the operation of the Golf Course and the reasonable requirements of any insurance company covering any risk against which the Golf Course is insured.

1.5.2 County's Right to Contest. With respect to a violation of any such laws or rules, County shall have the right to contest the applicable law and to postpone compliance pending the determination of such contest, if so permitted by law, but County shall protect and indemnify TGMS from any loss, cost damage, or expense as a result of such protest.

1.6 Bank Accounts/Disbursement of Funds – Working Capital

1.6.1 TGMS Golf Account. TGMS shall establish a Golf Course operational account at the same bank or trust company at which the County Account is established. TGMS shall authorize two signatories to the TGMS Account. Funds deposited into the TGMS Account shall not be commingled with other funds of TGMS.

1.6.2 Deposit of Funds into the TGMS Golf Account. On or before the first day of each month County shall cause amounts to be disbursed from the County Account and deposited into the TGMS Account consistent with the Approved Budget and the Annual Operating Plan. Those funds shall be used for the payment of Golf Course operational expenses in the manner provided below.

1.6.3 Payment of Operating Expenses. All operating expenses, and previously

approved capital expenditures, contained in the Approved Budget will be paid from the TGMS Golf Account. Notwithstanding the preceding sentence, no payment or disbursement shall be made from the TGMS Golf Account for any expense, which, under the provisions of this Agreement requires the County's prior written approval, without receipt by TGMS of such prior written approval. Consistent with this restriction, TGMS may make payments and disbursements and reimburse itself for approved expenses incurred for operation of the Golf Course consistent with the terms of this Agreement.

1.6.4 County to Supply Working Capital. The County shall furnish funds sufficient to constitute working capital for the operation of the Golf Course. For purposes of this Agreement the term working capital shall mean an amount sufficient to pay, as they come due on a current basis, all approved accounts payable and other approved obligations for the operation of the Golf Course.

1.6.5 Deposit of Golf Course Revenue. All revenues earned from the operation of the Golf Course shall be deposited by TGMS into the County Golf Account and not into the TGMS Golf Account. In the event revenues are mistakenly deposited into the TGMS Golf Account, TGMS will immediately cause those revenues to be disbursed from the TGMS Golf Account and deposited into the County Golf Account.

1.7 Books, Records, Statements & Budgets

1.7.1 TGMS to Maintain Books of Account. TGMS shall ensure that full and adequate books of account and other records are kept reflecting the results of operations of the Golf Course on a cash basis, all in accordance with generally accepted accounting principles and as required by the provision of this Agreement. The books of account and all other records relating to, or reflecting the operations of the Golf Course, shall be reasonably available to County and its representatives at any reasonable time for examination, audit, inspection, and transcription. All such books and records, including, without limitation, books of account, at all times shall be the property of County and shall not be removed from the Golf Course by TGMS without County's prior approval and consent. Upon termination or expiration of the Agreement, all such books and records forthwith shall be turned over to County, to assure the orderly continuance of the operation of the Golf Course, but such books and records shall thereafter be available to TGMS at all reasonable times for examination, audit, inspection, and transcription.

1.7.2 Periodic Financial and Operational Reports. TGMS shall cause to be delivered to County at the end of each accounting period cash basis financial statements as requested by the County, of the operation of the Golf Course for the immediately preceding accounting period and the fiscal year-to-date. Such statements shall be (i) delivered monthly, (ii) in the form and detail as TGMS and County shall agree upon, and (iii) taken from the books and records maintained for the Golf Course.

1.7.3 Annual Audited Financial Report. Within ninety (90) days after the end of each fiscal year, TGMS will cause to be delivered to County a compiled financial statement prepared by an independent certified public accountant showing the results of operations

of the Golf Course during such fiscal year. The County may request an audit at year end. The cost of such audit, if required, shall be borne by County. TGMS shall provide the County a copy of their annual tax return.

1.7.4 Annual Operating Plan. At least sixty (60) days before the beginning of each new fiscal year (which for the purposes of this Agreement shall be the calendar year), TGMS shall cause to be prepared and delivered to County's representatives an operating plan for the next year and an operating budget (including a working capital budget and a projected statement of cash flows) in preliminary draft form setting forth an itemized statement of the estimated receipts and disbursement for the forthcoming fiscal year. Such budget shall be based upon any proposed increases, fees, anticipated labor costs, management incentives, and estimates of food and beverage sales and shall take into account the general condition of the Golf Course, including furnishings and operating equipment. The operating plan and preliminary budget shall be subject to the County's approval. After reflecting the changes made thereto by County, a revised budget shall be submitted in final draft form no later than thirty (30) days after the preliminary budget has been reviewed and returned to TGMS. Once approved by TGMS and the County, such budget shall constitute the agreed standard and plan to which TGMS shall adhere and shall define the Annual Budget or Operating Budget as such terms are used in this Agreement. Except in the case of emergency repairs permitted under the terms of this Agreement and expenses to accommodate unanticipated personnel changes described in Section 1.4.5, above, no expense may be incurred or commitments made by TGMS in connection with the maintenance, repair, or operation of the Golf Course in excess of the amounts allocated to the various classification of expense in the approved budget without the County's specific written approval. The budget shall be in the format generally accepted by accounting firms specializing in Golf Course accounting and shall separately set forth estimates of total sales and income, expenses and profit by department for golf, food and beverage (combined), rentals (if any), and miscellaneous income. General and other undistributed expenses not allocable to any given department shall include: (i) administrative and general expenses, (ii) advertising and sales promotion, (iii) energy and utilities, (iv) repairs and maintenance, (v) fire insurance and franchise taxes, (vi) real estate taxes, (vii) rent and (viii) provisions for capital expenditures. Incentive compensation shall be included in the budget as described in Article I Section 1.12.1.

1.7.5 Administrative Procedures Manual. No later than 30 days after the Commencement Date, TGMS shall submit for the review and approval by County a proposed Administrative Procedures Manual providing such information as (a) organization charts, (b) methods for reviewing all existing procedures, (c) procurement and contracting procedures, (d) accounting, bookkeeping and record keeping systems and (e) personnel procedures. Within 30 days of the receipt of the proposed Administrative Procedures Manual, County shall submit any written comments to TGMS. The Parties will meet to resolve all outstanding differences and to agree upon a final Administrative Procedures Manual, which must be approved in writing by both Parties. The Administrative Procedures Manual shall remain in effect for the term of this Agreement, subject to revision and amendment by written agreement of the Parties.

1.7.6 Operations and Maintenance Procedure Manuals. No later than 30 days after the Commencement Date, TGMS shall submit for review and approval by County proposed Operations and Maintenance Procedure Manuals providing operations and maintenance procedures. These procedures should include information regarding:

- (a) equipment operating procedures;
- (b) maintenance programs for the Golf Course and equipment;
- (c) safety programs;
- (d) environmental compliance and mitigation programs;
- (e) programs for complying with report requirements contained in this Agreement;
- (f) license and permit operating reporting requirements;
- (g) other regulatory reporting requirements;
- (h) cultural practices; and
- (i) golf operation rules and regulations.

Within 30 days of the receipt of the proposed Operations and Maintenance Procedure Manuals, County shall submit any written comments thereon to TGMS. The parties will meet to resolve all outstanding differences and to agree upon a final Operations and Maintenance Procedure Manuals, which must be approved in writing by both Parties. This final Operations and Maintenance Procedure Manuals will remain in effect for the term of this Agreement, subject to revision by written agreement of the parties.

1.8 TGMS Not Obligated To Advance Funds

TGMS shall not be obligated to advance any of its own funds to or for the account of County, nor to incur any liability unless County shall have furnished TGMS with funds necessary for the discharge thereof. However, if TGMS shall, for any reason, have advanced funds in payment of a permitted expense in the maintenance and operation of the Golf Course, County shall reimburse TGMS on demand, and TGMS shall have the right to reimbursement from the Agency Account.

1.10 Insurance

1.10.1 Insurance Maintained by County. TGMS shall provide and maintain insurance in the following amounts to protect the interests of the County and TGMS, paid for out of the TGMS Golf Account. Said coverage shall furnish to County and TGMS reasonable protection in the ownership, management, and operation of the Golf Course. All insurance coverages are to be written in companies acceptable to County and TGMS. TGMS shall furnish to County true copies of the original policies including current endorsements, and other attachments to those policies as well as all amendments made to those original policies after initial issuance.

Form of Coverage

(i)	Property insurance	minimum 80% of insurable value
(ii)	Comprehensive General Public & Product Liability (including Dram Shop Coverage)	
	Bodily Injury – Each Person	\$1,000,000
	Bodily Injury – Each Accident	\$1,000,000
	Property Damage – Each Accident	\$1,000,000
	Property Damage – Aggregate	\$1,000,000
(iii)	Excess Umbrella Coverage	\$4,000,000
(iv)	Workers Compensation	Statutory
	Employers Liability	
	Bodily Injury by Accident – Each Accident	\$500,000
	Bodily Injury by Disease – Each Employee	\$500,000
	Bodily Injury by Disease – Policy Limit	\$500,000
(v)	Employment Practices Liability	\$5,000,000
(vi)	Such other insurance coverages as the County may require	

1.10.2 In the policies described in paragraphs (i), (ii) and (iii) above the County shall be listed as named insured and TGMS shall be listed as additional insured, and those policies shall provide that the loss, if any payable thereunder, shall be adjusted by and payable to County.

1.10.3 Property insurance shall include fire and extended coverage on the buildings and all contents, in an aggregate amount which shall not be less than eighty percent (80%) of the full insurable value thereof and in no event below the minimum amount necessary to avoid the effect of co-insurance provisions of such policies, and at least the minimum coverage set forth above (or such greater amounts as may be required by any contract affecting the Golf Course), and in the form that it is satisfactory to County and TGMS.

1.10.4 TGMS shall have all policies of insurance provide that the insurance company, or companies, will have no right of subrogation against any party hereto, their agents, or employees. TGMS assumes all risks in connection with the adequacy of any insurance or self-insurance program, and waives any claim against County for any liability, cost, or expense arising out of any uninsured claim, in part or in full, in any nature whatsoever. Proof of premium payments, in accordance with each policy, shall be delivered to County within five (5) days of the premium due date.

1.11 Warranties

TGMS will ensure maintenance of all warranties and guaranties and to cause the reimbursement of expenses for maintenance, repairs, and replacement, and for labor and materials associated with all warranted or guaranteed equipment and furnishings.

1.12 Management Fees

1.12.1 For the management services to be rendered by TGMS hereunder, TGMS shall be entitled to receive base compensation on the first day of each month during the continuance of this Agreement the sum of Nine Thousand Dollars (\$9,000). Beginning in year two of this Agreement, the monthly compensation shall be subject to an increase based on the Portland Consumer Price Index. In addition to the base compensation, TGMS shall be entitled to incentive compensation in the amounts and subject to the formulas contained in the approved budget. Base compensation shall be paid to TGMS by County monthly out of the County Golf Account. Incentive compensation shall be paid the first month of the new budget year based upon the net revenue from the previous year per the following formula:

When 90 – 100 percent of the net revenue is achieved TGMS will earn a three (3) percent bonus of the net revenue.

- 100% – 105% of the net revenue is achieved earns a 4% bonus
- 105% – 110% of the net revenue is achieved earns a 5% bonus
- 110% – 115% of the net revenue is achieved earns a 6% bonus
- 115% – 120% of the net revenue is achieved earns a 7% bonus
- 120% - + of the net revenue is achieved earns a 8% bonus

1.12.2 If for any reason payment to TGMS is withheld, TGMS reserves the right to discontinue all management services pertaining to the Golf Course until payment of the account is made in full. All past-due amounts shall bear interest at the maximum rate allowable by law from the date payment is due until payment is received by TGMS. Any such termination of service by TGMS shall not adversely affect TGMS's right to compensation.

2 Article II: MISCELLANEOUS

2.1 Consent

Except as herein otherwise provided, whenever in this Agreement the consent or approval of TGMS or County is required, such consent or approval shall not be unreasonably withheld.

2.2 Indemnification

2.2.1. Indemnification by County. Subject to the limits of the Oregon Tort Claims Act, and Article 11 Section 10 of the Oregon Constitution, County agrees to indemnify, defend and hold harmless TGMS, its officers, and employees, all as agents of the County, from and against all tort claims or demands arising out of an alleged act or omission occurring in the performance of TGMS' duty under this Agreement, provided however that County's obligations under this section do not apply in case of malfeasance in office or willful or wanton neglect of duty by the party seeking indemnification.

2.2.2. Indemnification by TGMS. TGMS shall indemnify, defend and hold harmless County, and its officers and employees, from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or in connection with TGMS' performance of the work under this agreement, to the extent such claims and actions are not subject to defense and indemnification by the County under the preceding paragraph 2.2.1.

2.2.3 Nothing in this Agreement shall be construed as constituting the County and TGMS as partners or joint ventures, or otherwise imposing on TGMS any liability or obligation of County, or upon County any liability of TGMS except as such liability may arise under the terms of this Agreement.

2.3 Debt Service

County agrees to provide adequate funds to maintain current monthly payments on all debt obligations of the Golf Course or obligations, which are secured by the Golf Course's assets, if any, and on all leases. TGMS shall have no liability to County or any lender with respect to such financing.

2.4 Entire Agreement

This Agreement, along with the Request for Proposals for Management Services for The Operation Of Stone Creek Golf Course Clackamas County Oregon, dated September 29, 2004, and the proposal response from TGMS dated September 29, 2004, represent the entire agreement between the County and TGMS and supersedes any and all prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by County and TGMS as appropriate under the circumstances.

2.5 Commencement Date

The commencement date of this Agreement shall be the first day of November, 2004.

2.6 Notification

All notifications related to this Agreement shall be deemed to be adequate if sent by first class United States mail and addressed to:

TGMS representative

Total Golf Management Services
19586 Kari Ann
Oregon City, Oregon 97045
Attn: Gordon Tolbert

County representative

Attn. Dan Zinzer, Parks Manager
9101 SE Sunnyside Blvd
Clackamas, OR 97015

2.7 Term of Agreement

2.7.1 This agreement shall be effective as of the Commencement Date and shall continue for an initial period of five (5) years with the opportunity for mutually agreeable five (5) year extensions.

2.7.2 Not later than twelve (12) months prior to the expiration of the then current Term, the Parties shall commence negotiations with each other concerning any extension and the changes, if any, to the Services or the provisions of this Agreement that they require to facilitate such an extension.

2.7.3 If the parties cannot agree upon a five year extension of this Agreement, the present contract terms shall be extended for one-hundred and eighty (180) days or upon the selection of a replacement contractor and then terminate.

2.7.4 Termination by County. County may terminate the Agreement with respect to TGMS at any time for cause. For the purposes of this section "cause" shall mean any of the following:

2.7.4.1. the death of Gordon Tolbert;

2.7.4.2. the permanent disability of Gordon Tolbert rendering him unable to perform the duties to be performed by TGMS;

2.7.4.3. the failure or refusal of TGMS to perform the services called for under the terms of this Agreement;

2.7.4.4. a finding that TGMS, Gordon Tolbert shall have been guilty of fraud, deceit or other similar act of dishonesty.

2.7.4.5. the dissolution, bankruptcy, liquidation, and/or cessation of business of TGMS.

2.7.4.6. TGMS's receipt of notice from County stating that TGMS has materially breached its obligations under this Agreement, and specifying the nature of the breach, unless TGMS cures the breach within such thirty (30) days. If cure cannot reasonably be completed within thirty (30) days, the cure period shall be continued for so long as TGMS diligently pursues the cure.

2.7.5. Termination by TGMS. TGMS may terminate the Agreement with respect to County at any time for cause. For the purposes of this section "cause" shall mean County's material breached of its obligations under this Agreement, provided that TGMS shall provide County notice stating that County has materially breached its obligations under this Agreement, and specifying the nature of the breach, and providing County thirty (30) days within which to cure the breach. If cure cannot reasonably be completed within thirty days, the cure period shall be continued for so long as County diligently

pursues the cure.

2.7.6 Effect of Termination. If this Agreement is terminated in accordance with this section, all services shall be deemed completed and all amounts due hereunder shall be paid through the termination date. Thereafter the parties herein shall have no further obligations to each other under this Agreement, except for the provisions of Article I, Section 1.8, and Article II, Section 2.2, which shall survive the termination of this Agreement.

2.8 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Oregon without regard to its choice of laws principles. Exclusive venue for any action will be in the Circuit Court of Clackamas County, Oregon.

2.9 Assignment

No interest in this Agreement may be assigned or duty delegated without the express prior written consent of the County.

2.10 Public Contracting

To the extent any activities of TGMS under this Agreement are or become subject to statutorily required provisions under the Oregon Public Contracting Law, TGMS agrees to comply with any such provisions.

2.11 Prevailing Wage Rate

To the extent TGMS hires workers to work on a project that constitutes public works, as that term is defined at ORS 279.348(3), TGMS shall be required to pay existing prevailing wage rates pursuant to ORS Chapter 279 and shall pay all necessary fees to the Oregon Bureau of Labor and Industries pursuant to ORS 279.352(2). Prevailing Wage Scales are available from the Oregon Bureau of Labor and Industries. It shall be the responsibility of TGMS to obtain and comply with such requirements.

2.12 Appropriations

This Agreement is subject to the appropriation and availability of County funds. In the event that the funds are not appropriated or are otherwise unavailable, County reserves the right to terminate this Agreement upon written notice to TGMS. Termination due to non-appropriation or unavailability of funds shall not be deemed an Event of Default by the County. Upon receipt of the written notice, TGMS shall cease all work associated with the Agreement. Should such an event occur, TGMS shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, TGMS shall have no right to recover from the

County any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

3.0 Title, Documents and Data

3.1 Materials and Equipment. Title to all materials, equipment, supplies, consumables, spare parts and other items of tangible personal property purchased or obtained by TGMS for which County is obligated to pay TGMS shall pass immediately to and vest in County upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect TGMS's obligations as set forth in the other provisions of this Agreement.

3.2 Documents. All materials and documents prepared or developed by TGMS or its affiliates, employees, representatives, agents or contractors in connection with the Golf Course or the performance of its services hereunder, including all manuals, data, designs, drawings, plans, specifications, reports, and accounts, will automatically become the property of County when prepared, TGMS nor their affiliates, employees, representatives, agents or contractors may use these materials and documents for any purpose other than the performance of the services hereunder, without County's prior written approval. All these materials and documents, together with any materials and documents furnished to TGMS or to their affiliates, employees, representatives, agents or contractors by County, shall be delivered to County upon expiration or termination of this Agreement and before final payment is made to TGMS.

3.3 Review by County. In addition, all such materials and documents referred to above must be available for review by County at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for the approval of County shall be prepared and processed in accordance with the requirements and specifications set forth in the Administrative Procedures Manual. However, County's approval of materials and documents submitted by TGMS shall not relieve TGMS of its responsibility for the correctness thereof or of its obligation to meet all the requirements of this Agreement.

IN WITNESS WHEREOF, County and TGMS have executed this Agreement as of the date indicated.

TOTAL GOLF MANAGEMENT SERVICES, LLC

By: Gordon B. Tolbert
Name: Gordon Tolbert
Title: Managing Member
Date: January 13, 2005

**CLACKAMAS COUNTY, OREGON
BOARD OF COMMISSIONERS**

By: Martha Schrader
Martha Schrader, Chair
Date: January 13, 2005

By: Mary Ruetke
Recording Secretary
Date: January 13, 2005

By: approved as to form
David W. Anderson
County Counsel
Date: January 13, 2005

AMENDMENT #1

To The Contract Documents with Total Golf Management Services LLC For Management Services for the Operation of Stone Creek Golf Course

This Amendment, when signed by the Contractor and the Director of Business and Community Services, as authorized by Board Order Number 2006-366 and Clackamas County LCRB Rules, will become part of the contract documents, superseding the original to the applicable extent indicated.

SECTION 1.14: Reads: The County designates the Transportation Engineering, Parks & Property Management Manager as the representative who will act as principle operating liaison between County and TGMS.

Change to Read: The County designates the Director of Business and Community Services as the representative who will act as principle operating liaison between County and TGMS.

SECTION 1.7.1 Reads: TGMS shall insure that full and adequate books of account and other records are kept reflecting the results of operations of the Golf Course on a Cash basis,....

Change to Read: TGMS shall insure that full and adequate books of account and other records are kept reflecting the results of operations of the Golf Course on an Accrual basis,.....

SECTION 1.12 Reads: For the management services to be rendered by TGMS hereunder, TGMS shall be entitled to receive base compensation on the first day of each month during the continuance of this Agreement the sum of Nine Thousand Dollars (\$9,000).

Change to Read: For the management services to be rendered by TGMS hereunder, TGMS shall be entitled to receive base compensation on the first day of each month during the continuance of this Agreement the sum of Ten Thousand Four Hundred Dollars (\$10,400)

SECTION 2.5 Reads: The commencement date of this Agreement shall be the first day of November 2004.

Change to Read: The commencement date of this Agreement shall be the first day of November 2004. For the purpose of extension of this Agreement, the extension periods shall be January through December. This first 5 year extension period shall be January 1, 2010 through December 31, 2014 inclusive.

SECTION 2.6 Revise: Address for County to read: Clackamas County
BCS Director
150 Beaver Creek Rd
Oregon City OR 97045

SECTION 2.7 Delete: Section 2.7.4.1 and 2.7.4.2

Total Golf Management Services LLC
19586 Kari Ann Court
Oregon City OR 97045

Gordon B. Tolbert
Gordon Tolbert

6-24-09
Date

CLACKAMAS COUNTY BOARD of
COUNTY COMMISSIONERS by:

Dan Zinzer
Dan Zinzer, Director
Business and Community Services

6/30/09
Date



Gary Barth
Director

BUSINESS AND COMMUNITY SERVICES

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

MEMO

To: Gordon Tolbert, Total Golf Management Services, LLC
From: Gary Barth, Director Business and Community Services
Date: September 18, 2013
Subject: Addendum to Contract between Clackamas County Business & Community Services and Total Golf Management Services, LLC (TGMS)

Clackamas County Business & Community Services has an active and ongoing contract with Total Golf Management Services, LLC regarding the operation and maintenance of Stone Creek Golf Club and its related amenities.

Section 1.1.5.2 Additional Benefits, specifically states:

TGMS may provide gratuitous food and other Golf Course use benefits consistent with industry standards and agreed upon by the County's authorized representative. The direct cost of providing these benefits shall be an operating expense of the Golf Course.

However the contract does not clarify or quantify the extent to which the "Additional Benefits" are anticipated.

At the inception of the contract, though nothing formal was provided, the County authorized representative and TGMS agreed to a limit of Five (5) complimentary round certificates per year, to be utilized as Business & Community Services deemed appropriate. Charity rounds may be used Monday through Friday anytime and after 2:00 p.m. on weekends and holidays.

For the purpose of clarifying the ambiguous nature of the contract itself, the prior mentioned informal commitment continues to meet acceptable standards and expectations and will be the agreed upon provision until such time as both parties agree to alter it.



Gary Barth, Director
Business & Community Services
Date 9/23/13



Gordon Tolbert, Managing Member
Total Golf Management Services, LLC
Date 9-26-13

AMENDMENT #2

To The Contract Documents with Total Golf Management Services LLC For the Management Services for the Operation of Stone Creek Golf Course

This Amendment, when signed by the Contractor and Board of County Commissioners will become part of the contract documents, superseding the original to the applicable extent indicated.

SECTION 1.6.1: Reads: TGMS shall establish a Golf Course operational account at the same bank or trust company at which the County Account is established. TGMS shall authorize two signatories to the TGMS Account. Funds deposited into the TGMS Account shall not be comingled with other funds of TGMS.

Change to Read: TGMS shall establish a Golf Course operational bank account which will include two signatories on the TGMS Golf Course Account. Funds deposited into the TGMS Golf Course Account shall not be comingled with other funds of TGMS.

SECTION 1.6.4: Reads: The County shall furnish funds sufficient to constitute working capital for the operation of the Golf Course.

Change to Read: The County shall furnish funds, not to exceed \$150,000, that are sufficient to constitute working capital for the operation of the Golf Course.

SECTION 1.7.4: Reads: At least sixty (60) days before the beginning of each new fiscal year (which for the purposes of this Agreement shall be the calendar year)...

Change to Read: At least sixty (60) days before the beginning of each new fiscal year (which for the purposes of this Agreement shall be the County fiscal year of July 1st through June 30th).....

SECTION 1.10.1: Reads:

Form of Coverage

(i)	Property insurance	minimum 80% of insurable value
(ii)	Comprehensive General Public & Product Liability (including Dram Shop Coverage)	
	Bodily Injury-Each Person	\$1,000,000
	Bodily Injury-Each Accident	\$1,000,000
	Property Damage-Each Accident	\$1,000,000
	Property Damage-Aggregate	\$1,000,000
(iii)	Excess Umbrella Coverage	\$4,000,000
(iv)	Workers Compensation	Statutory
	Employers Liability-	
	Bodily Injury by Accident-Each Accident	\$500,000
	Bodily Injury by Disease-Each Employee	\$500,000
	Bodily Injury by Disease-Policy Limit	\$500,000
(v)	Employment Practices Liability	\$5,000,000
(vi)	Such other insurance coverages as the County may require	

Change to Read:

Form of Coverage

(i)	Property insurance	minimum 80% of insurable value
(ii)	Commercial General Public & Product Liability (including Dram Shop Coverage)	
	Bodily Injury-Each Person	\$1,000,000
	Bodily Injury-Each Accident	\$1,000,000
	Property Damage-Each Accident	\$1,000,000
	General-Aggregate	\$2,000,000
(iii)	Excess Umbrella Coverage	\$4,000,000
(iv)	Workers Compensation	Statutory
	Employers Liability	
	Bodily Injury by Accident-Each Accident	\$500,000
	Bodily Injury by Disease-Each Employee	\$500,000
	Bodily Injury by Disease-Policy Limit	\$500,000
(v)	Employment Practices Liability	
	Each Occurrence	\$2,000,000
	Aggregate	\$3,000,000
(vi)	Such other insurance coverages as the County may require	

SECTION 1.10.5: Add to Read: In section (iv) Workers Compensation above, TGMS, as an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. TGMS shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 bodily injury by disease each employee, and \$500,000 each policy limit.

SECTION 1.10.6: Add to Read: In the policies described in paragraph (v) above, TGMS shall be listed as named insured and the County shall be listed as additional insured.

SECTION 1.12.1: Reads: For the management services to be rendered by TGMS hereunder, TGMS shall be entitled to receive base compensation on the first day of each month during the continuance of this Agreement the sum of Ten Thousand Four Hundred Dollars (\$10,400). Beginning in year two of this Agreement, the monthly compensation shall be subject to an increase based on the Portland Consumer Price Index. In addition to the base compensation, TGMS shall be entitle to incentive compensation in the amounts and subject to the formulas contained in the approved budget. Base compensation shall be paid to TGMS by County monthly out of the County Golf Account. Incentive compensation shall be paid the first month of the new budget year based upon the net revenue from the previous year per the following formula:

When 90 – 100 percent of the net revenue is achieved TGMS will earn a three (3) percent bonus of the net revenue.

- 100% - 105% of the net revenue is achieved earns a 4% bonus
- 105% - 110% of the net revenue is achieved earns a 5% bonus
- 110% - 115% of the net revenue is achieved earns a 6% bonus
- 115% - 120% of the net revenue is achieved earns a 7% bonus
- 120% - + of the net revenue is achieved earns a 8% bonus

Change to Read: For the management services to be rendered by TGMS hereunder, TGMS shall be entitled to receive base compensation on the first day of each month during the continuance of this Agreement the sum of Ten Thousand Four Hundred Dollars (\$10,400). Beginning in year two of this Agreement, the monthly

compensation shall be subject to an increase based on the Portland Consumer Price Index. Base compensation shall be paid to TGMS by County monthly out of the County Golf Account. In addition to the base compensation, TGMS shall be entitled to incentive compensation in the amounts and subject to the formulas contained in the approved budget. Incentive compensation shall be paid by the end of the second month of the new fiscal year based upon the net revenue from the previous fiscal year per the following:

- Net proceeds in excess of \$600,000 shall be split 80% to the County and 20% to TGMS. TGMS shall annually agree to Annual Operating Plan which shall outline as specified in 1.7.4 the details of how "net" revenue is calculated.

SECTION 2.3 Delete: Section 2.3 Debt Service

SECTION 2.5 Reads: The commencement date of this Agreement shall be the first day of November 2004. For the purpose of extension of this Agreement, the extension periods shall be January through December. This 5 year extension period shall be January 1, 2010 through December 31, 2014 inclusive.

Change to Read: The commencement date of this Agreement shall be the first day of November 2004. For the purpose of extension of this agreement after December 31, 2014, this second five year extension shall be five and a half years to accommodate changing from a calendar year to a fiscal year, and shall be January 1, 2015 through June 30, 2020, inclusive. Thereafter, extension periods shall be five years, July through June.

Total Golf Management Services LLC
19586 Kari Ann Court
Oregon City, OR 97045

Gordon Tolbert
Gordon Tolbert

12/10/2014
Date

CLACKAMAS COUNTY BOARD of COUNTY
COMMISSIONERS by:

John Ludlow
John Ludlow, Chair

12-18-14 E.I.
Date

**AMENDMENT #3
TO THE CONTRACT DOCUMENTS WITH TOTAL GOLF MANAGEMENT SERVICES, LLC
FOR THE MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF
COURSE**

This Amendment #3 is entered into between **Total Golf Management Services, LLC** ("TGMS") and Clackamas County ("County") and shall become part of the Contract documents entered into between both parties on **January 13, 2005** ("Contract"), as subsequently amended.

The Purpose of this Amendment #3 is to make the following changes to the Contract:

1. **ARTICLE 2, Section 2.7. Term of Agreement** is hereby amended as follows:

The Contract, as previously amended, expires on June 30, 2020. By execution of this Amendment #3, the parties agree to extend the term of the Contract for an additional three months to allow the parties to negotiate a potential renewal of the Contract for an additional five-year term. The Contract termination date is hereby changed to **September 30, 2020**. Any potential future extension of the Contract shall only be effective upon execution of a written amendment on terms acceptable to both parties.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #3, effective upon the date of the last signature below.

Total Golf Management Services, LLC

Gordon B Tolbert 7.8.20
Authorized Signature Date

Gordon B Tolbert
Printed Name

Clackamas County

Jim Bernard 7-16-2020
Jim Bernard, Chair Date

July 16, 2020 C.2
Date

AMENDMENT #4
TO THE CONTRACT DOCUMENTS WITH TOTAL GOLF MANAGEMENT SERVICES, LLC
FOR THE MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF
COURSE

This Amendment #4 is entered into between **Total Golf Management Services, LLC** ("TGMS") and Clackamas County ("County") and shall become part of the Contract documents entered into between both parties on **January 13, 2005** ("Contract"), as subsequently amended.

The Purpose of this Amendment #4 is to make the following changes to the Contract:

1. **ARTICLE 2, Section 2.7. Term of Agreement** is hereby amended as follows:

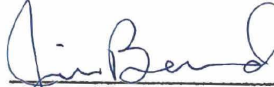
The Contract, as previously amended, expires on September 30, 2020. By execution of this Amendment #4, the parties agree to extend the term of the Contract for additional time to allow the parties to negotiate a potential renewal of the Contract for an additional five-year term. The Contract termination date is hereby changed to **November 20, 2020**. Any potential future extension of the Contract shall only be effective upon execution of a written amendment on terms acceptable to both parties.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #4, effective upon the date of the last signature below.

Total Golf Management Services, LLC

Clackamas County

 9-19-20
Authorized Signature Date

 9/24/2020
Date

Gordon B Tolbert
Printed Name

Jim Bernard, Chair B.2
Date



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

October 29, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement between Clackamas Broadband
eXchange and Christ the King for a dark fiber connection

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with Christ the King for a dark fiber connection to Clackamas ESD.
Dollar Amount and Fiscal Impact	Christ the King will pay a nonrecurring fee of \$33,800.00 for the extension of the fiber network and pay a recurring annual fee of \$3,060.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by The Park Academy.
Duration	Effective upon signature by the board, the SLA is effective for five (5) years.
Previous Board Action	Board previously approved CBX to build and maintain a dark fiber network for the Colton School District.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure. 2. This item follows the Board's Key Initiatives of making high speed internet available throughout the County.
Counsel Review	Andrew Naylor, October 12, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is looking for approval to provide 1 new dark fiber connection for Christ the King. The dark fiber connection will connect Christ the King to Clackamas ESD for essential services.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this fiber agreement with Christ the King. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Christ the King Catholic Church, Milwaukie, Oregon
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Christ the King Catholic Church, Milwaukie, Oregon (Customer) the services set forth in this Agreement (the "Services"), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

4. Construction and Installation Requirements

- a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not contain hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. Test results for physical connection will be made available to Customer upon request.

5. Term of Agreement

Upon completion of installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date". Unless terminated as herein provided, this Agreement continue through June 30, 2025.

6. Rates

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services described in Appendix A, as amended from time to time.

7. Payment

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the

succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligent acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235,

to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customer's use of the Services under this Agreement (collectively, "Taxes"), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees, surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 days' written notice to the other party.
- b. Pursuant to Section 20 of this Agreement, either party may terminate this Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as

that waived.

- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

23. No recourse Against the County

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by electronic mail as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court

Oregon City, Oregon 97045
ddexter@clackamas.us
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
cbxinfo@co.clackamas.or.us
Fax Number: (503) 655-8255

Notice to the Customer

Theresa M Huiard
Campus IT and School Development
7414 SE Michael Dr
Portland, OR 97222
(503) 785-2420
huiardt@ctk.pvt.k12.or.us

Either Party, by similar written notice, may change the address to which notices shall be sent.

25. Debt Limitations

This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

26. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

27. Governing Law

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

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, and 28, and all other rights and obligations which by their context are intended to survive.

29. Severability

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

30. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

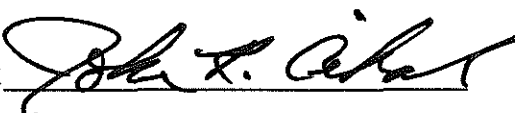
Name: _____

Title: _____

Date: _____

Customer

Christ the King Catholic Church, Milwaukie, Oregon
(Customer Name)

By (signature):  _____

Name (print): Monsignor John Cihak

Title: President

Date: 10/15/20

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Christ the King 7414 SE Michael Dr Portland, OR 97222	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Christ the King 7414 SE Michael Dr Portland, OR 97222	Construction	\$33,800.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with WTP America, LLC. dba WT Partnership
to serve as a P3 Technical Advisor**

Purpose/Outcome	Contract will provide P3 technical advisory services as part of a sub-team within the Technical Advisory Team ("TAT") implementing the county strategic goal of building a new Clackamas County courthouse.
Dollar Amount and Fiscal Impact	Contract total \$493,500.00 which is in the 2020/2021 FY adopted budget.
Funding Source	County General Fund for 50% of the contract amount with 50% match from the State General Fund through the Oregon Judicial Department
Duration	June 30, 2021
Previous Board Action/Review	July 7, 2020 Board Policy Session where Board directed staff to proceed with the P3 Procurement Preparation effort
Strategic Plan Alignment	The building of a new county courthouse is one of 12 Strategic Priorities of the county and is listed under the category Build Public Trust through Good Government. The project will take advantage of the State Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) legislation and ensure that essential court services are safe and accessible to all residents.
Counsel Review	1. 10/15/20 2. Counsel Initials: AN
Procurement Review	Was the item processed through Procurement? Yes
Contact Person	Gary Barth, Project Manager, 503-754-2050
Contract No.	3376

Background:

The Clackamas County Courthouse is home to the Fifth Circuit Court of the Oregon Judicial Department. The current courthouse was built in 1937 to house county offices and a single courtroom. The courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms. Due to the insufficient amount of space available in the building, services in support of the courthouse are located off-site, creating numerous operational inefficiencies. The courthouse is greater than 90 years old, requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services.

Recognizing the need for new county courthouses, the Oregon State Legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013 administered through the Oregon Judicial Department (the “OJD”). Counties that meet OCCCIF requirements and are approved will receive OCCCIF funding for 50% of the cost of a new county courthouse. Clackamas County (the “County”) applied to the OCCIF for its courthouse replacement project (the “Project”) and was approved by the state in 2017.

The County and the OJD have decided to utilize a Public-Private Partnership (“P3”) delivery approach to design, build, partially finance, operate and maintain (“DBfOM”) the Project. This determination was driven by a recently completed Value-for-Money (VFM) analysis that compared five project delivery approaches and showed the P3 Availability Model approach as providing the greatest Value-for-Money to the county and the state.

To execute the P3 procurement effort, Clackamas County is forming a Project Technical Advisory Team (“TAT”) to include representatives of the County, the OJD and external consultants with experience in the procurement and structuring of P3’s for similar social infrastructure projects.

The Technical Advisor will assemble, lead, manage, and coordinate a sub-team within the TAT focused on the Technical tasks required in procuring a private-sector developer for the P3 Courthouse Project. The Technical Advisor will be TAT lead in refining the project scope and cost estimates that meet the affordability targets established by the Financial and Transactional subgroup of the TAT.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on August 20, 2020. Proposals were opened on September 17, 2020. The County received two (2) Proposals: AECOM and WTP America, LLC dba WT Partnership. An evaluation committee comprised of four County personnel scored WTP America dba WT Partnership the highest.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with WTP America, LLC. dba WT Partnership for the P3 Technical Advisor contract.

Sincerely,

Gary Barth
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3376**

This Personal Services Contract (this “Contract”) is entered into between **WTP America, LLC. dba WT Partnership** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Clackamas County Administration.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021.
- 2. Scope of Work.** Contractor shall provide the following personal services: **RFP #2020-65 P3 Technical Advisor** (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **four hundred ninety-three thousand five hundred dollars (\$493,500.00)**, for accomplishing the Work required under Phase 1. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Section 5.1 If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Gary Barth,

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, and Exhibit C. Unless explicitly agreed to by the parties in this Contract, any additional terms and conditions that may be contained in Exhibit A are void.

7. Contractor and County Contacts.

Contractor	County
Administrator: Tom Kness Phone: 310-498-6717 Email: tom.kness@wtpartnership.co	Administrator: Gary Barth Phone: 503-754-2050 Email: gbarth@clackamas.us

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

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However,

neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or

procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

20. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

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

22. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

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

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

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

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys’ fees and expenses.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person’s services unless the County provides prior written consent to such reassignment or transfer.

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

Signature page to follow.

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

WTP America, LLC dba WT Partnership

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

1521105-90
Oregon Business Registry #

Approved as to Form:

FLLC/California
Entity Type / State of Formation

County Counsel

Date

EXHIBIT A
SCOPE OF WORK
RFP #2020-65 P3 Technical Advisor
Issued September 10, 2020

EXHIBIT B
VENDORS PROPOSAL



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**
Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

October 29th, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement between
North Clackamas Parks and Recreation District (NCPRD) and Clackamas Water
Environment Services (WES)**

Purpose/Outcome	Approval of an Intergovernmental Agreement Between North Clackamas Parks and Recreation District and Water Environment Services.
Dollar Amount and Fiscal Impact	NCPRD will receive funds, approximately \$90,000 annually, for an amount not to exceed \$450,000 over five years.
Funding Source	WES surface water fees paid by property owners in WES' service area.
Duration	The Agreement ends June 30, 2025, with an option to extend one additional 5-year term.
Previous Board Action/Review	Board approved a previous IGA on 8/6/2013, Board Agenda Item 7/18/2013-IX.2.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This grant funding will help protect our natural resources by reducing negative water quality impacts to our watershed. 2. This grant will further support good governance by leveraging state funds and local partnerships with the cost savings being transparent in the budget.
Counsel Review	County Counsel Review Date: October 8, 2020. Counsel Initials: JDM
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: Item is a IGA
Contact Person	Scott Archer, NCPRD Director, 503-742-4421 Tonia Williamson, Trails and Natural Areas, 503-742-4357
Contract No.	NA

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD), a division of Business and Community Services (BCS), manages natural areas with a focus on both access for our residents and protection and enhancement of habitat for wildlife. WES and NCPRD formed an agreement in 2013 to establish a cooperative working relationship for the purpose of undertaking public projects

aimed at improving water quality, enhancing natural resources areas, and providing public access for passive recreation and environmental education activities.

In the 2013 Agreement, WES and NCPRD partnered to manage natural areas and team on projects of mutual benefit and interest that fit the missions of both departments. Since the 2013 Agreement was implemented, WES and NCPRD's needs have evolved and changes to the 2013 Agreement are proposed to further our partnership for maximum efficiencies and benefits. WES and NCPRD desire to terminate the 2013 Agreement and enter into this new Agreement to ensure that past and future investments in these public assets will be protected.

WES owns and manages several natural areas, as well as a few passive recreational facilities such as trails. However, WES does not have field staff to take on this maintenance. NCPRD manages a Natural Resources Program and employs Natural Area staff, knowledgeable and skilled to provide stewardship of natural areas for fish and wildlife habitat, recreation, as well as water quality benefits.

NCPRD and WES have maintained a positive, cooperative partnership. Managing natural areas together in accordance with our shared values will ensure consistent treatment and maximum effectiveness of NCPRD resources within natural areas.

The specific WES sites that will be managed by NCPRD staff and the budget that NCPRD will be provided to manage the sites would be detailed within the annual work plan that is established between WES and NCPRD.

RECOMMENDATION:

Staff recommends the Board, acting as the governing body of North Clackamas Parks and Recreation District, approve the Intergovernmental Agreement between North Clackamas Parks and Recreation District and Water Environment Services.

ATTACHMENTS:

1. Intergovernmental Agreement between NCPRD and WES
2. Exhibit A - Scope of Work
3. Exhibit B – 2020-2021 Annual Work Plan

Respectfully submitted,



Laura Zentner, Director
Business and Community Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
AND WATER ENVIRONMENT SERVICES**

THIS AGREEMENT (this "Agreement") is entered into and between North Clackamas Parks and Recreation District ("NCPRD"), a county service district formed pursuant to ORS Chapter 451, and Water Environment Services ("WES"), an intergovernmental entity formed pursuant to ORS Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

WES and NCPRD formed an agreement in 2013 ("2013 Agreement") to establish a cooperative working relationship for the purpose of undertaking public projects aimed at improving water quality, managing storm water runoff, enhancing natural resources areas, and providing public access for passive recreation and environmental education activities.

In the 2013 Agreement, WES and NCPRD partnered to manage natural areas and team on projects of mutual benefit and interest that fit the missions of both departments. Since the 2013 Agreement was implemented, WES and NCPRD's needs have evolved and changes to the 2013 Agreement are proposed to further our partnership for maximum efficiencies and benefits to each department. WES and NCPRD desire to terminate the 2013 Agreement and enter into this new Agreement to ensure that past and future investments in these public assets will be protected.

WES owns and has the responsibility to manage several natural areas and stormwater management facilities in the WES service area, as well as a few passive recreational facilities such as trails. However, WES does not have field staff to take on this maintenance. NCPRD implements a Natural Resources Program and employs Natural Area staff, knowledgeable and skilled to provide stewardship of natural areas for fish and wildlife habitat, as well as water quality benefits. NCPRD Natural Resources Program staff are also qualified and skilled in restoration ecology, stewardship planning, implementing volunteer events and communicating with the public about issues these areas face.

WES has determined that NCPRD is well-equipped to provide these services and, because their service areas are similar, their staff is familiar with many of the properties. We have had a positive, cooperative partnership to date. Managing natural areas together in accordance with our shared values will ensure consistent treatment and maximum effectiveness of NCPRD resources within natural areas.

The specific WES sites that will be managed and the budget that NCPRD will be provided to manage the sites would be detailed within the annual work plan that is established between WES and NCPRD.

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

TERMS

1. **Termination of Previous Agreement.** The Parties agree that the 2013 Agreement is hereby terminated and replaced in its entirety by this Agreement.
2. **Term.** This Agreement shall be effective upon execution, and shall expire upon June 30, 2025 ("Term"). The Parties may renew this Agreement for one additional term of 5 years upon a writing signed by both Parties.
3. **Scope of Work.** The Parties agree to perform the obligations identified in Exhibit A ("Scope of Work"), in addition to the services further identified in the Annual Work Plan in Exhibit B ("Work Plan"), both attached hereto and incorporated herein (collectively referred to as the "Work"). The Parties will develop a new Annual Work Plan each year and will update Exhibit B accordingly without the need for formal amendment to this Agreement.
4. **Consideration.** WES agrees to pay NCPRD an amount not to exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) over the Term of this Agreement.
5. **Payment.** Unless otherwise specified, NCPRD shall submit quarterly invoices for Work performed and shall include the total amount billed to date by NCPRD prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. NCPRD shall also submit the annual reporting form provided by WES at the end of each fiscal year documenting information on the Work performed. Payments shall be made to NCPRD following WES' review and approval of invoices submitted by NCPRD. NCPRD shall not submit invoices for, and WES will not pay, any amount in excess of the maximum compensation amount set forth above.
6. **Representations and Warranties.**
 1. *WES Representations and Warranties:* WES represents and warrants to NCPRD that WES has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of WES enforceable in accordance with its terms.
 2. *NCPRD Representations and Warranties:* NCPRD represents and warrants to WES that NCPRD has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of NCPRD enforceable in accordance with its terms.
 3. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
7. **Termination.**
 1. Either the NCPRD or WES may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 2. NCPRD or WES shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
 3. Either Party may terminate this Agreement in the event a Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or

interpreted in such a way that either the Project under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
8. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, NCPRD agrees to indemnify, save harmless and defend WES, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of NCPRD or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which NCPRD has a right to control.

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

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

1. Tonia Williamson or their designee will act as liaison for NCPRD.

Contact Information:

Tonia Williamson
North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4357
twilliamson@NCPRD.com

Gail Shaloum or their designee will act as liaison for WES.

Contact Information:

Gail Shaloum, PLA
Clackamas County Water Environment Services
150 Beaver Creek Rd., Suite 430
Oregon City, OR 97045
(503) 742-4597
gshaloum@clackamas.us

11. General Provisions.

1. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between NCPRD and WES that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by WES or NCPRD of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. NCPRD and WES, by execution of this Agreement, hereby consent to the in personam jurisdiction of the courts referenced in this section.
2. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
3. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
4. **Access to Records.** Both parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. All financial records shall be maintained in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. At either party's request, the other party shall provide the

requesting party with paper or electronic version of all documents, engineering designs, warranties, and other materials directly related to a Project that have been produced or recorded. The Parties are not obligated to provide confidential documentation or produce materials in electronic media if the materials do not already exist in electronic media.

5. **Work Product.** Reserved.
6. **Hazard Communication.** Reserved.
7. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
8. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
9. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
10. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
11. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
12. **No Third-Party Beneficiary.** WES and NCPRD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any

benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

13. **Subcontract and Assignment.** Neither WES nor NCPRD shall enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall not be unreasonably withheld. Either Party's consent to any subcontract shall not relieve the other Party of any of its duties or obligations under this Agreement.
14. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
15. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
16. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
17. **Time is of the Essence.** WES and NCPRD agree that time is of the essence in the performance this Agreement.
18. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
19. **Force Majeure.** Neither WES nor NCPRD shall be held responsible for delay or default caused by events outside of WES or NCPRD's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, WES shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
20. **Confidentiality.** Reserved.
21. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signature Page Follows]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

North Clackamas Park and Recreation District

Water Environment Services

Chair

Chair

Date

Recording Secretary

Date

Approved as to Form

County Counsel

Date

Exhibit A

SCOPE OF WORK

1. **Obligations of WES.**

- i. WES agrees to lead the resolution of any property boundary issues, land surveys, etc. on WES owned properties.
- ii. WES agrees to notify NCPRD of special use permits related to sites that contain mitigation and to provide NCPRD with permit language, so that NCPRD understands what other uses of the site may be and can help provide recommendations based on day-to-day management.
- iii. WES agrees to notify NCPRD of partnership activities and educational events planned at WES sites where NCPRD may be conducting Work, so that NCPRD understands what other uses of the site may be and can help provide recommendations based on day-to-day management.
- iv. WES will provide its Rules for Public Property to NCPRD to guide NCPRD in interacting with the public on WES properties.
- v. WES will draft an annual work plan with input from NCPRD. The Parties will work together to finalize annual work plan documents that will guide NCPRD's day to day work during a fiscal year. Work tasks include, but are not limited to, 1) vegetation survey, monitoring, maintenance including hazard tree removal; 2) trails or facility monitoring and maintenance; and 3) trash monitoring and maintenance; 4) monitoring houseless persons activity on WES owned properties and posting necessary signage provided by WES in compliance with the Clackamas County Code, in addition to coordinating with representatives of the Clackamas County Sheriff's Office Exclusion Program as needed.

2. **Obligations of NCPRD.**

- i. NCPRD agrees to get approval from WES of any partnership or educational activities that NCPRD leads at WES sites and to include WES as a funding partner on any marketing materials, if funds from this IGA support the project.
- ii. NCPRD agrees to review information related to partnership activities and educational events planned at WES sites and to provide comments to WES in a timely fashion noting any conflict with the day-to-day management.
- iii. NCPRD will provide input on and review the annual work plan developed by WES. The two agencies will work together to finalize annual work plan documents that will guide NCPRD's day to day work during a fiscal year.
- vi. NCPRD will follow WES' Rules for Public Property to NCPRD in interacting with the public on WES properties.

- vii. Work tasks include but are not limited to 1) vegetation survey, monitoring, maintenance including hazard tree removal, 2) trails or facility monitoring and maintenance, 3) trash monitoring and maintenance. NCPRD follows specific best management practices, regulatory guidelines and policies and protocols to manage a site including Oregon Department of Agriculture regulations of control of invasive weeds, Clackamas County and NCPRD policies and protocols; 4) monitoring houseless persons activity on WES owned properties and posting necessary signage provided by WES in compliance with the Clackamas County Code, in addition to coordinating with representatives of the Clackamas County Sheriff's Office Exclusion Program as needed.
- iv. WES shall be listed as additionally insured on any contract insurance documents that NCPRD leads on WES property.

Exhibit B

ANNUAL WORK PLAN

Property Name	Current Activity	Needs	Taxlot	Address	City	Zip	Acres	Taxpayer	Address
Mt. Scott Creek - Oak Bluff Reach	Weed control, cleanups, sweeps for camps.	Continue as in past.	22E04B 00300	8970 SE OAK BLUFF RD	CLACKAMAS	97015	2.74	WES	8970 SE OAK BLUFF RD
Last Road Property	None to date	Weed control and re-planting, trash pickup--as time allows.	22E09DC01102	9557 SE LAST RD	CLACKAMAS	97015	0.20	WES	9557 SE LAST RD
84th Ave Property	None to date	Weed control and re-planting, trash pickup--as time allows.	22E04B 03700	12605 SE 84TH AVE	CLACKAMAS	97015	1.96	WES	12605 SE 84TH AVE
Rock Creek Confluence Property	Restoration completed by WES & CRBC; CRBC contract ended.	Occasional monitoring/maintenance. Weed spot treatment, mow around shelter, occasional sweeps for camping and cleanup.	22E12 00303	NO SITUS	NO SITUS	NO SITUS	9.20	WES	NO SITUS
Rose Creek	Weed control, trail maintenance, some planting, esp. streambank area.	Weed control, trail maintenance, some planting, bioengineering in streambank area.	22E01CD00100, 22E01CC11100, 22E01C 00312, 22E01CA07000	14001 SE 152ND DR	CLACKAMAS	97015	6.90	WES	14001 SE 152ND DR, 13944 SE HINES DR, NO SITUS
Echo Valley Meadows	Restoration completed, released from permit, in maintenance phase.	Needs continued maintenance (weed treatments/inter-planting).	22E03DD00519, 22E03DD00520, 22E03DD00527	14181 SE ECHO VALLEY CT	CLACKAMAS	97015	0.58	WES	14181 SE ECHO VALLEY CT, 14199 SE ECHO VALLEY CT, 14165 SE ECHO VALLEY CT
3-Creeks	Weed control, cleanups, sweeps for camping, volunteer event coordination.	Continue as in past.	22E04B 01300, 22E05 00200	NO SITUS	NO SITUS	NO SITUS	78.94	WES	NO SITUS and 7200 SE HARMONY RD
Hearthwood Wetlands easement area	Weed control, some inter-planting	Continue as in past.	22E09CC03000	NO SITUS	NO SITUS	NO SITUS	0.05	The Wetlands Conservancy	NO SITUS
North Clackamas Park riparian area	Weed control, inter-planting	Continue as in past.	22E06AC00100	SE Kellogg Creek Dr.	MILWAUKIE	97022	3.00	City of Milwaukie	SE Kellogg Creek Dr.



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

October 29, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Amendment #1 between North Clackamas Parks and Recreation District (NCPRD) and Metro for Mapping and Data Services

Purpose/Outcome	Provides NCPRD with continued on-call Geographic Information System (GIS) services through Metro’s Research Center to support project work.
Dollar Amount and Fiscal Impact	\$30,000
Funding Source	NCPRD General Fund, Planning Budget
Duration	Through June 30, 2024 (three years and eight months)
Previous Board Action/Review	None
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provides support service for economic development, public spaces, and community enrichment services to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities 2. Promote a <i>Healthy and Active Lifestyle</i> by providing support services to developing and maintaining NCPRD’s parks and trails.
Counsel Review	<ol style="list-style-type: none"> 1. October 20, 2020 2. JM
Procurement Review	<ol style="list-style-type: none"> 1. <i>Was this item processed through procurement?</i> No 2. This is an IGA.
Contact Person	Kathryn Krygier, Planning and Development Manager 503-867-2820
Contract No.	N/A

BACKGROUND:

NCPRD entered into an IGA with Metro for on-call GIS services in October, 2017. These services provide NCPRD with custom mapping, data and analysis for special projects. The services include things such as providing the District maps for internal and public use, analysis of District boundaries and data management for annexations, new acquisitions and changes in District boundaries. The proposed amendment would allow these service to continue until June 30, 2024.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners of Clackamas County, acting as the Board of Directors of the North Clackamas Parks and Recreation District, approve the Intergovernmental Agreement Amendment #1 between North Clackamas Parks and Recreation District (NCPRD) and Metro for mapping and data services and allow BCS Director or Deputy Director to sign on their behalf.

ATTACHMENTS:

1. Intergovernmental Agreement
2. Amendment to Intergovernmental Agreement

Respectfully Submitted,

Laura Zentner

Laura Zentner, Director
Business & Community Services

This AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (“Amendment”) is entered into on the last date of signature below (the “Effective Date”), by and between Metro, an Oregon municipal corporation (“Metro”), and the North Clackamas Parks and Recreation District, a county service district (“NCPRD”).

RECITALS

1. NCPRD and Metro are parties to an Intergovernmental Agreement effective 11/01/2017 for on-call professional consulting services through the Research Center (“Research Center NCPRD IGA”).
2. The Research Center NCPRD IGA establishes the responsibilities of the parties concerning Metro’s work performed for NCPRD.
3. The parties desire to amend the Research Center NCPRD IGA to extend the term and increase the funds for the extended term of the agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants of the parties set forth in this Amendment, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Term. The term is extended:

Following the expiration of the initial three-year term, this Agreement will continue through June 30, 2024 (“Extended Term”), unless earlier terminated as provided in this Agreement.

2. Funds. In consideration for the services Metro completes and delivers under the Extended Term and identified in the Scope of Work in the Research Center NCPRD IGA, the District agrees to pay Metro a sum not to exceed a total of **THIRTY THOUSAND AND 00/100THS DOLLARS (\$30,000)**.

3. Miscellaneous. This Amendment may be executed digitally and in counterparts, and delivery by facsimile or e-mail is sufficient to form a binding agreement. Except as modified herein, the Research Center NCPRD IGA remains unmodified and in full force and effect.

4. Miscellaneous. The Intergovernmental Agreement dated 11/1/2017 between the parties is ratified and fully executed by the signatures below.

BCC as the Board of North Clackamas Parks and Recreation District

Metro

By: _____

By: _____

Printed Name: _____

Printed Name: Marissa Madrigal

Title: _____

Title: Chief Operating Officer

Date: _____

Date: _____

INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

THIS AGREEMENT is between Metro, an Oregon municipal corporation (Metro) and North Clackamas Parks and Recreation District, a county service district organized under ORS chapter 451 (District).

RECITALS

- A. By the authority granted in ORS 190.110, units of local government may enter into agreements with units of local government to perform any or all functions and activities that the parties to the agreement, its officers, or agents have authority to perform.
- B. District desires Metro, through the Research Center, to provide on-call professional consulting services to the District.
- C. Metro manages data, including but not limited to district boundaries, maps of District assets, land uses, trends, and capital projects that the District desires to promote informed decision making.

In consideration of the foregoing recitals and the mutual promises herein, the parties agree as follows:

TERMS OF AGREEMENT

1. Purpose

This Agreement is to establish the responsibilities of the parties concerning the Metro's work performed pursuant to the Scope of Work in Exhibit A.

2. Term

This Agreement is effective as of the date all required signatures are obtained (the Effective Date) and will automatically terminate three (3) years after the Effective Date, unless earlier terminated as provided for in this Agreement.

3. Metro Responsibilities

Metro agrees to:

- a. Furnish the necessary personnel, equipment, material and services and otherwise do all things necessary for or incidental to performing work set forth in the Scope of Work attached as Exhibit A and incorporated herein (the Work).
- b. Perform the Work as an independent contractor and be exclusively responsible for all costs and expenses related to Metro's employment of individuals performing the Work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

- c. Comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement.

4. District Responsibilities

District agrees to:

- a. In consideration for the services Metro completes and delivers under this Agreement and identified in the Scope of Work, pay Metro a sum not to exceed a total of **THIRTY THOUSAND AND NO/100THS DOLLARS (\$30,000.00)** for term of this Agreement. The price includes all fees, costs and expenses of whatever nature. Payment will be made as provided for by section 5 below. Work will be at an hourly rate and for costs as described in Exhibit B.
- b. Certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

5. Billing invoices and Payment for Services

- a. Metro billing invoices to District must include:
 - (i) Metro contract number;
 - (ii) Remittance address;
 - (iii) Invoice date;
 - (iv) Invoice number;
 - (v) Invoice amount;
 - (vi) Itemized statement/description of expenses and work performed on each task during the billing period; and
 - (vii) Total amount billed to date.
- b. Metro billing invoices must not be submitted more frequently than monthly. Metro's billing invoices must be sent electronically to kkrygier@ncprd.com with the Metro contract number referenced in the email subject line. Metro's billing invoices for goods and/or services through June 30 must be submitted to the District by July 15.
- c. District will issue payment within 30 days of approval of the completed work and deliverables identified as being Metro's responsibility in the Statement of Work.

6. Notices: Project Managers

All notices and other written communication between the parties under this Agreement must be given in writing to the address set forth below and is deemed received (a) upon personal service, (b) three (3) days after deposit in the United States Mail, postage prepaid, or (c) one (1) day after deposit with a nationally recognized overnight courier service. The parties appoint the following representatives for receiving notice and as project managers for this Agreement.

INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

Metro: Karen Scott Lowthian
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232-2736
503-797-1725
Karen.Scott-Lowthian@oregonmetro.gov

District: Kathryn Krygier
Planning and Development Manager
North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, Oregon 97045
503-742-4358
kkrygier@ncprd.com

The foregoing addresses may be changed by giving written notice. Notice given in any manner other than the manners set forth above will be effective when received by the party for whom it is intended.

7. Termination

This Agreement may be terminated as follows:

- a. By mutual written consent of both parties.
- b. By District, in whole or in part, immediately upon written notice to Metro, or at such later date as may be established by District, under any of the following conditions:
 - i. If Metro fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If Metro commits any other breach or default of any covenant, warranty, or obligation under this Agreement, or so fails to pursue the Work as to endanger performance of this Agreement in accordance with its terms. To be effective, District must give Metro written notice of District's intent to terminate. If Metro does not entirely cure such breach, default, or failure within thirty (30) days after receipt of District's notice, or such longer period of cure as District may specify in the notice, then District may terminate this Agreement at any time thereafter by giving a written notice of termination.
 - iii. If District fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - iv. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way to prohibit the work under this Agreement or prohibit Metro from paying for such work from the planned funding source.



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INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

- c. By Metro, in whole or in part, immediately upon written notice to District, or at such later date as may be established by Metro, if District commits any breach or default of any covenant or obligation under this Agreement.

Any termination of this Agreement will not prejudice any rights or obligations accrued to the parties prior to termination. No consequential or punitive damages are permitted. Metro's sole remedy is a claim for the sum designated for the work performed.

8. Insurance

Metro and District are self-insured for general liability insurance and workers' compensation insurance coverage. Each party is responsible for the wages and benefits of its respective employees performing services under this Agreement.

9. Indemnification

- a. Within the limits of the Oregon Tort Claims Act and the Oregon Constitution, District shall indemnify, defend, and hold harmless Metro, its officers, employees, and agents, including assigned personnel, from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of District, its agents or assigned personnel acting within the scope of employment or pursuant to the terms of this Agreement.
- b. Within the limits of the Oregon Tort Claims Act and the Oregon Constitution, Metro shall indemnify, defend, and hold harmless District, its officers, employees, and agents, including assigned personnel, from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of Metro, its agents or assigned personnel acting within the scope of employment or pursuant to the terms of this Agreement.

10. Maintenance and Access

The parties shall maintain all fiscal records related to this Agreement in accordance with generally accepted accounting principles. The parties shall maintain books, documents, and other records related to the subject Agreement. The parties shall retain and keep accessible all such records for a period of six years from the date of final completion of this Agreement. Each party shall make records available to the other party and its authorized representatives, including but not limited to the staff of any department, at reasonable times and places regardless of whether litigation has been filed on any claims.

11. Ownership of Work Product

All work products relating to this Agreement shall allow District unrestricted access to use data and information provided by Metro. Notwithstanding, to the extent either party uses any of its own property created or developed, whether arising from copyright, patent, trademark, trade

INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

secret or other similar right, in the performance of this Agreement, such property shall remain the property of the party.

12. Confidentiality

Each party agrees that it will make all reasonable efforts to maintain the confidentiality of any Confidential Information received from the other party. Each party agrees that it will use any such Confidential Information only in performing its duties under this Agreement. "Confidential Information" means information marked or designated in writing by either party as "confidential" prior to its initial disclosure to the other party. Confidential Information if given orally must be reduced to writing within 30 days. The parties agree that nothing herein shall be construed to limit the applicability of Oregon Public Records Law.

13. Assignment

Neither party shall subcontract, assign, or transfer any of the Work scheduled under this Agreement without the prior written consent of the other party.

14. Survival

All obligations relating to indemnification, default or defect in performance, limitation of liability, publicity, proprietary rights, and obligations to make payments that become due under this Agreement prior to termination (except that payments for services not performed by the date of termination will be prorated) survive termination or expiration of this Agreement and, to the extent applicable, remain binding and in full force and effect.

15. Governing Law

This Agreement is governed by Oregon law without giving effect to the conflict of law provisions thereof. Any litigation between the parties that arises out of or relates to the Agreement must occur in Clackamas County Circuit Court. Claims must be brought in the Circuit Court's small claims division if within jurisdictional claim allowances.

16. Miscellaneous

Time is of the essence under this Agreement. Nothing in this Agreement provides any benefit or right to third persons. This Agreement is binding on each party, its successors, assigns, and legal representatives. This Agreement and attached exhibit(s) 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. The terms of this Agreement cannot be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written amendment signed by both parties. Any waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement does not constitute a waiver by that party of that provision or of any other provision. If any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law the



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INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

validity of the remaining Agreement terms are not affected and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the offending term or provision.

The parties hereto have executed this Agreement as of the Effective Date.

Metro

North Clackamas Parks and Recreation District

By: _____

Jeff Frkdnja
Jeff Frkdnja

By: _____

Laura Zentner
Laura Zentner

Title: Research Center Director

Title: Interim Business & Community Services Director

Date: _____

11/17/17

Date: _____

10/23/17

Approved as to Form:

Approved as to Form:

By: _____

By: _____

[Signature]



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INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

Exhibit A Scope of Work

This Scope of Work describes District-funded Metro tasks.

The District executed this IGA to engage Metro for on call services for custom mapping, data, and analysis for special projects. Projects include but are not limited to:

- District Maps for internal and public use.
- Analysis of District boundaries.
- Maps of District assets and responsibilities such as park amenities, property ownership, and property management, and other property data.
- Data management including annexations, new acquisitions, changes in District boundaries.
- Data and maps for projects such as District Master Plan, SDC Methodology Update and Capital Improvement Plan.

It is anticipated deliverables will be electronic and printed.

Services under the Agreement are on an “on-call” or “as-needed basis.”

No work may be performed by Metro until a written task scope of work is developed and agreed to by the parties, in writing, for a specific project.

Each task’s scope of work must minimally include: a detailed description of services or products to be provided and a timeline for the task and a maximum fee for completion of the task.



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INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 934898

Exhibit B Rates

Personnel Charges: Metro's incurred personnel costs for performing work requested by North Clackamas Parks and Recreation District and as described in Exhibit A will be paid by North Clackamas Parks and Recreation District. These actual personnel costs include salary, employee benefits, and Metro overhead. The hourly personnel rate to be charged ranges from \$75.00 per hour for an Assistant GIS Specialist to \$150.00 per hour for a GIS Manager. These rates will vary based upon the classification of employee(s) Metro assigns to fill a request and also can change as annual staff cost of living and merit increases occur.

Map Printing Costs: Metro's standard map printing costs for maps up to 34" X 44" range from \$5.00 to \$50.00 and may change if printing supply costs increase. Costs for printing oversize maps (larger than 34" X 44") are determined on an individual basis

Other Costs: Standard shipping and mailing charges may apply for items shipped through USPS or other mail services.



Gregory L. Geist
Director

October 29, 2020

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between
North Clackamas Parks and Recreation District and Water Environment Services

Purpose/Outcomes	Approval of an Intergovernmental Agreement Between North Clackamas Parks and Recreation District and Water Environment Services
Dollar Amount and Fiscal Impact	WES agrees to pay NCPRD approximately \$90,000.00 annually, for an amount not to exceed \$450,000.00 over five years.
Funding Source	Surface water fees paid by property owners in WES' service area. No County General Funds are requested.
Duration	The Agreement ends June 30, 2025, with an option to extend one additional 5-year term.
Previous Board Action/Review	Board approved a previous IGA on 8/6/2013, Board Agenda Item 7/18/2013-IX.2.
Counsel Review	This IGA was reviewed and approved by County Counsel on Sept. 16, 2020.
Strategic Plan Alignment	Supports the following key result for Watershed Protection: 50% of WES' streams are healthy. Supports the following goal for the County's Performance Clackamas goals: Honor, utilize, promote and invest in our natural resources.
Contact Person	Ron Wierenga, Surface Water Manager x4581, rwierenga@clackamas.us
Contract No.	N/A

BACKGROUND:

WES and NCPRD formed an agreement in 2013 to establish a cooperative working relationship for the purpose of undertaking public projects aimed at improving water quality, enhancing natural resources areas, and providing public access for passive recreation and environmental education activities.

In the 2013 Agreement, WES and NCPRD partnered to manage natural areas and team on projects of mutual benefit and interest that fit the missions of both departments. Since the 2013 Agreement was implemented, WES and NCPRD's needs have evolved and changes to the 2013 Agreement are proposed to further our partnership for maximum efficiencies and benefits. WES and NCPRD desire to terminate the 2013 Agreement and enter into this new Agreement to ensure that past and future investments in these public assets will be protected.

WES owns and manages several natural areas, as well as a few passive recreational facilities such as trails. However, WES does not have field staff to take on this maintenance. NCPRD implements a Natural Resources Program and employs Natural Area staff, knowledgeable and skilled to provide stewardship of natural areas for fish and wildlife habitat, as well as water quality benefits.

WES has determined that NCPRD is well-equipped to provide these services and, because their service areas are similar, their staff is familiar with many of the properties. We have had a positive, cooperative partnership to date. Managing natural areas together in accordance with our shared values will ensure consistent treatment and maximum effectiveness of NCPRD resources within natural areas.

The specific WES sites that will be managed and the budget that NCPRD will be provided to manage the sites would be detailed within the annual work plan that is established between WES and NCPRD.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between North Clackamas Parks and Recreation District and Water Environment Services.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a long horizontal flourish extending to the right.

Greg Geist
Director, Water Environment Services

Attachments:
IGA between WES and NCPRD

**INTERGOVERNMENTAL AGREEMENT
BETWEEN NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
AND WATER ENVIRONMENT SERVICES**

THIS AGREEMENT (this "Agreement") is entered into and between North Clackamas Parks and Recreation District ("NCPRD"), a county service district formed pursuant to ORS Chapter 451, and Water Environment Services ("WES"), an intergovernmental entity formed pursuant to ORS Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

WES and NCPRD formed an agreement in 2013 ("2013 Agreement") to establish a cooperative working relationship for the purpose of undertaking public projects aimed at improving water quality, managing storm water runoff, enhancing natural resources areas, and providing public access for passive recreation and environmental education activities.

In the 2013 Agreement, WES and NCPRD partnered to manage natural areas and team on projects of mutual benefit and interest that fit the missions of both departments. Since the 2013 Agreement was implemented, WES and NCPRD's needs have evolved and changes to the 2013 Agreement are proposed to further our partnership for maximum efficiencies and benefits to each department. WES and NCPRD desire to terminate the 2013 Agreement and enter into this new Agreement to ensure that past and future investments in these public assets will be protected.

WES owns and has the responsibility to manage several natural areas and stormwater management facilities in the WES service area, as well as a few passive recreational facilities such as trails. However, WES does not have field staff to take on this maintenance. NCPRD implements a Natural Resources Program and employs Natural Area staff, knowledgeable and skilled to provide stewardship of natural areas for fish and wildlife habitat, as well as water quality benefits. NCPRD Natural Resources Program staff are also qualified and skilled in restoration ecology, stewardship planning, implementing volunteer events and communicating with the public about issues these areas face.

WES has determined that NCPRD is well-equipped to provide these services and, because their service areas are similar, their staff is familiar with many of the properties. We have had a positive, cooperative partnership to date. Managing natural areas together in accordance with our shared values will ensure consistent treatment and maximum effectiveness of NCPRD resources within natural areas.

The specific WES sites that will be managed and the budget that NCPRD will be provided to manage the sites would be detailed within the annual work plan that is established between WES and NCPRD.

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

TERMS

1. **Termination of Previous Agreement.** The Parties agree that the 2013 Agreement is hereby terminated and replaced in its entirety by this Agreement.
2. **Term.** This Agreement shall be effective upon execution, and shall expire upon June 30, 2025 (“Term”). The Parties may renew this Agreement for one additional term of 5 years upon a writing signed by both Parties.
3. **Scope of Work.** The Parties agree to perform the obligations identified in Exhibit A (“Scope of Work”), in addition to the services further identified in the Annual Work Plan in Exhibit B (“Work Plan”), both attached hereto and incorporated herein (collectively referred to as the “Work”). The Parties will develop a new Annual Work Plan each year and will update Exhibit B accordingly without the need for formal amendment to this Agreement.
4. **Consideration.** WES agrees to pay NCPRD an amount not to exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) over the Term of this Agreement.
5. **Payment.** Unless otherwise specified, NCPRD shall submit quarterly invoices for Work performed and shall include the total amount billed to date by NCPRD prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. NCPRD shall also submit the annual reporting form provided by WES at the end of each fiscal year documenting information on the Work performed. Payments shall be made to NCPRD following WES’ review and approval of invoices submitted by NCPRD. NCPRD shall not submit invoices for, and WES will not pay, any amount in excess of the maximum compensation amount set forth above.
6. **Representations and Warranties.**
 1. *WES Representations and Warranties:* WES represents and warrants to NCPRD that WES has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of WES enforceable in accordance with its terms.
 2. *NCPRD Representations and Warranties:* NCPRD represents and warrants to WES that NCPRD has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of NCPRD enforceable in accordance with its terms.
 3. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
7. **Termination.**
 1. Either the NCPRD or WES may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 2. NCPRD or WES shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
 3. Either Party may terminate this Agreement in the event a Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or

interpreted in such a way that either the Project under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
8. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, NCPRD agrees to indemnify, save harmless and defend WES, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of NCPRD or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which NCPRD has a right to control.

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

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

1. Tonia Williamson or their designee will act as liaison for NCPRD.

Contact Information:

Tonia Williamson
North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4357
twilliamson@NCPRD.com

Gail Shaloum or their designee will act as liaison for WES.

Contact Information:

Gail Shaloum, PLA
Clackamas County Water Environment Services
150 Beaver Creek Rd., Suite 430
Oregon City, OR 97045
(503) 742-4597
gshaloum@clackamas.us

11. General Provisions.

1. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between NCPRD and WES that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by WES or NCPRD of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. NCPRD and WES, by execution of this Agreement, hereby consent to the in personam jurisdiction of the courts referenced in this section.
2. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
3. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
4. **Access to Records.** Both parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. All financial records shall be maintained in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. At either party's request, the other party shall provide the

requesting party with paper or electronic version of all documents, engineering designs, warranties, and other materials directly related to a Project that have been produced or recorded. The Parties are not obligated to provide confidential documentation or produce materials in electronic media if the materials do not already exist in electronic media.

5. **Work Product.** Reserved.
6. **Hazard Communication.** Reserved.
7. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
8. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
9. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
10. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
11. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
12. **No Third-Party Beneficiary.** WES and NCPRD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any

benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

13. **Subcontract and Assignment.** Neither WES nor NCPRD shall enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall not be unreasonably withheld. Either Party's consent to any subcontract shall not relieve the other Party of any of its duties or obligations under this Agreement.
14. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
15. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
16. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
17. **Time is of the Essence.** WES and NCPRD agree that time is of the essence in the performance this Agreement.
18. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
19. **Force Majeure.** Neither WES nor NCPRD shall be held responsible for delay or default caused by events outside of WES or NCPRD's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, WES shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
20. **Confidentiality.** Reserved.
21. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signature Page Follows]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

North Clackamas Parks and Recreation District

Water Environment Services

Chair


Date

Chair

Recording Secretary

Date

Approved as to Form



County Counsel

10/21/2020

Date

Exhibit A

SCOPE OF WORK

1. **Obligations of WES.**

- i. WES agrees to lead the resolution of any property boundary issues, land surveys, etc. on WES owned properties.
- ii. WES agrees to notify NCPRD of special use permits related to sites that contain mitigation and to provide NCPRD with permit language, so that NCPRD understands what other uses of the site may be and can help provide recommendations based on day-to-day management.
- iii. WES agrees to notify NCPRD of partnership activities and educational events planned at WES sites where NCPRD may be conducting Work, so that NCPRD understands what other uses of the site may be and can help provide recommendations based on day-to-day management.
- iv. WES will provide its Rules for Public Property to NCPRD to guide NCPRD in interacting with the public on WES properties.
- v. WES will draft an annual work plan with input from NCPRD. The Parties will work together to finalize annual work plan documents that will guide NCPRD's day to day work during a fiscal year. Work tasks include, but are not limited to, 1) vegetation survey, monitoring, maintenance including hazard tree removal; 2) trails or facility monitoring and maintenance; and 3) trash monitoring and maintenance; 4) monitoring houseless persons activity on WES owned properties and posting necessary signage provided by WES in compliance with the Clackamas County Code, in addition to coordinating with representatives of the Clackamas County Sheriff's Office Exclusion Program as needed.

2. **Obligations of NCPRD.**

- i. NCPRD agrees to get approval from WES of any partnership or educational activities that NCPRD leads at WES sites and to include WES as a funding partner on any marketing materials, if funds from this IGA support the project.
- ii. NCPRD agrees to review information related to partnership activities and educational events planned at WES sites and to provide comments to WES in a timely fashion noting any conflict with the day-to-day management.
- iii. NCPRD will provide input on and review the annual work plan developed by WES. The two agencies will work together to finalize annual work plan documents that will guide NCPRD's day to day work during a fiscal year.
- vi. NCPRD will follow WES' Rules for Public Property to NCPRD in interacting with the public on WES properties.

- vii. Work tasks include but are not limited to 1) vegetation survey, monitoring, maintenance including hazard tree removal, 2) trails or facility monitoring and maintenance, 3) trash monitoring and maintenance. NCPRD follows specific best management practices, regulatory guidelines and polices and protocols to manage a site including Oregon Department of Agriculture regulations of control of invasive weeds, Clackamas County and NCPRD polices and protocols; 4) monitoring houseless persons activity on WES owned properties and posting necessary signage provided by WES in compliance with the Clackamas County Code, in addition to coordinating with representatives of the Clackamas County Sheriff's Office Exclusion Program as needed.
- iv. WES shall be listed as additionally insured on any contract insurance documents that NCPRD leads on WES property.

Exhibit B

ANNUAL WORK PLAN

<u>Property Name</u>	<u>Current Activity</u>	<u>Needs</u>	<u>Taxlot</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Acres</u>	<u>Taxpayer</u>	<u>Address</u>
Mt. Scott Creek - Oak Bluff Reach	Weed control, cleanups, sweeps for camps.	Continue as in past.	22E04B 00300	8970 SE OAK BLUFF RD	CLACKAMAS	97015	2.74	WES	8970 SE OAK BLUFF RD
Last Road Property	None to date	Weed control and re-planting, trash pickup--as time allows.	22E09DC01102	9557 SE LAST RD	CLACKAMAS	97015	0.20	WES	9557 SE LAST RD
84th Ave Property	None to date	Weed control and re-planting, trash pickup--as time allows.	22E04B 03700	12605 SE 84TH AVE	CLACKAMAS	97015	1.96	WES	12605 SE 84TH AVE
Rock Creek Confluence Property	Restoration completed by WES & CRBC; CRBC contract ended.	Occasional monitoring/maintenance. Weed spot treatment, mow around shelter, occasional sweeps for camping and cleanup.	22E12 00303	NO SITUS	NO SITUS	NO SITUS	9.20	WES	NO SITUS
Rose Creek	Weed control, trail maintenance, some planting, esp. streambank area.	Weed control, trail maintenance, some planting, bioengineering in streambank area.	22E01CD00100, 22E01CC11100, 22E01C 00312, 22E01CA07000	14001 SE 152ND DR	CLACKAMAS	97015	6.90	WES	14001 SE 152ND DR, 13944 SE HINES DR, NO SITUS
Echo Valley Meadows	Restoration completed, released from permit, in maintenance phase.	Needs continued maintenance (weed treatments/inter-planting).	22E03DD00519, 22E03DD00520, 22E03DD00527	14181 SE ECHO VALLEY CT	CLACKAMAS	97015	0.58	WES	14181 SE ECHO VALLEY CT, 14199 SE ECHO VALLEY CT, 14165 SE ECHO VALLEY CT
3-Creeks	Weed control, cleanups, sweeps for camping, volunteer event coordination.	Continue as in past.	22E04B 01300, 22E05 00200	NO SITUS	NO SITUS	NO SITUS	78.94	WES	NO SITUS and 7200 SE HARMONY RD
Hearthwood Wetlands easement area	Weed control, some inter-planting	Continue as in past.	22E09CC03000	NO SITUS	NO SITUS	NO SITUS	0.05	The Wetlands Conservancy	NO SITUS
North Clackamas Park riparian area	Weed control, inter-planting	Continue as in past.	22E06AC00100	SE Kellogg Creek Dr.	MILWAUKIE	97022	3.00	City of Milwaukie	SE Kellogg Creek Dr.

<u>Property Name</u>	<u>Taxlot</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Acres</u>	<u>Taxpayer</u>	<u>SITUS</u>	<u>REVIEW COMMENTS</u>	<u>LANDC LASS</u>	<u>FUND NO.</u>
Mt. Scott Creek - Oak Bluff Reach	22E04B 00300	8970 SE OAK BLUFF RD	CLACKAMAS	97015	2.736756	WES	8970 SE OAK BLUFF RD	Natural resource area, with sanitary line through parcel	300	111
Last Road Property	22E09DC01102	9557 SE LAST RD	CLACKAMAS	97015	0.203868	WES	9557 SE LAST RD	Strip of land w/Cow Creek running through it, adjacent to Interstate Meats	300	151
Carli Property	22E15B 00100	NO SITUS	NO SITUS	NO SITUS	8.129552	WES	NO SITUS	Site with regional stormwater treatment and restoration	400	151
84th Ave Property	22E04B 03700	12605 SE 84TH AVE	CLACKAMAS	97015	1.962301	WES	12605 SE 84TH AVE	Linear site contains Philips Creek betwn Sunnyside & Sunnybrook; steep	200	151
Rock Creek Confluence Property	22E12 00303	NO SITUS	NO SITUS	NO SITUS	9.199795	WES	NO SITUS	Natural resource area, site of recently completed in-stream and vegetation restoration project	700	151
Rose Creek	22E01CC11100	NO SITUS	NO SITUS	NO SITUS	0.729743	WES	NO SITUS	Natural resource area along Rose Creek w/ veg management, pedestrian bridge, trail, partners assist in management.	100	
Rose Creek	22E01CD00100	14001 SE 152ND DR	CLACKAMAS	97015	4.985878	WES	14001 SE 152ND DR	Natural resource area along Rose Creek w/ veg management, pedestrian bridge, trail, partners assist in management.	400	151
Rose Creek	22E01C 00312	13944 SE HINES DR	CLACKAMAS	97015	1.074267	WES	13944 SE HINES DR	Natural resource area along Rose Creek w/ veg management, pedestrian bridge, trail, partners assist in management.	100	151
Rose Creek	22E01CA07000	NO SITUS	NO SITUS	NO SITUS	0.113236	WES	NO SITUS	Natural resource area along Rose Creek w/ veg management, pedestrian bridge, trail, partners assist in management.	100	151
Echo Valley Meadows	22E03DD00519	14181 SE ECHO VALLEY CT	CLACKAMAS	97015	0.164592	WES	14181 SE ECHO VALLEY CT	Restoration project and mitigaton wetlands on these parcels	100	151
Echo Valley Meadows	22E03DD00520	14199 SE ECHO VALLEY CT	CLACKAMAS	97015	0.246183	WES	14199 SE ECHO VALLEY CT	Restoration project and mitigaton wetlands on these parcels	100	151
Echo Valley Meadows	22E03DD00527	14165 SE ECHO VALLEY CT	CLACKAMAS	97015	0.164328	WES	14165 SE ECHO VALLEY CT	Restoration project and mitigaton wetlands on these parcels	100	151
3-Creeks	22E04B 01300	NO SITUS	NO SITUS	NO SITUS	1.608638	WES	NO SITUS	Large natural area owned by WES, managed by NCPRD thru IGA.	200	151
3-Creeks	22E05 00200	7200 SE HARMONY RD	MILWAUKIE	97222	77.335566	WES	7200 SE HARMONY RD	Large natural area owned by WES, managed by NCPRD thru IGA. Includes compensatory wetland mitigation site completed to mitigate Intertie #2 pump station.	100	151

***** Taxpayer is Clackamas County, but INCAREOF of WES



October 29, 2020

Water Environment Services Board
 Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement between
 Water Environment Services and Clean Water Services
 for Liquid Biosolids Management

Purpose/Outcomes	Extend the Intergovernmental Agreement between Water Environment Services and Clean Water Services. From time to time, the Tri-City Wastewater Treatment Plant loses the ability to dewater their liquid biosolids. This IGA will allow the Tri-City Plant to transport liquid biosolids to the Durham Advanced Wastewater Treatment Facility in Tigard, OR.
Dollar Amount and Fiscal Impact	N/A
Funding Source	FY20/21 WES Budget as approved. No general fund dollars impacted
Duration	From the date of execution of the Contract until November 1, 2021.
Previous Board Action/Review	Amended April 5 th 2019, no board action required
Counsel Review	This IGA 2 nd Amendment was reviewed and approved by County Counsel on October 21, 2020.
Strategic Plan Alignment	1) This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2) . This service supports the County Strategic Priority to ensure safe, healthy, and secure communities.
Contact Person	Terrance Romaine Resource Recovery Supervisor 503/557-2820
Contract No.	N/A

BACKGROUND:

The Tri-City Wastewater Treatment Plant produces Class B biosolids that are dewatered via centrifuge and hauled to Sherman County, OR. At times, both the primary centrifuge and the back-up centrifuge at Tri-City are unavailable. The Tri-City plant has limited storage capacity for liquid biosolids so it must be removed from the plant daily.

The purpose of this agreement is to allow Water Environment Services staff to haul liquid Class B biosolids from Tri-City to the Durham Advanced Wastewater Treatment Facility in Tigard, OR.

This Intergovernmental Agreement Amendment 2, has been reviewed and approved by County Counsel.

RECOMMENDATION:

WES staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Intergovernmental Agreement between Water Environment Services and Clean Water Services for Class B liquid biosolids management.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a long horizontal flourish extending to the right.

Greg Geist
Director, Water Environment Services

Attachments:

SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
Between Clean Water Services and Water Environment Services

This Amendment, dated effective November 1, 2020, is between Clean Water Services (District) and Water Environment Services (WES), and amends the parties' Intergovernmental Agreement to accept Class B biosolids dated November 1, 2017 as amended by the First Amendment, dated effective April 5, 2019 (collectively, IGA).

RECITALS

1. District and WES previously entered into the IGA to have District accept its class B biosolids from WES' Tri-City Facilities, Boring Sewage Treatment Plant and Hoodland Water Sewage Treatment Plant (WES Facilities) at District's Durham Advanced Wastewater Treatment Facility and beneficially use them when WES Facilities are unable to do so.
2. The parties wish to amend the IGA to extend the term for one year.

TERMS AND CONDITIONS

1. One-Year Extension

The parties agree to renew the IGA for one additional year. The renewal period will begin on November 1, 2020 and extend through October 31, 2021 unless the parties terminate the IGA pursuant to Section D.6.

2. Effect of Amendment

Except as amended herein, the IGA will remain in full force and effect.

WATER ENVIRONMENT SERVICES

CLEAN WATER SERVICES

By: _____
Chair

By: _____
Chief Executive Officer or Designee

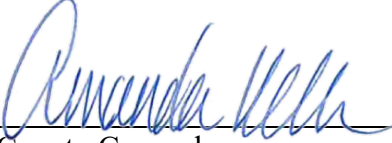
Approved as to Form

ATTEST

By: _____
Secretary

District Counsel

Approved as to Form



County Counsel