

AGENDA

Thursday, December 7, 2017 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2017-147

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

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

A. Health, Housing & Human Services

1. Approval of a Sub-recipient Grant Agreement with Clackamas Women's Services for Shelter from Domestic Violence – *Social Services*
2. Approval of 2013-2017 Carryover Report Pertaining to Intergovernmental Agreement No. 148058 with the State of Oregon, Department of Human Services, Seniors and People with Disabilities Division – *Social Services*
3. Approval of an Intra-Agency Agreement with Clackamas County Health Centers Division (CCHCD), for the School Based Health Centers (SBHC) Building Mental Health Services Capacity for Oregon City and Sandy High Schools – *Public Health*
4. Approval of a Sub-recipient Professional Services Agreement with Cascade AIDS Project for HIV Testing and Counseling Services – *Public Health*

B. Department of Transportation & Development

1. Approval of a Public Crossing - At-Grade Crossing Agreement with Union Pacific Railroad Company

C. Elected Officials

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

D. County Counsel

1. Approval of Settlement Agreements with Parametrix, Inc. for the Carver Bridge Litigation

E. Technology Services

1. Approval of a Contract with CDW-G for Procurement of an ExaGrid EX280 System for Backup Storage - *Procurement*

III. DEVELOPMENT AGENCY

1. Approval of a Disposition Agreement with Clackamas Crossing LLC.

IV. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Approval of Amendment No. 1 to the Professional Services Contract between Murraysmith, Inc. and Clackamas County Service District No. 1 for Arrah Wanna Pump Station and Hoodland Water Resource Recovery Facility Modernization – *Procurement*

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.

www.clackamas.us/bcc/business.html

December 7, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Grant Agreement with
Clackamas Women’s Services for Shelter from Domestic Violence

Purpose/Outcomes	Contractor will provide emergency shelter and services to people experiencing domestic violence in Clackamas County.
Dollar Amount and Fiscal Impact	\$21,560
Funding Source	Emergency Food and Shelter Program (EFSP) grant funds. No County General Funds are involved.
Duration	April 1, 2017 through January 31, 2018
Previous Board Action	None
Strategic Plan Alignment	1. This funding aligns with H3S’s strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the County’s strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8541

BACKGROUND:

Social Services Division of the Health, Housing and Human Services Department requests approval of a Subrecipient Grant Agreement with Clackamas Women’s Services (CWS). CWS will provide emergency shelter for survivors of domestic violence who are homeless or at imminent risk of homelessness at a facility operated by CWS in Clackamas County.

This agreement is funded with Emergency Food and Shelter Program (EFSP) grant funds from the Federal Department of Homeland Security for the express purpose to serve the hungry and homeless population.

This Subrecipient Agreement is effective April 1, 2017 through January 31, 2018. The reason for the retroactive effective date is that the funding received allows expenses to be paid back to April 1, 2017. The value of the agreement is \$21,560. There are no County General Funds involved.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 18-026**

Project Name: **Emergency Food And Shelter Program Phase 34**

Project Number:

This Agreement is between **Clackamas County**, Oregon,
acting by and through its Department of Health, Housing and Humans Services, Social Services Division,
and **Clackamas Women's Services**, an Oregon Nonprofit Corporation.

Clackamas County Data

Grant Accountant: Sue Aronson	Program Manager: Teresa Christopherson
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503)742-5421 suea@clackamas.us	Clackamas County – H3S Social Services Division PO Box 2950 Oregon City, OR 97045 503-650-5718 teresachr@co.clackamas.or.us

Subrecipient Data

Finance/Fiscal Representative: Melissa Erlbaum	Program Representative: Amy Doud
Clackamas Women's Services 256 Warner Milne Rd. Oregon City, OR 97045 503-655-8600 melissae@cwsor.org	Clackamas Women's Services 256 Warner Milne Rd Oregon City, OR 97045 503-655-8600 amyd@cwsor.org
DUNS: 959059759	

RECITALS

1. Whereas homelessness remains a persistent problem in most of Clackamas County, including urban, rural and suburban areas;
2. Whereas homelessness affects some of the most vulnerable Clackamas County residents, with almost half of the identified homeless being children under the age of 18, and significant numbers of veterans, people with disabilities, women fleeing domestic violence and older adults suffering homelessness;
3. Whereas homeless individuals are frequent victims of crime and often experience health problems;
4. Whereas many homeless adults want to work but are not employable without a safe place to sleep at night;
5. Whereas Clackamas County ("COUNTY") has received federal funding under the Emergency Food and Shelter Program ("EFSP"), authorized by the Stewart B. McKinney Homeless Assistance Act of 1987, as amended, Title 3, Section 301, Public Law 100-77, 42 U.S.C 11331-11346. The EFSP was created in 1983 to supplement and expand the work of local social service agencies, both nonprofit and governmental, in an effort to help people with economic (rather than disaster-related) emergencies.

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6. Whereas funding provided in this award is intended to supplement costs associated with the provision of emergency shelter services in Oregon City, Oregon, operated by Clackamas Women's Services ("SUBRECIPIENT"), in order to provide transitional shelter services to adults and families who require case management activities with attendant shelter to stabilize their shelter needs while providing for the development of essential living skills necessary to achieve long-term independent housing situations.
7. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **April 1, 2017** and not later than **January 31, 2018**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in with the requirements of the EFSP program (Federal Award #34-7080-00 005; award date: 10/03/17) that is the source of the grant funding, in addition to Award Special Terms and Conditions, Program Information, and EFSP Manuals, Addenda, and other required information in Exhibits A-H, which are attached to and made a part of this agreement by this reference.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the EFSP 34 (Catalogue of Federal Domestic Assistance [CFDA] #: 97.024) issued to the COUNTY by the United Way on behalf of the U.S. Department of Homeland Security. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$21,560.00**. This is a fixed unit price grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Performance Reporting. Failure to comply with the terms of this Agreement may result in withholding of payment
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.

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7. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
 - h) **Indirect Cost Recovery.** Indirect cost recovery is statutorily unavailable on this award.
 - i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
 - j) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be

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submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.

- k) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F, G & H), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after

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

- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for EFSP Phase 34 (Exhibit H), that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to COUNTY, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.

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

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

11. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an

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explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals ("RFP") for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the

term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.

- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" as an additional insured.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its, elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 9) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.

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

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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


CLACKAMAS COUNTY

CLACKAMAS WOMEN'S SERVICES

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

Signing on Behalf of the Board,

By: _____
Jim Bernard, Chair

By: 
Melissa Erlbaum, Executive Director

Dated: _____

Dated: 11-8-2017

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: 
County Counsel

Dated: 26 October 2017

- Exhibit A: SUBRECIPIENT Statement of Program Objectives
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Performance Reporting
- Exhibit F: Award Special Terms and Conditions
- Exhibit G: Final Financial Report
- Exhibit H: EFSP Phase 33 Manual and Phase 34 Addendum

December 7, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of 2013-2017 Carryover Report pertaining to the Intergovernmental Agreement #148058 with the State of Oregon, Department of Human Services, Seniors and People with Disabilities Division

Purpose/Outcomes	Report total funds carried over and planned use of funds for future services.
Dollar Amount and Fiscal Impact	2013-2015 Carryover Balance = \$112,934. 2015-2017 Carryover Balance = \$898,811. Total Carryover Balance as of 6/30/2017 = \$1,011,745. The Developmental Disability Services Program plans to use \$1,011,745 for future services during the time period of 7/1/17 – 6/30/2019. \$0 carryover to be retained after June 30, 2019.
Funding Source	The Oregon Department of Human Services – Seniors and People with Disabilities (DHS – SPD). No County General Funds are involved.
Duration	Effective July 1, 2015 and terminates on June 30, 2019
Previous Board Action	The original contract was approved by the Board of County Commissioners on July 30, 2015
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of those with developmental and intellectual disabilities in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	7316

BACKGROUND

The Social Services Division of the Health, Housing and Human Services request approval of the Carryover Report pertaining to the Intergovernmental Agreement #148058 with the State of Oregon, Dept. of Human Services, Seniors and People with Disabilities. Through the Intergovernmental agreement the Community Developmental Disability Services Program agrees to provide essential services as well as, case management services, local administration services and adult protective services to persons with developmental and intellectual disabilities who reside in Clackamas County.

Report total funds carried over from 2013-2017 biennium and planned use of these funds for future services provided by the Developmental Disability Services Program.

2013-2017 Carryover Balance = \$1,011,745. The Developmental Disability Services Program plans to use \$1,011,745 for future services during the time period of 7/1/17 – 6/30/2019. \$0 carryover to be retained after June 30, 2019

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health Housing & Human Services

Carryover Report 7/1/2013 through 6/30/2017

SE Number	Service	Total Accrued Carryover as of: 6/30/13	Standard Revenue (DHS Funded) Received: 7/1/13 to 6/30/15	Local Match Revenue (Federal Portion) Received: 7/1/13 to 6/30/15	Other Revenue used to cover unmet funding needs Received: 7/1/13 to 6/30/15	Expense for Providing services during the period: 7/1/13 to 6/30/15	Carryover Balance as of: 6/30/15
DD 02	Local Administration	\$0.00	\$ 1,329,258.43	\$ 31,549.52	\$ 60,000.00	\$ 1,394,856.95	\$ 25,951.00
DD 48	Case Management	\$0.00	\$ 5,745,946.64	\$ 305,549.04	\$ 135,528.00	\$ 6,100,040.68	\$ 86,983.00
DD 55	Abuse Investigation	\$0.00	\$ 500,350.00	\$ -	\$ -	\$ 500,350.00	\$ -
DD 157	Regional Crisis & Back Up Services	\$0.00	\$ 109,358.00	\$ -	\$ -	\$ 109,358.00	\$ -
Total		\$ -	\$ 7,684,913.07	\$ 337,098.56	\$ 195,528.00	\$ 8,104,605.63	\$ 112,934.00

SE Number	Service	Total Accrued Carryover as of: 6/30/15	Standard Revenue (DHS Funded) Received: 7/1/15 to 6/30/17	Local Match Revenue (Federal Portion) Received: 7/1/15 to 6/30/17	Other Revenue used to cover unmet funding needs Received: 7/1/15 to 6/30/17	Expense for Providing services during the period: 7/1/15 to 6/30/17	Carryover Balance as of: 6/30/17
DD 02	Local Administration	\$ 25,951.00	\$ 3,058,632.00	\$ 75,086.00	\$ 71,894.00	\$ 2,912,562.00	\$ 319,001.00
DD 48	Case Management	\$ 86,983.00	\$ 6,730,337.00	\$ -	\$ 53,932.00	\$ 6,471,292.00	\$ 399,960.00
DD 55	Abuse Investigation	\$ -	\$ 1,125,189.00	\$ -	\$ -	\$ 832,405.00	\$ 292,784.00
DD 157	Regional Crisis & Back Up Services	\$ -	\$ 109,184.00	\$ -	\$ -	\$ 109,184.00	\$ -
Total		\$ 112,934.00	\$ 11,023,342.00	\$ 75,086.00	\$ 125,826.00	\$ 10,325,443.00	\$ 1,011,745.00

SE Number	Service	Carryover Balance as of: 6/30/17	Planned expenditure of carryover during the period: 7/1/17 to 6/30/19	Requested carryover to be retained beyond: 6/30/19	Unplanned Carryover Funds
DD 02	Local Administration	\$ 319,001.00	\$ 319,001.00		\$ -
DD 48	Case Management	\$ 399,960.00	\$ 399,960.00	\$ -	\$ -
DD 55	Abuse Investigation	\$ 292,784.00	\$ 292,784.00	\$ -	\$ -
DD 157	Regional Crisis & Back Up Services	\$ -	\$ -	\$ -	\$ -
Total		\$ 1,011,745.00	\$ 1,011,745.00	\$ -	\$ -

Planned Use of Carryover Funds

Local Administration DD 02

Description of Planned Use of Carryover Funds	Anticipated Date Funds Expended	Amount
Add Admin employee to Eligibility to support update to new Eligibility requirements in eXPRS, and increased volume of intakes		\$ -
Program Aide 2 Salary & Fringe		\$ 75,354.00
Indirects Program Aide 2		\$ 14,400.00
Allocated Costs Program Aide 2		\$ 17,144.00
Indirects 4 Assessors		\$ 62,306.00
Allocated Costs 4 Assessors		\$ 71,787.00
Indirects for DRC		\$ 17,909.00
Allocated Costs for DRC		\$ 17,144.00
Purchase New technology/Software not previously funded		\$ 42,957.00
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
	Subtotal	\$ 319,001.00

Planned Use of Carryover Funds

Case Management DD 48

Description of Planned Use of Carryover Funds	Anticipated Date Funds Expended	Amount
Employ 4 ONA Assessors for the year to conduct ONAs to meet ODDS expectation of all initial ONAs to be completed by 12/31/18.		\$ 309,300.00
Purchase electronic case management documentation system, to support case management services		\$ - \$ 16,035.00
Employ a full time DRC to replace the "crisis" service/coordination previously provided by Region 1		\$ - \$ 74,625.00
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
	Subtotal	\$ 399,960.00

Planned Use of Carryover Funds

Abuse Investigation DD 55

Description of Planned Use of Carryover Funds	Anticipated Date Funds Expended	Amount
Additional Abuse Investigator		\$ 179,953.00
Materials and Services		\$ 6,100.00
Purchase New technology/Software not previously funded		\$ 18,508.00
Temporary CM Aide		\$ 69,357.00
Indirects and Allocated Costs CM Aide		\$ 18,866.00
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
Subtotal		\$ 292,784.00

REASONS FOR CARRYOVER

It took several months into 2015 to begin hiring and bringing on the additional staff, made available by the workload model. During that time, there was ongoing turnover in positions, that has continued through 2017-2019. We also experienced a tragic loss of a supervisor, unexpectedly, in late 2015. This position was vacant for six months. Recruiting and training new case managers, licensors, investigators, and eligibility specialists takes time. This will continue to be a challenge, as the workforce is depleted by all of our programs looking to fill all of our vacancies.

13-17 Carryover Report Contact & Signatures Page

Contract Number 13-15: 142122
 Contract Number 15-19: 148058
 Contractor Name: Clackamas County
 Contact Name: Kim Cota
 Contact Title: DD Program Manager
 Contact Email: kcota@clackamas.us
 Contact Phone Number: 503-557-5814

Chairman, Board of Commissioners

Printed Name	Signature	Date
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County Commissioner

Printed Name	Signature	Date
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County Commissioner

Printed Name	Signature	Date
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CMHP Director/ CDDP Director

Richard Swift

Printed Name	Signature	Date
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Chair, Developmental Disabilities Advisory Committee

Michelle Kidwell

Printed Name	Signature	Date
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December 7, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intra-Agency Agreement with Clackamas County Health Centers Division (CCHCD),
for the School Based Health Centers (SBHC)

Building Mental Health Services Capacity for Oregon City and Sandy High Schools.

Purpose/Outcomes	This Agreement provides the basis for a cooperative working relationship for building Mental Health Services capacity at the Oregon City and Sandy SBHC's.
Dollar Amount and Fiscal Impact	Contract maximum value is \$288,000.
Funding Source	Public Health Admin Funds is receiving Grant funds from the State Public Health Authority – No County General Funds will be used.
Duration	Effective upon signature and terminates on June 30, 2019
Strategic Plan Alignment	1. Improved Community Safety and Health` 2. Ensure safe, healthy and secure communities
Previous Board Action	The Board previously ruled on this on June 5, 2014 agenda item 060514-A1, October 22, 2015 agenda item 102215-A1
Contact Person	Dawn Emerick, Public Health Director – 503-655-8479
Contract No.	8252

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Agreement with Clackamas County Health Centers Division (CCHCD) to build mental health services capacity at the Oregon City and Sandy SBHC's. This Agreement provides the basis for a cooperative working relationship for the provision of a mental health specialist at the SBHC's. This agreement will allow earlier access to mental health services, reducing the number of crisis incidents. This agreement is funded with grant money received through the Local Public Health Authority (LPHA).

This contract is effective upon signature and continues through June 30, 2019. This Agreement has been reviewed by County Counsel on October 31, 2017.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

INTRA-AGENCY AGREEMENT
BETWEEN
CLACKAMAS COUNTY HEALTH, HOUSING AND HUMAN SERVICES
PUBLIC HEALTH DIVISION
AND
CLACKAMAS COUNTY HEALTH, HOUSING AND HUMAN SERVICES
HEALTH CENTERS DIVISION

Contract #8252

I. Purpose

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

II. Scope of Work and Cooperation

A. CCHCD agrees to:

1. Provide a .8 FTE mental health specialist 2 at Oregon City SBHC and Sandy SBHC.
2. Provide services that are culturally and linguistically appropriate for their target population.
3. Track data related to mental health encounters as outlined in the SBHC Certification standards. SBHC Certification standards are available at www.healthoregon.org/sbhc
4. Submit mental health encounter data to the State Program Office (SPO) four times during the contract period (January 15, 2018; July 15, 2018; January 15, 2019; and July 15, 2019)
5. Participate in regular check-in meetings via phone or email with the SPO.
6. Submit 3 mid-project reports in December 2017, June 2018, December 2018, and a final report in June 2019. Final reports are due no later than July 15, 2019. Guidance will be given on expected report content.
7. Create and implement an evaluation plan for their projects in collaboration with the SPO. The SPO will provide technical assistance throughout this process.

B. CCPHD agrees to:

1. Serve as liaison to SPO.
2. Participate in regular check-in meetings via phone or email with the SPO.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION

INTRA-AGENCY AGREEMENT - #8252

Page 2 of 4

III. Liaison Responsibility

- A. Facilitate communication and cooperation between the CCHCD and CCPHD and school districts to provide mentalhealth services in the SBHC'S.
- B. Complete the scope of work as outlined under Section II.

Liaison from CCPHD is Jamie Zentner: JZentner@clackamas.us
Liaison from CCHCD is Leann Dooley: LDooley@clackamas.us

IV. Compensation

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

The maximum amount available for CCHCD under this agreement shall not exceed \$288,000. The funds shall be distributed as follows:

Oregon City and Sandy School based health center to receive \$72,000 each per fiscal year.

Upon contract execution CCHCD will prepare an interfund request for \$60,000. Beginning December 2017, CCHCD will prepare monthly interfund requests for \$6,000 per SBHC and submit to CCPHD.

V. Reporting Requirements

A. Fiscal Reports

- 1. CCHCD shall submit monthly expnditure reimbursement invoices for true and verifiable costs and expenses related to implementation of the Mental Health Expansion Project. Invoices must be itemized and reference contract # 8252. Invoices shall be submitted to CCPHD by the 10th of the month following expenditures.
- 2. Annual expenditure report due to COUNTY by July 10, 2018 and July 10, 2019.
- 3. CCHCD will submit Fiscal Reports to:

Clackamas County Public Health Division
Attn: Sherry Olson
2051 Kaen Road, #367
Oregon City, Oregon 97045
SOlson3@clackamas.us
(503) 742-5342

B. Performance Reporting

- 1. CCHCD must submit qualitative and quantitative data based on reporting requirements set forth by the SPO.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION

INTRA-AGENCY AGREEMENT - #8252

Page 3 of 4

2. CCHCD will submit Performance Reports to:

Clackamas County Public Health Division
Attn: Jamie Zentner
2051 Kaen Road, #367
Oregon City, Oregon 97045
JZentner@clackamas.us
(503) 742-5939

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 **upon signature** and is scheduled to terminate **June 30, 2019**.

This contract may be terminated by mutual consent of both parties, or by either party, upon 30 days' written notice.

This agreement in its entirety consists of seven (7) sections.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION

INTRA-AGENCY AGREEMENT - #8252

Page 4 of 4

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

**CLACKAMAS COUNTY
HEALTH CENTERS DIVISION**

**CLACKAMAS COUNTY
PUBLIC HEALTH DIVISION**

Deborah Cockrell, Director

Dawn Emerick, Director

Date

Date

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

Richard Swift, Director

Date

S:\Admin\CONTRACTS\PUBLIC HEALTH\Expense\Clackamas County\Health Centers\Mental Health
Expansion\H3SPH\ClackamasCountyHealthCenters8252.docx

December 7, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project
for HIV Testing and Counseling Services

Purpose/Outcomes	Provide HIV testing, counseling, and outreach to Clackamas County population.
Dollar Amount and Fiscal Impact	The maximum Agreement value is \$100,000.
Funding Source	Funding provided by the State of Oregon - Oregon Health Authority. No County General Funds are involved.
Duration	Effective July 01, 2017 and terminates on June 30, 2018
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick, Public Health Director – (503) 655-8479
Contract No.	8423

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project for HIV Testing and Counseling Services. The County receives pass through funding through the Local Public Health Authority Agreement (LPHA) with the State of Oregon. This funding is a mix of federal and state funding. The County contracts with Cascade AIDS Project to manage the HIV program.

This Agreement has a maximum value of \$100,000. This Agreement is effective July 1, 2017 and continues through June 30, 2018. This Agreement has been reviewed by County Counsel on November 16, 2017. This was delayed due to negotiations, clarifications, adjustments required by the State and the contractor.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

CLACKAMAS COUNTY, OREGON SUBRECIPIENT GRANT AGREEMENT 18-022	
Project Name: HIV Counseling and Testing – Contract #8423 Project Number: 40063	
This Agreement is between <u>Clackamas County</u> , Oregon, acting by and through its <u>Department of Health, Housing, and Human Services, Public Health Division</u> and <u>Cascade AIDS Project (CAP)</u> , an Oregon Nonprofit Organization.	
Clackamas County Data	
Grant Accountant: Sherry Olson	Program Manager: Dawn Emerick
Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5342 Email: solson4@co.clackamas.or.us	Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 655-8479 Email: demerick@co.clackamas.or.us
Subrecipient Data	
Finance/Fiscal Representative: Nell Whitman	Program Representative: Caitlin Wells
Cascade AIDS Project 520 NW Davis St., Suite 215 Portland, OR 97209 Phone: (503) 278-3880 Email: nwhitman@cascadeaids.org	Cascade AIDS Project 520 NW Davis St., Suite 215 Portland, OR 97209 Phone: (503) 278-3860 Email: cwells@cascadeaids.org
DUNS: 180464919	

RECITALS

1. Clackamas County, a political subdivision of the State of Oregon ("COUNTY") has an Intergovernmental Agreement ("IGA") for the Financing of Public Health Services through its Public Health Division, the entity designated, pursuant to ORS 431.375(2), as the Local Public Health Authority for Clackamas County ("LPHA") and the State of Oregon acting by and through its Oregon Health Authority ("OHA") for the biennium period 2017-2019.
2. Cascade AIDS Project ("SUBRECIPIENT") desires to partner with COUNTY to fulfill the objectives of such IGA, which includes Program Element 07 for HIV Prevention Services. Funds provided under this Agreement for such Program Element may only be used in accordance with and subject to the requirements and limitations for the following services and appropriate costs associated with the delivery of such services:
 - a. Confidential HIV counseling, rapid testing, and referral services;
 - b. Other HIV prevention services with evidence of effectiveness to identified high-risk populations in COUNTY's service area; and
 - c. Structural activities that facilitate the delivery of HIV prevention services to high-risk populations in the COUNTY's service area.

3. Priority populations for service focus in Oregon are identified in the current HIV Prevention Comprehensive Plan. Funds awarded under this Agreement may only be expended on Services included in the COUNTY's HIV Prevention Program Model Plan that has been approved by the DHS HIV Prevention Program, with an emphasis focused predominantly on services for the high-risk populations identified above.
4. Project description: Expand HIV client-centered counseling, testing and referral services ("CTRS") and continue to provide outreach to CTRS to sexual and social networks of men who have sex with men ("MSM") and other priority populations who reside in Clackamas County.
5. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2017** and not later than **June 30, 2018**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the 2017-2019 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority for the Financing of Public Health Services (Agreement No. 154103) and the U.S. Department of Health and Human Services, that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the *Code of Federal Regulations*, Part 74.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the 2017-2019 Intergovernmental Agreement, HIV Prevention Activities for Health Departments, **CFDA No. 93.940** issued to the COUNTY by the State of Oregon issued to the COUNTY by the U.S. Department of Health and Human Services. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$100,000.00**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Quarterly Performance Reports and State of Oregon HIV Prevention Program Workbook for FY 2016. Failure to comply with the terms of this Agreement may result in withholding of payment.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of term of this Agreement as described in paragraph 1. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs

work subject to the amendment.

6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.

- h) **Indirect Cost Recovery.** SUBRECIPIENT chooses to use the federally-authorized *de-minimis* indirect cost rate of 10%, which is incorporated by reference into the SUBRECIPIENT program budget in Exhibit B.
- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting.
- k) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting on a monthly basis.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits D, D.1, E, & F), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System ("DUNS") as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

CASCADE AIDS PROJECT

Federal Grant Agreement – 18-022 Contract #8423

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- q) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for State of Oregon Grant Intergovernmental Agreement #154103, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi)

the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.

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

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

11. Federal and State Procurement Standards

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

12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, elected officials, and employees. This

coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

- 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.
- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" as an additional insured.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its, elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

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

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

- **Exhibit A:** SUBRECIPIENT Statement of Program Objectives
- **Exhibit B:** SUBRECIPIENT Program Budget
- **Exhibit C:** Congressional Lobbying Certificate
- **Exhibit D:** Required Financial Reporting
- **Exhibit D.1** SUBRECIPIENT Reimbursement Request
- **Exhibit E:** Quarterly Performance Reports and State of Oregon HIV Prevention Program Workbook for FY2016
- **Exhibit F:** Final Financial Report
- **Exhibit G:** Residual Supplies Inventory
- **Exhibit H:** Parking Policy for CAP Employees

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

CLACKAMAS COUNTY

CASCADE AIDS PROJECT (CAP)

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

Signing on Behalf of the Board,

By: _____
Jim Bernard, Chair

By: 
Tyler TerMeer, Executive Director

Dated: _____

Dated: 11-28-2017

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: 
County Counsel

Dated: 16 November 2017

EXHIBIT A

SUBRECIPIENT STATEMENT OF PROGRAM OBJECTIVES

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #18-022
SUB-RECIPIENT: Cascade AIDS Project	

PURPOSE

- Expand HIV client-centered counseling, testing and referral services (CTRS) and continue to provide outreach to CTRS to sexual and social networks of men who have sex with men (MSM) who live, work, or play in Clackamas county.
- Emphasize prevention to MSM in proportion to their representation in the Clackamas County estimated HIV/AIDS prevalence demographics.
- Conduct CTRS and outreach to CTRS to those persons who inject drugs (PWD) specifically within Clackamas County.
- Maintain strong community partnerships to optimize testing and prevention activities.
- Serve a broad range of target population MSM, including Spanish-speaking Latino MSM.
- Serve MSM who engage in high risk sexual practices that put them at risk for transmitting or acquiring HIV disease.
- Implement evidenced-based HIV CTRS and outreach to HIV CTRS within sexual and social networks of MSM.

SCOPE OF PROGRAM

- A. SUBRECIPIENT agrees to accomplish the following work under this contract:
1. Conduct weekly HIV Counseling Rapid Testing and Confirmatory Testing, and other prevention activities a minimum of (2) two hours twice a week at the Sunnyside Clinic and at least one other location within Clackamas County with the intent of engaging individuals most at risk for HIV. SUBRECIPIENT shall work with Program Manager to determine schedule and other locations (i.e., monthly, as needed, or as agreed upon).
 2. Provide education and referral services to individuals at risk for HIV, including but not limited to: PrEP and nPEP, health insurance navigation, STI testing, and primary medical care.
 3. Distribute safer sex materials (e.g. condoms and lube) to communities at risk for HIV and community specific venues.
 4. Provide monthly and quarterly narrative and expenditure reports as outlined in Exhibits D, D.1 & E.
 5. Referral and Case Management - All individuals who receive a confirmed positive result will be referred to essential services as needed, including but not limited to: medical care,

CASCADE AIDS PROJECT

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case management services, health insurance navigation, partner services, and Care Link (early intervention services).

6. Outreach – Conduct targeted testing outreach efforts as determined with the Program Manager, to include: Palm Cards, Flyers and Test Result Cards, digital advertising via social and geo-social media – online banner ads, online profiles from other social networking apps (i.e. Grindr), Facebook, Twitter, and others as appropriate. Other advertising in print publications for targeted MSM/at risk population testing, such as posters and advertising, may be included as agreed upon.

EXHIBIT B - SUBRECIPIENT PROGRAM BUDGET								
Clackamas County Line Item Budget for FY18 07/01/17 - 06/30/18								
Name of Subcontractor: Cascade AIDS Project								
Budget Categories	Description						Total	
(A) Personnel	Position #	Title of Position	% of time (FTE based on 2080 hr work year)	Rate / hr or Monthly Salary*	Hrs / mo	# of mo. budgeted	Total Cost	
	1	Director of Healthcare Operations	8.00%	\$ 6,833.33		12	\$ 6,560.00	
	2	Manager of Prevention Services***	20.00%	\$ 4,465.08		12	\$ 10,716.20	
	3	Manager of Clinical Health Services*	15.00%	\$ 4,458.00		12	\$ 8,024.40	
	4	HIV/STI Testing Coordinator*	10.00%	\$ 3,417.00		12	\$ 4,100.40	
	5	PrEP Navigator	5.00%	\$ 3,417.00		12	\$ 2,050.20	
	6	HIV Prevention Navigator*	80.00%	\$ 3,114.17		12	\$ 29,896.00	
(B) Fringe Benefits	Personnel Costs		Fringe Benefits (Payroll Taxes, Employee Benefits,		Total Cost		\$ 18,869.45	
	\$ 61,947.20		\$ 18,869.45		\$ 80,217			
*Provides HIV Testing **Coordinates Condom Distribution								
(C) Consultant	Include all consultant costs.						\$ -	
(D) Equipment	Item	Equipment is defined as an item with a useful life of >1 year AND a single unit cost of \$5000+ and is				Total Cost	\$ -	
	1	N/A				\$ -	\$ -	
(E) Supplies	Item	List supply detail including office and medical supplies. If using an allocation method, detail how cost is allocated (e.g. FTE, square footage etc). For supplies (e.g. test kits), list item, quantity and cost. Preprinted, purchased materials are considered a supply, the direct printing costs of materials, is to be listed in section G, Other. The purchase of furniture is not allowed in this award.				Total Cost		
	1	Clinical Supplies - For HIV Testing including: gauze, phlebotomy supplies, bandages, lancets, disposable test pads, surface sanitation wipes, etc. <i>Phlebotomy supplies are for confirmatory HIV testing.</i>				\$ 250.00	\$ 1,280.00	
	2	Safer Sex Supplies - Specialty condoms, insertive condoms, and lube for distribution in Clackamas County				\$ 500.00		
	3	HIV Test Kits - No tests will be purchased this year due to an oversupply of tests.				\$ -		
	4	Central Supplies - General office supplies (e.g. pens, paper, note pads, etc.) based on FTE for program				\$ 530.00		
(F) Travel	Item	Include methodology used to calculate travel costs				Total Cost		
	1	Program Mileage to travel to testing sites, prevention programming, etc (\$0.535 x 600 miles)				\$ 321.00	\$ 821.00	
	2	Program Parking from traveling to and from testing sites during the course of a business day				\$ 500.00		
(G) Other	List costs for any staff training or trainings that you will be providing, marketing / advertising costs for all replication and distribution of materials, telephone, and other direct costs not already indicated. Printing costs, telecommunications, postage and office equipment rental. Note: food and beverages are only allowable when used as an incentive or as an integral part of an intervention. Incentives must be detailed, including individual costs, purpose of the incentive, and how incentive is to be used and tracked. For negotiable incentives, e.g., gift cards, a copy of cash handling procedures must be submitted with any request for incentive use: Any costs that are allocated costs must include allocation method.							
	Item	Justification				Total Cost		
	1	Staff Training - Agency trainings calculated at actual FTE, HIV Prevention Specific Trainings e.g. Trauma Informed Care, Motivational Interviewing, phlebotomy, etc.				\$ 250.00	\$ 4,297.00	
	4	Phone - Phone costs for basic service (FTE based), and cell phone reimbursement for 1 staff (M. Grover)				\$ 797.00		
	5	Copies & Printing - FTE based copy charges, printing charges for testing materials, palm cards, flyers, prevention messaging (e.g. PrEP, HIV 101), etc. Costs are shared across programs.				\$ 750.00		
	6	Advertising for Testing Recruitment - Costs include one print ad during Pride week and online social media promotions.				\$ 1,000.00		
	7	Volunteer Resources - Costs include: Volunteer Manager, Volunteer Coordinator, volunteer database costs, volunteer staff training, volunteer recruitment, background investigation of all potential new volunteers,				\$ 1,500.00		
(H) Contractual	List all sub-contracts and all contractual costs. Note: Line Item Budgets must be submitted for each Subcontractor							\$ -
	Subcontracted Agency				Total Cost	\$ -		
	N/A				\$ -			
(I) Total Direct Charges	Sum of A through H						\$ 86,614.65	
(J) Other - Excluded per MTDC	List all sub-contracts and all contractual costs. Note: Line Item Budgets must be submitted for each Subcontractor						\$ 4,385	
	Subcontracted Agency				Total Cost			
	1	Davis Office Rent - Office space and utilities for direct services staff				\$ 2,885.35		
2	Belmont Office Rent (Pivot) - Office space and utilities for Pivot services that serves Clackamas County				\$ 1,500.00			
(K) Indirect Charges	10.4% of direct costs. Indirect costs are those costs that are incurred for common or joint purposes and not attributable exclusively and directly to the HIV Prevention Program.						\$ 9,000.00	
(L) TOTALS	Sum of I & J. Should add up to OHA HIV Prevention Award.						\$ 100,000	

* (A) Personnel - Use Rate / Hr with Hrs / Mo columns or Monthly Salary with Hrs / Mo. All personnel costs are based on a 2080 work year.

**EXHIBIT C
CONGRESSIONAL LOBBYING CERTIFICATE**

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #18-022
SUB-RECIPIENT: Cascade AIDS Project	

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Cascade AIDS Project 18-022/40063
Organization Name Award Number or Project Name
Tyler TerMeer, Executive Director
Name and Title of Authorized Representative
[Signature] 11-28-2017
Signature Date

**EXHIBIT D
REQUIRED FINANCIAL REPORTING AND REIMBURSEMENT REQUEST**

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #18-022
SUB-RECIPIENT: Cascade AIDS Project	

COMPENSATION AND RECORDS

- A. CLACKAMAS shall compensate SUBRECIPIENT for satisfactorily completing activities described in Exhibit A, above.
- B. The total payment to SUBRECIPIENT shall not exceed **\$100,000.00**.
- C. CLACKAMAS agrees to pay SUBRECIPIENT true and verifiable expenses on a monthly basis after payment is received from the State of Oregon.
- B. Method of Payment: To receive payment, SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses as outlined below:

SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses by the tenth day of the month following that in which service was performed. Requests shall be submitted to Clackamas County Public Health, Attn: Sherry Olson 2051 Kaen Road, Suite 367, Oregon City, Oregon 97045, or electronically to: SOlson4@co.clackamas.or.us. When submitting electronically, designate SUBRECIPIENT name and contract **18-022** in the subject of the e-mail.

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

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

- C. **Record and Fiscal Control System:** All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of seven (7) years after receipt of final payment under this contract; 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.

- D. **Access to Records:** COUNTY, the State of Oregon, and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of SUBRECIPIENT which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcripts.

If an audit discloses that payments to SUBRECIPIENT were in excess of the amount to which the SUBRECIPIENT was entitled, then SUBRECIPIENT shall repay the amount of the excess to COUNTY.

(Sample of Request for reimbursement form on next page)

Exhibit D.1 SUBRECIPIENT REQUEST FOR REIMBURSEMENT

**Note: This form derives from the approved budget in your grant Agreement.
 All expenditures must have adequate supporting documentation.**

Subrecipient	Cascade AIDS Project	Grant Number:	#18-022
Address:	520 NW Davis St., Suite 215 Portland, OR 97209	Report Period:	
Contact Person:	Nell Whitman	Contract #:	
Phone Number:	(503) 278-3880	Federal Award #:	154103
E-mail:	nwhitman@cascadeaids.org	CFDA(s):	93.940

Budget Category	Budget	Current Draw Request	Previously Requested	Balance
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Total Grant Funds Requested	\$ -	\$ -	\$ -	\$ -

Clackamas County and the Federal government retain the right to inspect all financial records and other books, documents, papers, plans, records of shipments and payments and writings of Recipient that are pertinent to this Agreement.

CERTIFICATION

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise, (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by: _____
Authorized Signer: _____
Date: _____

Department Review

Project Officer Name: _____
Department: _____
Signature: _____ **Date:** _____

EXHIBIT E
MONTHLY AND FINAL PERFORMANCE REPORT

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #18-022
SUB-RECIPIENT: Cascade AIDS Project	

SUBRECIPIENT shall complete the State of Oregon HIV Prevention Program Workbook for FY2016 (Exhibit E) **quarterly**. CCPHD will complete their section of the workbook and send the workbook electronically via E-mail to SUBRECIPIENT by the tenth day of the month. SUBRECIPIENT will complete their sections and return to CCPHD by the 20th of the month. **Completed workbook due to OHA 30 DAYS AFTER QUARTER END.**

Reporting Periods:

07/01/2017 - 09/30/2017, 10/31/2017 - 12/31/2017, 01/01/2018 - 03/31/2018, 04/01/2018 – 06/30/2018

Project Name: HIV Testing and Counseling	Agreement #: 18-022
Federal Award #: 154103	Date of Submission: XX/XX/XX
Subrecipient: Cascade AIDS Project	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

Exhibit F: Final Financial Report

Report of Funds received, expended,
 and reported as match (if applicable) under this agreement

Total Federal Funds authorized on this agreement:	
Year-to-Date Federal Funds requested for reimbursement on this agreement:	
Total Federal Funds received on this agreement:	
Total non-Federal Funds authorized on this agreement:	
Total non-Federal Funds requested for reimbursement on this agreement:	
Total non-Federal Funds received on this agreement:	
Total match reported on this agreement (if required):	
Balance of unexpended Federal Funds (Line 1 minus Line 3):	
Balance of unexpended non-Federal Funds (Line 4 minus Line 6):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

Project Name: HIV TESTING AND COUNSELING	Agreement #: 18-022
Federal Award: 154103	Date of Submission: XX/XX/XX
Subrecipient: CASCADE AIDS PROJECT	
Is this program continuing beyond the expiration of this agreement?: Y/N	
If yes, does the subrecipient request to continue to use all or part of the supplies? Y/N <i>(If yes, identify all such supplies below by marking it with a highlighter)</i>	
OR	
Does the subrecipient request the use of the supplies on other federally supported activities? Y/N If subrecipient does not request continued use of items of equipment, the federal agency will issue disposition instructions. Other agency-specific requirements may apply.	

Exhibit G: Residual Supplies Inventory

Items of Supplies with an Aggregate, Current Fair Market Value of
 \$5,000 or more and purchased with Federal Grant Funds

Attach more sheets if necessary

Items Description	Location	Estimated Current Fair Market Value	Disposition Date & Price, if applicable

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

Subrecipient's Certifying Official's telephone: _____

EXHIBIT H

Parking Policy for CAP Employees

Excerpt from Cascade AIDS Project's Personnel Manual

1.16 - Parking

You are strongly encouraged to utilize the mass transit system that is available in our area. CAP normally does not provide parking spaces or parking subsidies to CAP employees.

However, if the needs or requirements of your job on a particular day necessitate driving to work rather than the use of public transportation, reimbursement for parking expenses may be provided.

HIV Testing and Reimbursement for Parking

CAP staff that test offsite from CAP's main office fall under the provision of "requirement of your job on particular day necessitate driving to work". Our HIV testing policies and procedures require that staff gather testing supplies from the office before going to an outreach site and to return the materials at the end of the testing event. This includes confidential health information of our clients, as well as supplies and blood samples that must be kept in a temperature regulated environment.

CAP does not provide parking reimbursement to staff that will only be at CAP's main office (or any other office) for the entirety of their work day.



M. BARBARA CARTMILL
DIRECTOR

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

December 7, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Crossing At-Grade Crossing
Agreement with Union Pacific Railroad Company

Purpose/Outcomes	Approval of an agreement to complete upgrades to a railroad crossing over SE Evelyn Street.
Dollar Amount and Fiscal Impact	\$79,497.50.
Funding Source	Road Fund
Duration	Indefinite
Previous Board Contact	None
Strategic Plan Alignment	Build a strong infrastructure. Build public trust through good government.
Contact Person	Deana Mulder, Development Review Coordinator – 503-742-4710

BACKGROUND:

Southeast Evelyn Street is a County-maintained road. An at grade public road crossing over rail lines controlled by Union Pacific Railroad exists near the intersection with Southeast Last Road, just north of Southeast Jennifer Street. The public road crossing over the rail line is in need of certain improvements which will include replacement of the existing rubber crossing surface with insulated concrete panels. This upgrade is being coordinated with other roadway and sanitary sewer improvements in the vicinity that have been planned by the Department of Transportation and Development and Water Environment Services.

The agreement requires the County and Union Pacific Railroad to split the cost of the project, which is anticipated to cost \$158,995. No additional right of way is necessary for the improvements to the existing crossing. The County anticipates that this project will be completed in 2018.

RECOMMENDATION:

Staff respectfully requests that the Board approve this Public Crossing At-Grade Crossing Agreement, so that the County may proceed with upgrades to the rail crossing over Evelyn Street.

Respectfully submitted,

Mike Bezner
Assistant Director of Transportation

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

EVELYN STREET
DOT NUMBER 759778B
MILE POST 759.45 - BROOKLYN SUB
CLACKAMAS, CLACKAMAS COUNTY, OREGON

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CLACKAMAS COUNTY**, a municipal corporation or political subdivision of the State of Oregon to be addressed at 150 Beaver Creek Road, Oregon City, OR 97045 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing at grade public road crossing over Evelyn Street, DOT 759778B at Railroad's Milepost 758.57 on Railroad's Brooklyn Sub at or near Clackamas, Clackamas County, Oregon (the "Existing Crossing").

The Political Body and Railroad now desire to undertake as their project (the "Project") certain improvements at the Existing Crossing, including replacement of the existing rubber crossing surface with insulated concrete panels. The right of way being utilized by the Political Body for the Existing Crossing is sufficient for the Project. The Existing Crossing, as improved by the Project is hereinafter the "Roadway" and the portion of the Roadway that crosses Railroad's property is the "Crossing Area" as such area is generally shown on the Railroad's location print marked **Exhibit A** attached hereto and hereby made a part hereof.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

The general terms and conditions marked **Exhibit B**, are attached hereto and

hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

Upon the execution of this Agreement, for and in consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. PROJECT EXPENSES

The Political Body and Railroad shall each fund fifty percent (50%) of the actual cost of the Railroad work associated with the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The Project work to be performed by the Railroad, at the Political Body's shared cost and expense, is described in the Railroad's Material and Force Account Estimate dated May 2, 2017, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is One Hundred Fifty Eight Thousand Nine Hundred Ninety Five Dollars (\$158,995). For the avoidance of doubt, the Political Body and Railroad acknowledge and agree that each party shall be responsible for fifty percent (50%) of the actual cost of the Railroad work associated with the Project, which is currently estimated at Seventy Nine Thousand Four Hundred Ninety Seven Dollars and Fifty Cents (\$79,497.50).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Railroad or Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate dated May 2, 2017 in Exhibit C.

C. The Political Body acknowledges that the Estimate does not include an estimate of flagging or other protective services. If any such services are deemed to be necessary for the Project, as determined by Railroad in its sole discretion, each party shall be responsible for fifty percent (50%) of the actual cost of such services.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for 50 percent (50%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action,

regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry

Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.

- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
Printed Name: _____
Title: _____

CLACKAMAS COUNTY

By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)

**EXHIBIT B
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the

construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

C. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends plus two feet (2') beyond track tie ends, which shall be maintained by and at the expense of the Railroad.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on

Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. Flagging.

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment

of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide

adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

TO

PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimate.

DATE: 2017-05-02

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
 BY THE
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2017-10-31

DESCRIPTION OF WORK:

CLACKAMAS,OR / EVELYN STREET / DOT #759778B / BROOKLYN SUB, MP 759.45
 REPLACE RUBBER SURFACE WITH 88' CONCRETE XING SURFACE ON 10'WOOD XTIES.
 50% RECOLLECTABLE USING FEDERAL ADDITIVES INCLUDING OVERHEAD AND
 INDIRECT COSTS OF 234%

PID: 94934 AWO: MP,SUBDIV: 758.57, BROOKLYN
 SERVICE UNIT: 18 CITY: CLACKAMAS STATE: OR

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
-----	---	----	-----	-----	-----	-----	-----
ENGINEERING WORK							
ENGINEERING			1897		948	949	1897
FLAGGING			1697		848	849	1697
LABOR ADDITIVE 234%			12381		6190	6191	12381
TRACK			1697		848	849	1697
TOTAL ENGINEERING			17672		8834	8838	17672
TRACK & SURFACE WORK							
BALAST	1.00	CL	496	898	697	697	1394
BILL PREP FEE				900	450	450	900
CONTRACT COSTS				10000	5000	5000	10000
ENVIRONMENTAL PERMIT				20	10	10	20
FIELD WELD			1104		552	552	1104
FOREIGN LINE FREIGHT				9101	4550	4551	9101
HOMELINE FREIGHT				900	450	450	900
LABOR ADDITIVE 234%			47233		23615	23618	47233
MATL STORE EXPENSE				670	334	336	670
OTM			2903	6902	4902	4903	9805
RAIL	240.00	LF	8101	3914	6007	6008	12015
RDXING	88.00	TF	2910	20033	11471	11472	22943
SALES TAX				1594	796	798	1594
TRK-SURF,LIN			2428		1214	1214	2428
WELD			2576	938	1757	1757	3514
XTIE	66.00	EA	10487	7215	8856	8846	17702
TOTAL TRACK & SURFACE			78238	63085	70661	70662	141323
LABOR/MATERIAL EXPENSE			95910	63085			
RECOLLECTIBLE/UPRR EXPENSE					79495	79500	
ESTIMATED PROJECT COST							158995

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____

_____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and _____.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____
Folder No. _____

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails

to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A

Exhibit A will be a print showing the general location of the work site.

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this

Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any

- track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

DRAFT

Approval of Previous Business Meeting Minutes:
November 2, 2017

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<http://www.clackamas.us/bcc/business.html>

Thursday, November 2, 2017 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

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

EXCUSED: Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

1. Les Poole, Gladstone – asked about Gas Tax money, Road funding, Sunrise to 172nd.
2. Brainard Brauer, Oregon City – Lower speed on Redland Road.

~Board Discussion~

II. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title,

Chair Bernard then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Fischer: Second.
all those in favor/opposed:
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

A. Health, Housing & Human Services

1. Approval of a Service Agreement with Walgreens Partnering with Clackamas County Health Centers Division in Participation with 340B Pharmacy Services Agreement – *Health Centers*
2. Approval of an Agency Service Contract with ColumbiaCare Services, Inc. for Supported Employment Services – *Behavioral Health*
3. Approval of an Agency Service Contract with ColumbiaCare Services, Inc. for Supported Housing Services – *Behavioral Health*
4. Approval of an Agency Service Contract with Lifeworks NW for Supported Employment Services for Medicaid Clackamas County Residents – *Behavioral Health*
5. Approval of Intergovernmental Revenue Agreement with Oregon Department of Education, Early Learning Division for Kindergarten Partnership and Innovation – *Children, Youth & Families*
6. Approval of Amendment No. 4 of the Intergovernmental Agreement with Oregon Department of Education, Early Learning Division for Early Learning Hub – *Children, Youth & Families*

B. Department of Transportation & Development

1. Approval of the Addendum to the Intergovernmental Agreement between Clackamas County, Building Codes Division and the City of Sandy – *Building Codes Division*
2. Approval of Amendment No. 2 to the Intergovernmental Agreement No. 30447 with Oregon Department of Transportation for the OR-213 at Union Mills Road Project

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of FY 2017 – 2018 Local Subrecipient Grant Agreement For the Children’s Center of Clackamas County – *District Attorney*

III. COUNTY ADMINISTRATOR UPDATE

<http://www.clackamas.us/bcc/business.html>

IV. COMMISSIONERS COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

MEETING ADJOUNED – 10:26 AM

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



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD OREGON CITY, OR 97045

December 7, 2017

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Settlement Agreements with
Parametrix, Inc. for Carver Bridge Litigation

Stephen L. Madkour
 County Counsel

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

Purpose/Outcomes	Authorize settlement of lawsuit between the County and Parametrix, Inc. design engineers
Dollar Amount and Fiscal Impact	\$345,000 with a \$50,000 offset for a total net to County of \$295,000.
Funding Source	Project Budget
Duration	Full and Final Release and Settlement
Previous Board Action	The Board has been apprised of various developments in this case over the course of the litigation; the most recent being on November 7, 2017
Strategic Plan Alignment	Build public trust through good government; build a strong infrastructure
Contact Person	Stephen L. Madkour, County Counsel at 503-655-8362
Contract No.	Project File # CI-0003-22085

BACKGROUND:

As part of the County's efforts to replace the aging Carver Bridge over the Clackamas River, the County contracted with Parametrix, Inc. to design the bridge and appurtenances, and with Wildish Standard Paving to construct the new Carver Bridge. The County also contracted with Clackamas River Water District ("CRW") to install a waterline under the bridge as part of the bridge project. The bridge was substantially completed in December 2014 but the waterline has not managed to pass pressure tests.

The parties were involved in lengthy negotiations which eventually resulted in Wildish filing suit against the County, and the County in turn asserting claims against CRW and Parametrix. The parties continued with numerous mediation sessions and eventually settled the dispute between Wildish, CRW and the County. The terms were approved by this Board on August 3, 2017.

The County continued with its claims against Parametrix, Inc. The County and Parametrix, Inc. have reached an agreement to resolve the remainder of the dispute. The specific terms of the proposed settlement reached between Parametrix, Inc. and Clackamas County are set forth in the attached Release and Settlement Agreements.

RECOMMENDATION:

Staff respectfully requests that the Board of County Commissioners approve the terms of settlement with Parametrix, Inc. as set forth in the attached Release and Settlement Agreements.

Respectfully submitted,



Stephen L. Madkour
County Counsel

Attachments:
Release and Settlement Agreements

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”), effective as of November 7, 2017 (the “Effective Date”), is made and entered into by and between Clackamas County (“Clackamas”) and Parametrix, Inc. (“Parametrix”). Clackamas and Parametrix are hereinafter referred to as the Parties.

RECITALS

Clackamas contracted with Parametrix for engineering and design services for the Replacement of the Clackamas Bridge (Springwater Road) Project. (“Project”).

Through contract amendment with Clackamas, Parametrix agreed to design a waterline for the ultimate use of Clackamas River Water.

A dispute arose during the construction of the Project. In particular, the general contractor Wildish Standard Paving Co. (“Wildish”) made claims related to the design of the waterline.

Wildish filed a lawsuit against Clackamas entitled *Wildish Standard Paving Co. v. Clackamas County*, Clackamas County Circuit Court 16CV21578 (“Lawsuit”). In the Lawsuit, Clackamas filed a third party complaint against Parametrix and Clackamas River Water.

Wildish, Clackamas River Water and Clackamas recently settled all disputes between themselves related to the Lawsuit. Clackamas and Parametrix mediated the remaining claims in the Lawsuit on November 3, 2017. The Parties reached a settlement during the mediation.

The settlement resolved all remaining and known claims related to the Project, including without limitation those asserted in the Lawsuit.

As agreed, the Parties are formally memorializing this settlement with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the terms, covenants, and conditions set forth in this Agreement, the Parties mutually agree as follows:

1. Clackamas Release. In consideration of the mutual releases provided herein as well as other consideration identified below, the County and its board, commissioners, agents, representatives, attorneys, employees, insurers, bonding companies, predecessors, successors and assigns, if any, do hereby release and forever discharge Parametrix and its officers, shareholders, employees, insurers (including but not limited to XL Catlin) and subconsultants (including but not limited to OBEC) from any and all known claims, demands, contract balances, invoices, damages, costs, expenses, attorney’s fees, or causes of action related to or arising out of the Project and the Lawsuit.

2. Parametrix's Release. In consideration of the mutual releases provided herein as well as other consideration identified below, Parametrix and its respective agents, representatives, shareholders, attorneys, employees, insurers, bonding companies, predecessors, successors and assigns, if any, do hereby release and forever discharge Clackamas and its board, commissioners, employees, attorneys, directors, and its surety and bonding companies from any and all known claims, demands, contract balances, invoices, damages, costs, expenses, attorney's fees, or causes of action related to or arising out of the Project and the Lawsuit.

3. Parametrix's Payment. In consideration for the releases above, Parametrix agrees to pay Clackamas \$345,000.00 within 30 days of the mutual execution of this Agreement. Clackamas agrees to provide Parametrix whatever necessary documentation, if any, is needed to process the payment.

4. Dismissal of Lawsuits. The Parties will cooperate fully and execute any necessary pleadings to dismiss the Lawsuit with prejudice and without fees or costs.

5. Enforcement. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Oregon. This Agreement has been drafted jointly by the Parties following negotiations between them.

If any provision of this Agreement is deemed by law to be void, invalid, or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid, or inoperative, that phrase, clause, or provision shall be deemed modified to the extent necessary to make it valid and operative, or if it cannot be so modified, then such phrase, clause, or provision shall be deemed severed from this Agreement, with the remaining phrases, clauses and provisions continuing in full force and effect as if the Agreement had been signed with the void, invalid, or inoperative portion so modified or eliminated.

In the event of any dispute over this Agreement, such dispute shall be submitted to Mike Scott to decide in a binding arbitration. The prevailing party is entitled to attorney's fees, costs and expenses.

6. Authority. The Parties acknowledge and represent that they are effecting this settlement and executing this Agreement after having received full legal advice as to their rights from legal counsel, and hereby warrant that they have the sole right and exclusive authority to execute this Agreement and receive the benefits specified herein, and that no other person or entity has or has had any interest in the claims released in this Agreement, nor have any of the claims referred to herein been sold, assigned, transferred, conveyed, or otherwise disposed of.

The Parties acknowledge that they have carefully read this Agreement and know the contents thereof, including the fact that this Agreement is a release of claims, that no promise or agreement not expressed in this Agreement has been made, and that they have signed this Agreement as a free act. This Agreement incorporates and supersedes any and all prior understandings, contains the entire agreement between the Parties, and shall be binding upon and inure to the benefit of the representatives, successors, and assigns of each.

Any amendments of this Agreement shall be by written agreement between the Parties.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof, or copies or electronic versions of the same, shall be deemed to be an original instrument, but all such counterparts shall constitute one agreement.

Parametrix, Inc.

Clackamas County

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

DATED: _____, 2017.

DATED: _____, 2017.

Approved As to Form:

Stephen L. Madkour
Attorney for Clackamas County

RELEASE AND SETTLEMENT AGREEMENT

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Through contract amendment with Clackamas, Parametrix agreed to design a waterline for the ultimate use of Clackamas River Water.

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Wildish filed a lawsuit against Clackamas entitled *Wildish Standard Paving Co. v. Clackamas County*, Clackamas County Circuit Court 16CV21578 (“Lawsuit”). In the Lawsuit, Clackamas filed a third party complaint against Parametrix and Clackamas River Water. In the Lawsuit, Parametrix asserted a counterclaim against Clackamas for approximately \$150,000.

Wildish, Clackamas River Water and Clackamas recently settled all disputes between themselves related to the Lawsuit. Clackamas and Parametrix mediated the remaining claims in the Lawsuit on November 3, 2017. The Parties reached a settlement during the mediation.

The settlement resolved all remaining and known claims related to the Project, including without limitation those asserted in the Lawsuit.

As agreed, the Parties are formally memorializing this settlement with this Agreement.

AGREEMENT

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2. Parametrix's Release. In consideration of the mutual releases provided herein as well as other consideration identified below, Parametrix and its respective agents, representatives, shareholders, attorneys, employees, insurers, bonding companies, predecessors, successors and assigns, if any, do hereby release and forever discharge Clackamas and its board, commissioners, employees, attorneys, directors, and its surety and bonding companies from any and all known claims, demands, contract balances, invoices, damages, costs, expenses, attorney's fees, or causes of action related to or arising out of the Project and the Lawsuit.

3. Clackamas's Payment. In consideration for the releases above, Clackamas agrees to pay Parametrix \$50,000.00 within 30 days of the mutual execution of this Agreement. Parametrix agrees to provide the County whatever necessary documentation, if any, is needed to process the payment.

4. Dismissal of Lawsuits. The Parties will cooperate fully and execute any necessary pleadings to dismiss the Lawsuit with prejudice and without fees or costs.

5. Enforcement. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Oregon. This Agreement has been drafted jointly by the Parties following negotiations between them.

If any provision of this Agreement is deemed by law to be void, invalid, or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid, or inoperative, that phrase, clause, or provision shall be deemed modified to the extent necessary to make it valid and operative, or if it cannot be so modified, then such phrase, clause, or provision shall be deemed severed from this Agreement, with the remaining phrases, clauses and provisions continuing in full force and effect as if the Agreement had been signed with the void, invalid, or inoperative portion so modified or eliminated.

In the event of any dispute over this Agreement, such dispute shall be submitted to Mike Scott to decide in a binding arbitration. The prevailing party is entitled to attorney's fees, costs and expenses.

6. Authority. The Parties acknowledge and represent that they are effecting this settlement and executing this Agreement after having received full legal advice as to their rights from legal counsel, and hereby warrant that they have the sole right and exclusive authority to execute this Agreement and receive the benefits specified herein, and that no other person or entity has or has had any interest in the claims released in this Agreement, nor have any of the claims referred to herein been sold, assigned, transferred, conveyed, or otherwise disposed of.

The Parties acknowledge that they have carefully read this Agreement and know the contents thereof, including the fact that this Agreement is a release of claims, that no promise or agreement not expressed in this Agreement has been made, and that they have signed this Agreement as a free act. This Agreement incorporates and supersedes any and all prior understandings, contains the entire agreement between the Parties, and shall be binding upon and inure to the benefit of the representatives, successors, and assigns of each.

Any amendments of this Agreement shall be by written agreement between the Parties.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof, or copies or electronic versions of the same, shall be deemed to be an original instrument, but all such counterparts shall constitute one agreement.

Parametrix, Inc.

Clackamas County

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

DATED: _____, 2017.

DATED: _____, 2017.

Approved As to Form:

Stephen L. Madkour
Attorney for Clackamas County



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract with CDW-G for Procurement of an ExaGrid EX280 System for Backup Storage

Purpose/Outcomes	Provides the backup storage system to replace the current aging system. This is the primary storage for the County's data backup and recovery.
Dollar Amount and Fiscal Impact	Initial hardware and 2 year maintenance procurement = \$258,763.00 Annual Maintenance after 2 nd year = \$35,280 / yr
Funding Source	Existing budgets. Technology Services Capital Replacement Reserve
Duration	Initial 2-year contract, annual maintenance renewal as required
Previous Board Action	None
Strategic Plan Alignment	Direct support for County and Technology Service initiatives for: <ul style="list-style-type: none"> - Build a strong infrastructure - Build public trust through good government
Contact Person	Dave DeVore (503) 723-4996
Contract No.	

BACKGROUND:

Technology Services (TS) is tasked with maintaining the efficient storage, availability, and security of the County's numerous data systems. This includes the ability to backup and restore data in an efficient and timely manner to ensure the County's data is secure and reliably available to meet County service requirements. This requires the Backup Storage System to perform to County standards and integrate with County Systems. The current backup storage system has performed well but is nearing its end of service/support life and not able to perform to current County standards.

Technology Services is seeking to procure a new backup storage system to replace the current aging system that meets all required technical, strategic and budget requirements. After significant research, the best solution is the ExaGrid Systems. This will meet all technical performance and expansion requirements as well as integrate with our Veeam Backup System and VMware server farms. After consultation with ExaGrid, the most appropriate model for current and future growth is the EX-280 System with encryption to meet governance requirements.

Three (3) quotes were solicited from three (3) cooperative price agreements offering the ExaGrid Systems; CDW-G, Connection Public Sector Solutions, and SHI International. CDW-G presented the lowest price for the system. The initial purchase of the hardware includes maintenance for the initial 2-year term, with maintenance purchased for subsequent years, as required.

CDW-G is an approved Oregon State IT Vendor Consortium (5603).

RECOMMENDATION:

Staff respectfully recommends approval of the purchase of an ExaGrid EX280 backup storage solution from CDW-G. Staff further recommends that the Board delegate authority to the Technology Services Director to sign agreements necessary in the ongoing performance of this agreement.

Sincerely,

David Cummings, CIO
Clackamas County Technology Services

Placed on the December 7, 2017 agenda by Procurement



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

December 7, 2017

Board of County Commissioners
Development Agency Board

Members of the Board:

Approval of a Disposition Agreement with Clackamas Crossing, LLC

Purpose/Outcomes	Authorization for the Chair to execute a Disposition Agreement to convey real property from the Clackamas County Development Agency to Clackamas Crossing, LLC.
Dollar Amount and Fiscal Impact	The agreement stipulates sale of the property for \$712,500
Funding Source	Not Applicable. No funding considered as a part of this property transaction
Duration	Establishes a due diligence period of 365 days, closing within 30 days of due diligence and substantial completion of the project within 24 months
Previous Board Action	Executive Session
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Program Supervisor – Development Agency 503-742-4322 or davidque@co.clackamas.or.us

BACKGROUND:

The Development Agency owns a .90 acre parcel located at the southeast corner of Highway 212 and SE 135th Avenue. Clackamas Crossing, LLC presented a proposal to the Agency to acquire the property for redevelopment purposes, which was presented to the Board for consideration in Executive Session. The Board directed staff to proceed with negotiations for disposition of the property to Clackamas Crossing, LLC subject to terms agreeable by the Board.

The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition Agreement dictate purchase of the property for \$712,500 and consistency with the development proposal as presented at the Executive Session.

County Counsel has reviewed and approved this Agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Disposition Agreement with Clackamas Crossing, LLC
- Delegate authority to the Chair to execute the aforementioned Agreement, inclusive of any non-material changes, and any other necessary documents on behalf of the Development Agency Board at closing
- Delegate staff authority to act on behalf of the Agency at closing
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency

Respectfully submitted,

David Queener
Program Supervisor, Development Agency

DISPOSITION AGREEMENT

THIS DISPOSITION AGREEMENT (this “**Agreement**”) is by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the “**Agency**”), and CLACKAMAS CROSSING, LLC, an Oregon limited liability company (the “**Developer**”). The latest date on which this Agreement is signed by Agency and Developer (as indicated below their signatures herein) is referred to in this Agreement as the “**Effective Date**.”

The Agency and the Developer hereby agree as follows:

RECITALS

A. This Agreement is entered into by the Agency in furtherance of its objectives under the Clackamas Industrial Area Renewal Plan (“**Plan**”) by providing for the disposition of certain real property and the development of the “**Property**” (as hereinafter defined) as provided in this Agreement. The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the “**County**”) and the Plan and the health safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. The Plan was originally approved and adopted on July 26, 1984 by Order No. 84-1045 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect and that this Agreement, and the obligations of Agency set forth in this Agreement, are all in accordance with the Plan. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

C. Agency desires to sell the Property to Developer, and Developer desires to purchase the Property from Agency, on and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: The Property.

The “**Property**” consists of approximately .90 acres of land owned by the Agency located on the southeast corner of the SE 135th Avenue and Highway 212 intersection, as more particularly shown on the map attached hereto as **Exhibit “A”** and more particularly described in the legal description attached hereto as **Exhibit “B.”**

Section 1.2: Post-Closing Agreement.

At Closing, Agency and Developer will enter into that Post-Closing Development Agreement in the form attached hereto as **Exhibit “C”** (the **“Post-Closing Agreement”**). Among other things, the Post-Closing Agreement provides for Developer to meet certain building improvement conditions as more specifically described therein.

Section 1.3: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term **“Agency”** as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
c/o Development Agency Program Supervisor
150 Beaver Creek Road
Oregon City, OR 97045
Attn: Dave Queener
Email: DavidQue@co.clackamas.or.us

Section 1.4: The Developer.

The term **“Developer”** as used in this Agreement is Kirk Wardius, or any permitted assignee of Developer, as provided in Section 1.6 below. The principal office and mailing address of the Developer for purposes of this Agreement is:

Clackamas Crossing, LLC
PO Box 1075
Ridgefield WA 98642
Email: kwardius@aol.com

with a copy to:

Jordan Ramis PC
Attn: Robert Koury
Two Centerpointe Drive, 6th Floor
Lake Oswego, Oregon 97035
Email: robert.koury@jordanramis.com

Section 1.5: Escrow Officer/Title Company.

The principal office and mailing address of the Escrow Officer and Title Company for purposes of this Agreement is:

Lawyer's Title Insurance Company
12550 SE 93rd, #420
Clackamas, Oregon 97015
Attn: Jenny McGuire
Email: jennyMcGuire@ltic.com

Section 1.6: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer is of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein. All assignments of this Agreement shall require written consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the notice and opportunity to cure provisions set forth in Section 7 below, this Agreement may be terminated by Agency at its option before Closing if there is any change (voluntary or involuntary) in the ownership, management or control of Developer or any successor-in-interest of Developer inconsistent with this Agreement. Notwithstanding anything herein to the contrary, Developer may assign its rights under this Agreement to any entity which it owns or controls.

ARTICLE 2: DEVELOPER'S DUE DILIGENCE

Section 2.1: Title Commitment.

Within twenty (20) days after the Effective Date, Agency will cause the Title Company (defined in Section 3.3 below) to furnish to Developer its preliminary title report on the Property (the "**Preliminary Commitment**"), along with copies of all documents that give rise to exceptions listed in the Preliminary Commitment (the "**Underlying Documents**"). Within thirty (30) days of receiving the last of the Preliminary Commitment, the Underlying Documents and the Initial Survey (defined in Section 2.2 below), Developer will give Agency written notice setting forth the title exceptions that are not acceptable to Developer (the "**Unacceptable Exceptions**"). All exceptions other than those timely objected to will be deemed acceptable to Developer as "**Permitted Exceptions.**" Agency will have twenty (20) days after receiving Developer's notice within which to notify Developer in writing whether Agency is willing or able to eliminate the Unacceptable Exceptions. If Agency agrees to eliminate the Unacceptable Exceptions, Agency will be obligated to do so on or before Closing (defined in Section 3.3 below) at its cost. If Agency is unwilling or unable to eliminate the Unacceptable Exceptions, Developer may terminate this Agreement or elect to accept the Unacceptable Exceptions and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to

terminate this Agreement, it will be deemed to have waived its objections to the Unacceptable Exceptions and all of the Unacceptable Exceptions shall become Permitted Exceptions. Developer shall have the same rights as set forth above to approve (or disapprove and terminate this Agreement with respect to) any subsequent title matters or exceptions that are disclosed in any subsequent title reports that may be issued after the receipt of the initial Preliminary Commitment. Upon termination of this Agreement by Developer as provided in this Section 2.1, the Earnest Money shall be refunded to Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.2: Survey.

Within thirty (30) days after the Effective Date, Agency shall deliver the most recent survey in its possession to Developer (the “**Initial Survey**”). At its option and expense, Developer may order an update to the Survey (or a new survey) (the Initial Survey, as updated or a new survey, as applicable, is referred to herein as the “**Survey**”). If applicable, Developer shall deliver a copy of any new or updated survey to Agency promptly upon receipt. Within thirty (30) days after receipt of the Survey, Developer may deliver to Agency, in writing, any objections to any matters shown on the Survey (the “**Objections**”). Developer’s failure to timely object to any such matters shall be deemed to constitute Developer’s approval thereof and such shall then become Permitted Exceptions, as defined in Article 2. If Developer timely objects to any matters shown on the Survey, then Agency shall have the right, but not the obligation, to agree in writing to cure before Closing such Objections, or to decline to cure such Objections. Agency will have twenty (20) days after receiving Developer’s Objections within which to notify Developer in writing whether Agency is willing or able to cure the Objections. If Agency agrees to cure the Objections, Agency will be obligated to do so by Closing at its cost. If Agency is unwilling or unable to cure the Objections, Developer may terminate this Agreement or elect to accept the Objections and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Objections and all of the Objections shall become Permitted Exceptions. Notwithstanding anything to the contrary above, although Developer may elect to update the Initial Survey or obtain a new survey, Developer is not obligated to do so. Upon termination of this Agreement by Developer as provided above, the Earnest Money shall be refunded to Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.3: Property Documents.

Within thirty(30) days after the Effective Date, Agency shall deliver all documents and materials which Agency has in its possession (or access to) which concern the Property or its development, including but not limited to: existing surveys, environmental assessments; soils or geotechnical reports; wetland reports, analysis and permits; traffic studies; development feasibility studies; copies of use and development permits; and any covenants, conditions, restrictions, maintenance agreements, development standards applicable to the Property and not

otherwise set forth herein (except those that appear in zoning codes, comprehensive plans or other readily available government planning documents).

Section 2.4: Due Diligence Period.

Developer shall have a period of three hundred sixty five (365) days after the Effective Date (referred to herein as the “**Due Diligence Period**”) to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer’s intended uses, including without limitation the physical condition of the Property, zoning, access, and utilities. During the period from the Effective Date until the earlier of Closing or termination of this Agreement, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. If this Agreement is terminated for any reason, Developer agrees to provide the Agency with copies of all non-confidential or privileged third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide Agency with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the “**Approval Notice**”). Alternatively, Developer at its option may provide notice to Agency of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval notice were given to Agency prior to expiration of the Due Diligence Period. Upon such termination (or deemed termination), except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

If Agency fails to deliver (or cause to be delivered) to Developer the Preliminary Commitment or any of the property documents required under this Article 2 by the applicable deadline, the Due Diligence Period will be automatically extended by the number of days occurring from such deadline to the date such documents are delivered to Developer.

Section 2.5: Design Drawings.

The Developer shall prepare and submit to the Agency a conceptual site plan with architectural renderings of the Developer’s proposed improvements (“**Design Drawings**”), or

any portion thereof, for Agency review and written approval within the Due Diligence Period. The Design Drawings shall be generally consistent with the Scope of Development, attached hereto as **Exhibit “F.”** Future versions of plans and documents as may be required shall also be submitted to the County for the purposes of compliance with all codes, regulations and other requirements in connection with the construction of the Developer’s proposed improvements. Agency shall diligently, in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development as proposed by the Developer and shall issue its decision within twenty (20) days after receipt of same. Failure of Agency to notify Developer within such period of time shall be deemed to be approval by Agency. If Agency does not approve the Design Drawings, Agency shall specify, in writing, its specific objections to same, and Developer shall have a reasonable opportunity to revise the Design Drawings. Agency approval shall not be deemed approval by the County Design Review Board or any other agency or department.

Section 2.6: Governmental Approvals.

Prior to the Closing Date, Agency agrees to join in executing any applications reasonably required by Developer in connection with its attempts to obtain governmental permits and approvals for its intended development or use of the Property. Agency’s agreement to cooperate with Developer in connection with Developer’s governmental approvals and any other provision of this Agreement shall not be construed as making either party an agent or partner of the other party.

Section 2.7: No Liens.

Prior to Closing, the Developer shall not place or allow to be placed on the Property or any part thereof any mortgage, trust deed, encumbrance or lien, unless specifically pre-approved in writing by the Agency. The Developer shall remove or have removed any levy, lien or attachment made on the Property, or any part thereof, or provide assurance of the satisfaction therein within a reasonable time, but in any case no later than thirty (30) days of such levy, lien or attachment coming into existence without permission prior to Closing. Developer may contest or challenge the validity or amount of any such lien or encumbrance provided such challenge or contest is taken in accordance with applicable law and within a reasonable time, so long as Developer provides security satisfactory to Agency protecting the Agency’s interests, or (in the case of construction liens) bonds against the liens as permitted by statute.

ARTICLE 3: DISPOSITION OF PROPERTY

Section 3.1: Purchase and Sale of the Property; Total Purchase Price.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, or Developer’s permitted assignee of this Agreement, and Developer agrees to purchase from Agency, the Property, for the amount of Seven Hundred Twelve Thousand Five Hundred and no/100 Dollars (\$712,500.00) (the **“Purchase Price”**).

Section 3.2: Earnest Money Deposit.

Developer shall, within three (3) business days after the Effective Date, deliver to the Title Company (defined below) the sum of Twenty Thousand and no/100 Dollars (\$20,000.00) as earnest money in the form of a promissory note (the “**Earnest Money**”) to be held and applied in accordance with the terms of this Agreement. The Earnest Money promissory note shall be redeemable on demand in cash, or other immediately available funds, upon expiration of the Due Diligence Period set forth above. If Developer fails to timely deposit the Earnest Money as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. The Earnest Money, once redeemed, will be held in an interest bearing account approved by Developer, and all interest earned thereon shall be added to and become part of the Earnest Money. The Earnest Money will be applied to the Purchase Price due by Developer at Closing. If this Agreement terminates prior to expiration of the Due Diligence Period for any reason, except the default of Developer under the terms of this Agreement, the Earnest Money and any accrued interest shall be fully and immediately refunded to Developer. Upon expiration of Developer’s Due Diligence Period, the Earnest Money, and any accrued interest, shall become nonrefundable (except in the event of a default by the Agency), but shall be credited toward payment of the Purchase Price at Closing.

Section 3.3: Closing.

This transaction shall close (the “**Closing**”) on a date to be selected by Developer and reasonably acceptable to Agency that is on or before thirty (30) days after the expiration of the Due Diligence Period (as may be extended as provided herein, the “**Closing Date**”). Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of Lawyer’s Title Insurance Company of Oregon, 12550 SE 93rd Avenue, #420, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Property and pay to Agency at Closing the Purchase Price for the Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Earnest Money. The Agency and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement.

Section 3.4: Deed Form.

At Closing, the Agency shall convey to Developer fee simple title to the Property by Bargain and Sale Deed, duly executed, acknowledged and delivered in the form of **Exhibit “D”** attached hereto (the “**Deed**”), free and clear of all liens, claims and encumbrances other than the Permitted Exceptions. Conveyance of title to the Property to Developer shall conclusively establish satisfaction or waiver of all closing conditions set forth in Article 4 herein.

Section 3.5: Title Insurance; Prorations; Adjustments;

3.5.1 Developer shall be responsible for obtaining any and all title insurance for the Property, including additional premiums for extended coverage and additional title endorsements. At Developer's request, Agency will execute and deliver at Closing a standard affidavit certifying that there are no unrecorded leases or agreements affecting the Property, there are no parties in possession of the Property, that there are no mechanic's or statutory liens against the Property, and as to such other matters as may be reasonably requested by the Title Company or Developer for issuance of extended coverage title insurance in favor of Developer.

3.5.2 Real property taxes and assessments and other Property expenses for the current year (if any) shall be prorated and adjusted between the parties as of the Closing Date. Agency shall be responsible for any and all real property taxes for the period of time prior to the recording of the Deed and the Developer shall be responsible for such taxes for the period of time on and subsequent thereto. Escrow fees shall be shared equally by Developer and the Agency. Developer shall be responsible for all professional fees incurred by Developer in connection with its investigation of the Property, all recording fees and payment of its respective legal fees and expenses. Agency shall pay the costs of its own attorneys, consultants and advisors with respect to this transaction.

Section 3.6: Events of Closing.

Provided the Escrow Officer has received sums equal to the Purchase Price as well as any costs, prorations and adjustments as provided herein, and is in a position to cause the title insurance policy to be issued as described herein, this transaction shall be closed on the Closing Date as follows:

3.6.1 The Escrow Officer shall perform the prorations and adjustments described in Section 3.5, and the parties shall be charged and credited accordingly.

3.6.2 Developer shall pay the entire Purchase Price to Agency by wire transfer of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Agreement, including a credit for the Earnest Money.

3.6.3 Any liens required to be paid by Agency at closing shall be paid and satisfied of record at Agency's expense.

3.6.4 Agency shall convey the real property to Developer by execution and delivery of the Deed, subject only to the Permitted Exceptions.

3.6.5 The Title Company shall be irrevocably committed to issue the policy described in Section 4.2.5, upon recordation of the Deed.

3.6.6 Agency shall deliver Agency's Certification of Nonforeign Status as provided in Section 8.14 herein.

3.6.7 The parties shall execute and deliver the Post-Closing Development Agreement in the form attached hereto as **Exhibit “C.”**

3.6.8 The parties shall execute and deliver, with notary acknowledgment, a Memorandum of Post-Closing Agreement in the form attached hereto as **Exhibit “E”** (the “**Memorandum**”).

3.6.9 The Escrow Officer shall record the following documents in the following order: (i) Deed and (ii) Memorandum.

3.6.10 Developer shall execute and deliver the Post-Closing Development Agreement, attached hereto as **Exhibit “C.”**

3.6.11 The parties will take such further actions and execute and deliver such other instruments as may be reasonably necessary or desirable to consummate the transactions contemplated by this Agreement.

Section 3.7: Possession.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title on the Closing Date. The Developer shall accept title and possession on the Closing Date, unless such date is extended as provided herein.

Section 3.8: Conditions of the Property.

The Developer acknowledges that it is purchasing the Property “As Is,” except as provided otherwise herein.

ARTICLE 4: CLOSING CONDITIONS

Section 4.1: Agency’s Closing Conditions.

Agency's obligations to convey the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.1.1 The fulfillment by Developer of all its obligations and covenants under this Agreement to be performed on or before the Closing Date, including but not limited to the deposit of the Purchase Price required for conveyance of the Property with the Title Company at or before Closing, and the attachment of all exhibits to the Post-Closing Agreement as of that time.

4.1.2 Design Drawings (as defined in Section 2.5) for the Developer Improvements have been prepared and submitted by Developer in accordance with the terms of this Agreement and have been reviewed and approved by Agency, such approval not to be unreasonably withheld, conditioned or delayed, within twenty (20) days after receipt of such Design Drawings, as being in accordance with the Plan and this Agreement; and Developer shall have completed its

design review process and the Design Drawings shall have been approved by the County Design Review Board or any subsequent appellate body and such approval is not subject to further appeal under Oregon land use law. The Developer shall complete the process with the County Design Review Board, and any subsequent appeal (“**Design Approval**”), within the Due Diligence Period, as it may be extended pursuant to Section 2.4. Design Drawings for the purpose of Agency’s review shall mean architectural design development drawings of the site improvements.

4.1.3 That all of Developer’s representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

The foregoing conditions may be waived only by Agency. If any one or more of such conditions are not satisfied as of the Closing Date, Agency at its option may terminate this Agreement, in which event the Earnest Money shall be refunded to Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination), except to the extent such condition is not satisfied solely as a result of a breach of this Agreement by Developer, in which case the provisions of Section 7.1 below shall apply.

Section 4.2: Developer’s Closing Conditions.

Developer’s obligations to close the purchase of the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.2.1 Developer giving the Approval Notice, or being deemed to have given its approval pursuant to Section 2.4.

4.2.2 The fulfillment by Agency of all its obligations and covenants under this Agreement to be performed on or before the Closing Date.

4.2.3 That all of Agency’s representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

4.2.4 There being no change in the condition or legal requirements of the Property, whether directly or indirectly, including any dumping of refuse or environmental contamination, after Effective Date, and that no legal action or proceeding (including condemnation) affecting the Property or Developer’s intended use thereof shall have been threatened or commenced.

4.2.5 That the Title Company shall be irrevocably committed to issue an owner’s title insurance policy insuring that fee simple title is vested in Developer as of the Closing Date, in the amount of the Purchase Price, subject only to the Permitted Exceptions.

The foregoing conditions may be waived only by Developer. If any one or more of such conditions are not satisfied as of the Closing Date, Developer at its option may terminate this Agreement, in which event the Earnest Money shall be refunded to Developer and neither party

shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination), except to the extent such condition is not satisfied solely as a result of a breach of this Agreement by Agency, in which case the provisions of Section 7.2 below shall apply.

ARTICLE 5: RESERVED

Reserved

ARTICLE 6: REPRESENTATIONS AND WARRANTIES

Section 6.1: Developer's Representations and Covenants.

Developer represents, warrants and covenants as follows:

6.1.1 Developer is qualified to do business in the state in which the Property is located. Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby;

6.1.2 There is no agreement to which Developer is a party or which, to Developer's knowledge, is binding on Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to Developer's knowledge, threatened against Developer which challenges or impairs Developer's ability to execute or perform its obligations under this Agreement;

6.1.3 Developer has the financial capacity to cause those improvements set forth in the Post-Closing and Development Agreement to be constructed;

6.1.4 Intentionally deleted;

6.1.5 To the best of Developer's knowledge (without any requirement of further investigation), all information, documents and instruments delivered to Agency by Developer in connection with this Agreement are complete and true copies of such documents or original counterparts thereof;

6.1.6 Developer has not obligated itself in any manner to convey, transfer, or otherwise encumber the Property after the Closing to any party that may reasonably be expected to impair performance under the Post-Closing Agreement in any material respect, and further Developer promises not to enter into an agreement with any other party that could reasonably be expected to negatively impact or impair Developer's performance under the Post-Closing Agreement in any material respect;

6.1.7 Developer is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code; and

6.1.8 To the best of Developer's knowledge, Developer, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with (i)

all applicable tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Developer, to Developer's property, operations, receipts, or income, or to Developer's performance of or compensation for any work performed by Developer; (iii) any tax provisions imposed by a political subdivision of this state that applied to Developer, or to goods, services, or property, whether tangible or intangible, provided by Developer; and (iv) any applicable rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Section 6.2: Agency's Representations and Covenants.

Agency represents, warrants and covenants as follows:

6.2.1 Agency has been duly organized and is validly existing as a corporate body politic, in good standing in the State of Oregon. Agency has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby;

6.2.2 To the best of Agency's knowledge (without any requirement of further investigation), there are no actions, suits, claims, legal proceedings, condemnation or eminent domain proceedings, or any other proceedings affecting the Property, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign, nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the Property for Developer's intended purpose, the value of the Property, or adversely affect the ability of Agency to perform its obligations under this Agreement; provided, however, that Agency makes no representation or warranty regarding the use of the Property under current or future land use codes, building codes, or other generally applicable laws and regulations, and Developer acknowledges their obligation to investigate the same as part of their due diligence process;

6.2.3 To the best of Agency's knowledge (without any requirement of further investigation), there are no liens, bonds, encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property except as disclosed in the Preliminary Commitment, and Agency has not received notice and has no knowledge of any pending liens or special assessments to be made against the Property;

6.2.4 From the Effective Date until the Closing Date, Agency shall use commercially reasonable efforts to properly maintain the Property in its current condition as of the Effective Date less reasonable impact of natural conditions and Developer's due diligence efforts;

6.2.5 To the best of Agency's knowledge (without any requirement of further investigation), all Property information, documents and instruments delivered to Developer by Agency are complete and true copies of such documents or original counterparts thereof;

6.2.6 To the best of Agency's knowledge (without any requirement of further investigation), other than this Agreement, the documents to be executed and delivered hereunder at Closing and the Permitted Exceptions, there are no contracts or agreements of any kind

relating to the Property to which Agency or its agents is a party and which would be binding on Developer after Closing;

6.2.7 Agency has not obligated itself in any manner to sell the Property to any party other than Developer and promises not to enter into an agreement with any other party for the sale or lease of any portion of the Property while this Agreement is in effect;

6.2.8 Agency is not a “foreign person” for purposes of Section 1445 of the Internal Revenue Code;

6.2.9 To the best of Agency’s knowledge (without any requirement of further investigation), Agency is not (and is not engaged in this transaction on behalf of) a person or entity with which Developer is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; Executive Order 13224; the Bank Secrecy Act; the Trading with the Enemy Act; the International Emergency Economic Powers Act; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 U.S.C Sections 1956 and 1957;

6.2.10 To the best of Agency’s knowledge (without any requirement of further investigation), Agency’s sale of the Property is not subject to any federal, state or local withholding obligation of Developer under the tax laws applicable to Agency or the Property;

6.2.11 Agency has received no written notice of and has no knowledge of any material violations or investigations of violations of any applicable laws or ordinances affecting the Property that have not been corrected or resolved;

6.2.12 To the best of Agency’s knowledge (without any requirement of further investigation), during the time Agency has owned the Property, Agency has not released to the soil or groundwater on the Property any hazardous substances in any material concentration or quantity;

6.2.13 To the best of Agency’s knowledge (without any requirement of further investigation), the Property is in compliance with all applicable environmental laws, there are no material concentrations of hazardous wastes or hazardous substances on, in or under the Property, and there are no underground storage tanks within the Property. As used in this Agreement, the term “environmental laws” includes any and all state, federal and local statutes, regulations, and ordinances to which the Property is subject and relating to the protection of human health and the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to same; and the term “hazardous substances” includes all hazardous and toxic substances, wastes, or materials, including without limitation all substances, wastes, and materials containing either petroleum, including crude oil or any fraction thereof, or any of the substances referenced in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601(14), and similar or comparable state or local laws.

For the purposes of this Agreement, “Agency’s knowledge” is defined as the knowledge of Mr. Dan Johnson and Mr. Dave Queener.

Section 6.3: Survival.

All representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and shall survive Closing and not be merged into any documents delivered at Closing.

ARTICLE 7: DEFAULTS AND REMEDIES

Section 7.1: Agency’s Remedies.

In the event that this transaction fails to close solely on account of a default by Developer under this Agreement, this Agreement shall terminate and the Earnest Money, any accrued interest, shall be forfeited by Developer and retained by Agency as liquidated damages as Agency’s sole remedy for such default. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for Developer’s default, since the precise amount of such compensation would be difficult to determine. For any default by Developer that does not cause the transaction to fail, but which nevertheless causes damage to the Agency, the Agency shall be entitled to such remedies as may be available under applicable law.

In the event that any of the following occur prior to the conveyance of title to the Property, then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or the Property, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event the Earnest Money (and any interest earned thereon) shall be retained by the Agency as liquidated damages and as its property without any deduction, offset or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

7.1.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;

7.1.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.6 hereof;

7.1.3 The Developer does not submit Design Drawings as required by this Agreement in the manner and by the dates respectively provided in this Agreement therefore; or

7.1.4 The Developer does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after the satisfaction or waiver of all of Developer’s Closing Conditions set forth in Section 4.2

Section 7.2: Developer's Remedies.

If this transaction fails to close because of Agency's default hereunder, the Earnest Money, and any accrued interest, shall be returned to Developer. Developer shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

Section 7.3: Default.

Except for the parties' wrongful failure to close or satisfy a condition to Closing by the Closing Date, neither party shall be deemed in default under this Agreement unless such party is given written notice of its failure to comply with this Agreement and such failure continues for a period of fifteen (15) days following the date such notice is given.

ARTICLE 8: GENERAL PROVISIONS

Section 8.1: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

Section 8.2: Attorney Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 8.3: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Manager of the Agency, or in such other manner as may be provided by law. In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made in such manner as may be provided by law.

Section 8.4: Notice, Demands and Communications Between the Parties.

All notices given pursuant to this Agreement shall be in writing sent to the addresses shown in Section 1.3 and Section 1.4 of this Agreement and to the attention of the person indicated, and shall be either: (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by local or national courier.

Any notice (i) sent by mail in the manner specified in this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, and (ii) delivered in person or by local or national courier shall be deemed served or given upon receipt

or refusal of delivery. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender. Each party may change its address for notice by giving not less than ten (10) days' prior notice of such change to the other party in the manner set forth above.

Section 8.5: Nonliability of Officials and Employees.

No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 8.6: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 8.7: Headings.

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.8: Time of Essence.

Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 8.9: Severability.

If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

Section 8.10: No Partnership.

Neither anything in this Agreement or the documents delivered in connection herewith nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

Section 8.11: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary governmental action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

Section 8.12: Entire Agreement; Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in a writing signed by the appropriate authorities by the Agency and the Developer.

Section 8.13: Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Section 8.14: Non-Foreign Persons.

The parties agree to comply with the terms of Internal Revenue Code Section 1445 and at Closing, Agency shall execute and deliver to Developer and Title Company a non-foreign person affidavit in a form mutually acceptable to the parties. Agency represents and warrants that it is not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and Agency agrees to furnish Developer with any necessary documentation to that effect.

Section 8.15: Waiver.

Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Section 8.16: Weekends and Holidays.

If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

Section 8.17: Neutral Construction.

This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party by virtue of which party drafted all or any part of this Agreement.

Section 8.18: Exhibits.

All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

Section 8.19: 1031 Like-Kind Exchange.

If Developer intends for this transaction to be a part of a Section 1031 like-kind exchange, then the Agency agrees to cooperate in the completion of the like-kind exchange so long as the like-kind exchange can be completed within the timelines set forth herein, Agency incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the Agency that are related only to the exchange are paid or reimbursed to the Agency at or prior to closing.

ARTICLE 9: SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns.

ARTICLE 10: STATUTORY DISCLAIMER

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY,

UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

“AGENCY”

CLACKAMAS COUNTY DEVELOPMENT
AGENCY, a corporate body politic

By: _____
Chair

Date: _____, 2017

“DEVELOPER”

CLACKAMAS CROSSING, LLC, an Oregon
limited liability company

By: _____

Date: _____, 2017

LIST OF EXHIBITS

EXHIBIT A	Property Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Post-Closing Agreement
EXHIBIT D	Form of Bargain and Sale Deed
EXHIBIT E	Memorandum of Post-Closing Agreement
EXHIBIT F	Scope of Development

EXHIBIT A
Property Map

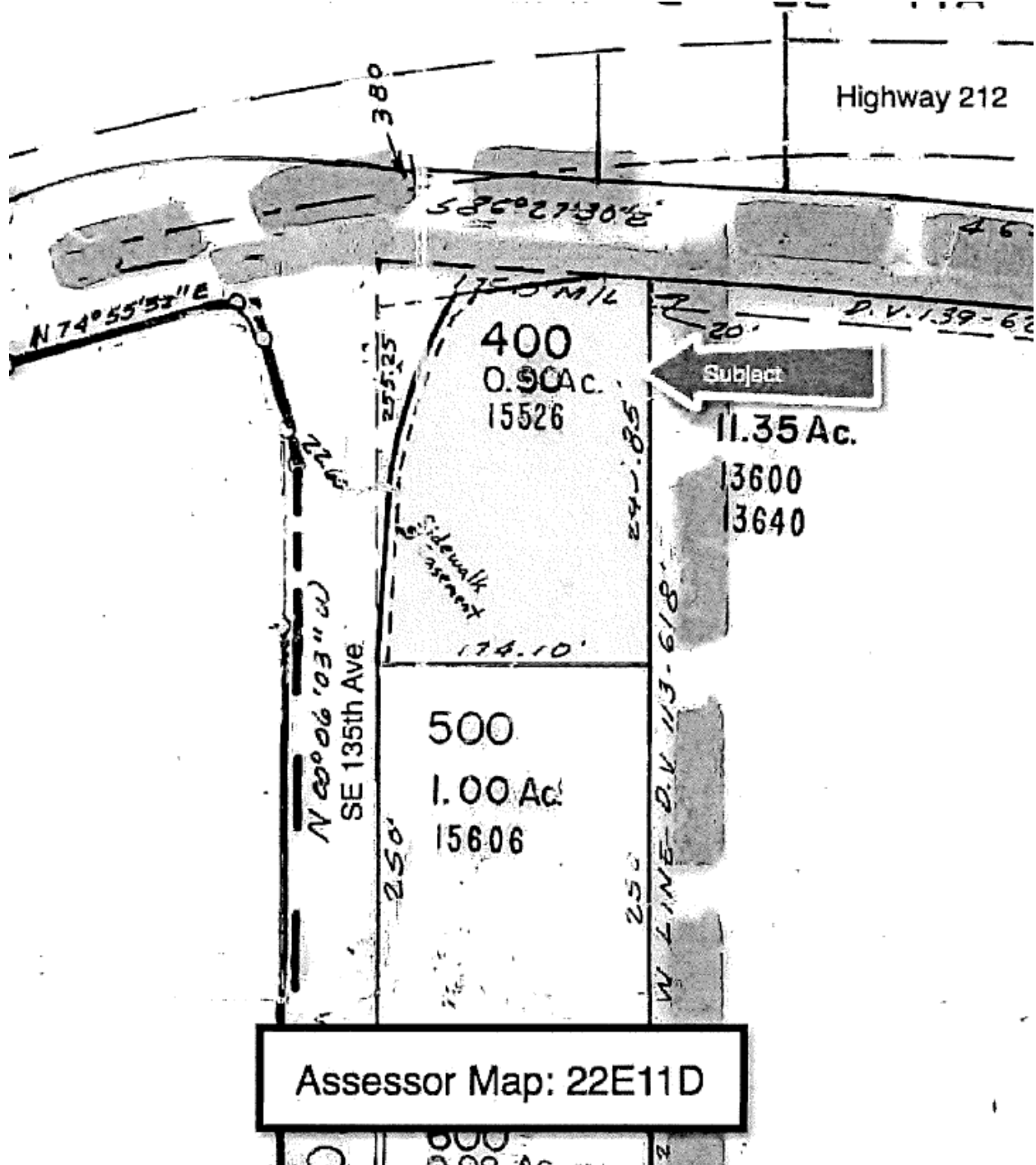


EXHIBIT B

Legal Description - Property

Beginning 465.96 feet West and 289.03 feet South of the Northeast corner of the Isaac Capps Donation Land Claim No. 52 in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, said point beginning on the West line of the land conveyed to Joseph Enghouse and wife by Deed recorded May 3, 1910 in Book 113, Page 618, Deed Records; thence West 174.10 feet to a point in the East line of a 60.0 foot roadway easement, as described in Exhibit A in Clackamas County Deed Book 658, Page 305, Deed Records; thence North along said East line 255.25 feet, more or less, to the South line of State Highway 213, thence Easterly along the South line of State Highway 175.0 feet, more or less, to the West line of the above said Enghouse property; thence South along said West line 245.85 feet, more or less, to the point of beginning.

EXCEPTING that portion conveyed unto the State of Oregon, by and through its Department of Transportation, Highway Division by Warranty Deed recorded February 22, 1982, Recorder's Fee No. 82-5139.

EXHIBIT C

POST-CLOSING DEVELOPMENT AGREEMENT

THIS POST-CLOSING DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the “**Agency**”) and **CLACKAMAS CROSSING, LLC**, an Oregon limited liability company (“**Developer**”). The latest date on which this Agreement is signed by Agency and Developer (as indicated below by their signatures herein) is referred to in this Agreement as the “**Effective Date.**”

RECITALS

A. Pursuant to that Disposition Agreement effective _____, 2017 (the “**DA**”), Developer acquired from Agency that certain real property comprised of approximately .90 acres of land owned by the Agency located on the southeast corner of the SE 135th Avenue and Highway 212 intersection in Clackamas County, Oregon, as more particularly described in Exhibit “B” of the DA (the “**Property**”). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. In connection with the DA and in furtherance of the objectives and goals of the Clackamas Industrial Area Renewal Plan, Agency desires that Developer construct the Building Improvements (defined below), and Developer wishes to do so, on and subject to the terms and conditions of this Agreement. As used herein, the “**Building Improvements**” means the commercial buildings and associated improvements on the Property as described in **Exhibit “A,”** attached hereto.

AGREEMENT

1. **DEVELOPMENT GOALS.** Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion of the Building Improvements in accordance with and within the limitations specified in **Exhibit “A,”** “Scope of Development,” attached hereto and made a part hereof, within twenty-four (24) months after the Effective Date, subject to delays due to force majeure, delays caused by the Agency or its elected officials, officers, directors, shareholders, members, managers, employees, affiliates, agents, successors, assigns, and/or any other person or entity acting on its behalf or under its direction or control, and any other causes beyond the reasonable control of Developer or that could not have been foreseen or provided against. For purposes of this Agreement, delays caused by the action or inaction of the Agency shall not include the passage of time attributable to any permit or development review procedure, or other standard decision-making process that could be associated with the Agency’s function as a public entity. As used in this Agreement, “Substantial Completion” of a work or improvement shall mean that the applicable work or improvement has been completed to the point that it can be used or occupied for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called “punch list.” The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Building Improvements in accordance with the terms of this Agreement and with all

applicable specifications, standards and codes and requirements, including those of the County and the State of Oregon.

2. **CONSTRUCTION SCHEDULE**. Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Building Improvements within the time specified in the Schedule of Performance, specified in **Exhibit "B,"** attached hereto and made a part hereof, except as otherwise permitted herein.

3. **GOVERNMENTAL PERMITS**. Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Building Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

4. **TERM**. The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all obligations of the parties under this Agreement have been satisfied.

5. **PAYMENT**. In the event that the Developer fails to perform any of its obligations under this Agreement within twenty-four (24) months after the Effective Date, subject to delays due to the force majeure or other causes beyond the reasonable control of Developer, Developer shall owe the Agency the sum of Thirty-Five Thousand and No/100 Dollars (\$35,000) (the "**Payment**").

6. **LIMITATION OF LIABILITY**. Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Payment as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Payment or with respect to any assets of either party (other than the Payment). Except solely for either party's right to the Payment as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date. As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

7. **INTENTIONALLY DELETED.**

8. **DEVELOPER OBLIGATIONS UNDER THE PLAN.** Pursuant to Section 715 and 745 of the Plan, Developer agrees as follows:

8.1 The Property shall be used for the purposes designated in the Plan.

8.2 Developer shall obtain necessary approvals for the Building Improvements from all federal, state and/or local agencies that may have jurisdiction on the Property and the Building Improvements to be developed thereon.

8.3 The development of the Property shall be in accord with the regulations prescribed in the County's Comprehensive Plan, Zoning and Development Ordinance, and any other applicable local, state or federal laws regulating the development of property.

8.4 Agency acknowledges receipt of a copy of the plans and specifications for construction of the Building Improvements referenced on Exhibit A attached.

8.5 Developer shall commence and complete the Building Improvements within the period of time as provided in this Agreement.

8.6 Developer covenants that it will not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

8.7 Developer shall maintain the Property in a clean, neat and safe condition.

8.8 The foregoing covenants shall be binding upon and run for the benefit of the parties hereto and their respective assigns and successors in interest, subject to Section 9.12. In the event the Developer or any of its lessees, licensees, agents or other occupants, uses the Property in a manner inconsistent with Section 8 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

9 **GENERAL PROVISIONS.**

9.1 **Attorneys' Fees.** The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

9.2 **Notice.**

(a) All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

(b) Any notice (i) sent by mail in the manner specified in subsection (a) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (ii) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day), and (iii) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender. The address of each party to this Agreement for purposes of notice shall be as follows:

AGENCY:

Clackamas County Development Agency
c/o Development Agency Supervisor
150 Beaver Creek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.clackamas.or.us

Clackamas Crossing, LLC
PO Box 1075
Ridgefield, WA 98642
Attn: Kirk Wardius
Email: kwardius@aol.com

9.3 **Nonliability of Officials and Employees.** No member, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

9.4 **Headings.** Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.5 **Time of Essence.** Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing

9.6 **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect

9.7 **No Partnership.** Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

9.8 **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the

County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

9.9 **Non-Integration.** This Agreement supplements the obligations of the parties under the DA, all of which shall be construed to be consistent with one another to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

9.10 **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

9.11 **Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

9.12 **Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 9.12, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns

9.13 **Force Majeure.**

(a) **Event of Force Majeure.** The time for performing obligations under this Agreement shall be extended, on a day-for-day basis, due to, and a party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement, to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming party; provided that such event is not caused by or attributable to the negligence or fault of, or breach of its obligations hereunder by, such party, and could not have been avoided by prudent commercial practices (any such event, a "Force Majeure Event").

(b) **Notice of Force Majeure Events.** As a condition to claiming a Force Majeure Event, the claiming party shall promptly give the other party a written notice describing the

particulars of the Force Majeure Event of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties hereto agree to use reasonable efforts to notify each other of potential Force Majeure Events and update each other on developments regarding potential Force Majeure Events.

(c) **Mitigation.** Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and no longer duration than is reasonably required by such Force Majeure Event. The party claiming a Force Majeure Event shall have a duty to alleviate and mitigate the cause and effect arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement promptly after being able to do so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

9.14 **Exhibits.** All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

9.15 **Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

9.16 **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

9.17 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

9.18 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

9.19 **Memorandum of Agreement.** On or about the Effective Date, the parties will execute and deliver a memorandum of this Agreement in mutually acceptable form, which shall be recorded in the official records of Clackamas County, Oregon. This Agreement shall not be recorded. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective assigns and successors in interest. Upon termination of this Agreement, the parties shall execute and record at Developer's expense an instrument in mutually acceptable form evidencing such termination.

9.20 **Dispute Resolution.** Each party waives its rights to trial by jury in any claim, action, suit, or proceeding arising out of this Agreement or the transactions relating to its subject matter.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:
Clackamas Crossing, LLC an Oregon
Limited Liability Company

By: *DRAFT- FOR INFORMATION ONLY*
Name: _____
Date of Execution: _____

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

AGENCY:
Clackamas County Development Agency
a corporate body politic

By: *DRAFT- FOR INFORMATION ONLY*
Name: _____
Title: _____
Date of Execution: _____

List of Exhibits

- Exhibit A Scope of Development
- Exhibit B Schedule of Performance

Exhibit A to the Post-Closing Development Agreement

Scope of Development

The Development consists of a new retail/commercial building located at the southeast corner of Highway 212 and SE 135th Avenue in Clackamas County. The subject property is being developed in conjunction with the adjacent property and will include up to 20,000 square feet of space.

Associated improvements include:

- Landscaping
- Sidewalk, roadway and lighting within the right of way as required
- Bicycle and pedestrian amenities as required
- Landscaped automobile parking area

Exhibit B to the Post-Closing Development Agreement

Schedule of Performance

Design Review	Complete by May 2018
Construction Documents	Complete by August 2018
Permitting	by November 2018
Begin Construction	December 2018
Complete Construction	October 2019

EXHIBIT D

Form of Bargain and Sale Deed

AFTER RECORDING SEND TO:

**UNTIL A CHANGE IS REQUESTED
ALL TAX STATEMENTS SHALL
BE SENT TO:**

STATUTORY BARGAIN AND SALE DEED

CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (“Grantor”) conveys to **CLACKAMAS CROSSING, an Oregon limited liability company** (“Grantee”) all of Grantor’s interest in that certain real property located in Clackamas County, Oregon, as more particularly described on Exhibit A attached hereto.

The true consideration for this conveyance is Seven Hundred Twelve Thousand Five Hundred and no/100 Dollars \$712,500.00.

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property subject to this conveyance.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR

PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED as of _____, 201__.

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: *DRAFT- FOR INFORMATION ONLY*
Name:
Its:

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on _____, 201__, by _____, as _____ of Clackamas County Development Agency, a corporate body politic.

Notary Public for Oregon
My commission expires:

Exhibit A to Bargain and Sale Deed

Legal Description

Beginning 465.96 feet West and 289.03 feet South of the Northeast corner of the Isaac Capps Donation Land Claim No. 52 in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, said point beginning on the West line of the land conveyed to Joseph Enghouse and wife by Deed recorded May 3, 1910 in Book 113, Page 618, Deed Records; thence West 174.10 feet to a point in the East line of a 60.0 foot roadway easement, as described in Exhibit A in Clackamas County Deed Book 658, Page 305, Deed Records; thence North along said East line 255.25 feet, more or less, to the South line of State Highway 213, thence Easterly along the South line of State Highway 175.0 feet, more or less, to the West line of the above said Enghouse property; thence South along said West line 245.85 feet, more or less, to the point of beginning.

EXCEPTING that portion conveyed unto the State of Oregon, by and through its Department of Transportation, Highway Division by Warranty Deed recorded February 22, 1982, Recorder's Fee No. 82-5139.

EXHIBIT E

Memorandum of Post-Closing Agreement

When Recorded Return To:

MEMORANDUM OF POST-CLOSING AGREEMENT

This Memorandum of Post-Closing Agreement (this “**Memorandum**”) is made and dated as of _____, 201__ (the “**Effective Date**”), by **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the “**Agency**”), and **CLACKAMAS CROSSING, LLC, an Oregon limited liability company** (the “**Developer**”).

The Developer acquired that certain real property described on attached Exhibit A (the “**Property**”) from the Agency.

In connection with the acquisition of the Property, the Agency and the Developer entered into that certain Post-Closing Development Agreement dated as of _____, 201__ (the “**Post-Closing Agreement**”). Capitalized terms used in this Memorandum without definition will have the meanings given in the Post-Closing Agreement.

The Post-Closing Agreement, among other things, provides for Developer to make certain improvements to or for the Property, including construction of one or more commercial building(s) for sale or lease of approximately 4,000 square feet of total building floor area.

This Memorandum is solely for recording purposes and shall not be construed to in any way alter, modify, amend, or supplement the Post-Closing Agreement or any term or condition thereof.

This Memorandum may be executed in one or more counterparts, all of which shall be considered one and the same Memorandum and shall be effective when one or more counterparts have been signed and delivered by the Owners.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the Effective Date.

“AGENCY”

**CLACKAMAS COUNTY DEVELOPMENT
AGENCY, a corporate body politic**

By: *DRAFT- FOR INFORMATION ONLY*
Name:
Its:

STATE OF OREGON)
) ss.
COUNTY OF _____)

On _____, 2017 before me personally appeared _____ as the _____ of Clackamas County Development Agency, a corporate body politic, who executed the within and foregoing instrument, and acknowledged said instrument to be the voluntary act and deed of said agency.

WITNESS my hand and official seal.

Notary Public for the State of Oregon
My commission expires:_____

**Exhibit A to Memorandum of
Post-Closing Agreement**

Property Description

Beginning 465.96 feet West and 289.03 feet South of the Northeast corner of the Isaac Capps Donation Land Claim No. 52 in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, said point beginning on the West line of the land conveyed to Joseph Enghouse and wife by Deed recorded May 3, 1910 in Book 113, Page 618, Deed Records; thence West 174.10 feet to a point in the East line of a 60.0 foot roadway easement, as described in Exhibit A in Clackamas County Deed Book 658, Page 305, Deed Records; thence North along said East line 255.25 feet, more or less, to the South line of State Highway 213, thence Easterly along the South line of State Highway 175.0 feet, more or less, to the West line of the above said Enghouse property; thence South along said West line 245.85 feet, more or less, to the point of beginning.

EXCEPTING that portion conveyed unto the State of Oregon, by and through its Department of Transportation, Highway Division by Warranty Deed recorded February 22, 1982, Recorder's Fee No. 82-5139.

EXHIBIT F

Scope of Development

The Development consists of a new retail/commercial building located at the southeast corner of Highway 212 and SE 135th Avenue in Clackamas County. The subject property is being developed in conjunction with the adjacent property and will include up to 20,000 square feet of space.

Associated improvements include:

- Landscaping
- Sidewalk, roadway and lighting within the right of way as required
- Bicycle and pedestrian amenities as required
- Landscaped automobile parking area



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment 1 to the Professional Services Contract between
Murraysmith, Inc. and Clackamas County Service District No. 1
for Arrah Wanna Pump Station and Hoodland Water Resource Recovery Facility Modernization

Purpose/Outcomes	Phase 2 engineering services, including design of improvements for the Hoodland Water Resource Recovery Facility Modernization project.
Dollar Amount and Fiscal Impact	Funding is available in the 2017-18 budgets for Clackamas County Service District No. 1. Amendment increases contract by \$292,718 for a new total contract value of not to exceed \$364,386.
Funding Source	Clackamas County Service District No.1 FY 2017-18 annual budgets. No General Funds impacted.
Duration	Execution through October 31, 2018
Previous Board Action/Review	None
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan to provide partner communities with reliable waste water infrastructure to serve existing customers and support future growth. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Contact Person	Jeff Stallard, Civil Engineering Supervisor – Water Environment Services – 503-742-4694

BACKGROUND:

Clackamas County Service District No. 1 (“District”) recently completed a master plan for providing wastewater services in the Hoodland Services area. This plan identified the need for capacity and operational improvements to its Hoodland Water Resource Recovery Facility (WRRF) and the WRRF’s influent pump station, the Arrah Wanna Pump Station (AWPS).

Original contract was solicited through an RFP process conducted through the Procurement Division and contemplated multiple phases.

Phase 1 of this project was executed by a contract with Murraysmith, Inc. to complete condition assessment, further define the project criteria, and complete a predesign of project elements.

Phase 2 includes services to complete the design, prepare bid documents, and support District staff during the bidding phase of the project.

This amendment has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, a county service district, approve and execute Amendment No. 1 to the Personal/Professional Services Contract between Murraysmith, Inc. and Clackamas County Service District No. 1 for Engineering Services for Arrah Wanna Pump Station and Hoodland Water Resource Recovery Facility Modernization.

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

Placed on the December 7, 2017 agenda by Procurement.

AMENDMENT #1

**TO THE CONTRACT DOCUMENTS WITH MURRAYSMITH, INC. FOR
ENGINEERING SERVICES FOR ARRAH WANNA PUMP STATION AND HOODLAND
WATER RESOURCE RECOVERY FACILITY MODERNIZATION**

This Amendment #1 is entered into between **Murraysmith, Inc.** (“Contractor”) and Clackamas County Service District No. 1 (“District”) shall become part of the Contract entered into between the parties on September 5, 2017.

The Purpose of the Amendment #1 is to make the following changes to the Contract;

1. **Article I. 2. Scope of Work:** is hereby changed as follows:
Scope of work is to be modified to include phase II of the project titled Exhibit A, hereby attached and incorporated by reference.

2. **Article I. 3. Consideration:** is hereby changed as follows: The Contract price is being changed to reflect the additional scope of work to include phase II. The maximum compensation allowed under this Contract is increased by **\$292,718.00**, with a maximum compensation not to exceed **\$364,386.00**. Proposed Fee Estimate for Amendment #1 is hereby attached and incorporated by reference.

ORIGINAL CONTRACT	\$ 71,668.00
<u>Amendment #1</u>	<u>\$ 292,718.00</u>
TOTAL CONTRACT AMOUNT	\$ 364,386.00

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 #1, effective upon the date of the last signature below.

Murraysmith, Inc.
888 SW 5th Ave, Suite 1170
Portland, Oregon 97204

Clackamas County Service District No. 1

Authorized Signature

Chair

Date

Name, Title

Recording Secretary

146807-14

Oregon Business Registry Number

Approved as to Form

DBC/Oregon

Entity Type / State of Formation

County Counsel

Date

Amendment #1
Murraysmith, Inc.
Engineering Services for Arrah Wanna Pump Station and
Hoodland Water Resource Recovery Facility Modernization

EXHIBIT A

SCOPE OF WORK HOODLAND WRRF MODERNIZATION PH II CLACKAMAS COUNTY WES

Introduction

Clackamas County Water Environmental Services (WES) recently completed a master plan for providing wastewater services in the Hoodland Services area. This plan identified the need for capacity and operational improvements to its Water Resource Recovery Facility (WRRF) and the WRRF's influent pump station, the Arrah Wanna Pump Station (AWPS).

An initial contract was executed to complete condition assessment, develop the project parameters, and identify improvements for the project. This amendment provides services to complete design, prepare contract documents, and support WES staff during the bidding and construction phases for the project. Task numbering is a continuation from the initial scope of work.

Task 1 - Project Management (Existing Supplemented Task)

Objective:

To provide leadership and team strategic guidance aligned with WES staff objectives. To coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for developing and implementing the project scope.

Activities:

- Team coordination and oversight
- Coordinate with client for design input or decisions in between design submittals
- Provide email summary of important conversations or decisions
- Prepare invoices and progress reports

Deliverables

- Design decision summaries
- Monthly invoices with progress report, task-level budget report

Assumptions:

- Phase II duration will be approximately 14 months.

Task 6 – 60% Design Development (New Task)

Objective:

The purpose of this task is to utilize the conceptual decisions of the project made in the Preliminary Design Phase (Tasks 2, 3, 4 and 5) and develop the design in sufficient detail to convey the design intent to District staff. The 60 percent design level construction drawings and specifications will depict the final location and size of major components and systems.

Activities:

Design development will include the following major work elements:

- Document existing electrical service, conduit, conductors, and equipment at AWPS and WRRF
- Finalize equipment selection and develop equipment data sheets
- Finalize line size and service load calculations for AWPS and generator load for WRRF
- Coordinate service upgrade requirements with power utility
- Preliminary sizing of all pipes and valves
- Preliminary sizing of building HVAC
- Preliminary sizing, placement, and ducting for new wet well odor fan
- Design of connections and sheathing for new metal roof
- Design of pump room slab modifications for larger hatch clear opening
- Design of framing for new ladder access and platform in wet well
- Design of new wet well exhaust vent and penetration through existing walls
- Analysis for lateral loads on existing building per ASCE 41 and design of a new CMU exterior building addition to house the wet well odor fan
- Develop drawings as noted on Drawing List
- Develop draft control narrative for AWPS and WRRF
- Assemble County or WES standard details for each required discipline
- Develop draft technical specifications for major equipment
- Prepare Class 2 Construction Cost Estimate
- Develop preliminary construction sequence and construction schedule

Consultant will conduct one three-hour workshop to review the 60% design submittal with District staff. Both meetings will be attended by Murraysmith's Project Manager, Project Engineer, Principal-In-Charge, and multi-disciplinary subconsultants.

Deliverables:

- 60% Design Development Drawings, see attached Drawing List
- Equipment Data Sheets and Technical Specifications for major equipment
- 60% Construction Cost Estimate and bid item list
- 60% Construction Sequence and Schedule
- Meeting agenda and summary for workshop and review meeting

Assumptions:

- Base mapping and elevations will be based on CAD files provided by WES for odor bio-filter plans and original record drawings
- Major equipment includes sewage pumps, generator, odor fan, and flow meter
- Existing concrete floor slab and proposed hatches can be configured so that the existing beams will remain; limits structural analysis to floor modifications
- Building addition will have an independent foundation and entrance from existing building
- Budget includes \$8,000 allowance for reinforcement design for south building wall if required
- Plan sheets will be submitted as noted with an "*" on the attached drawing list
- District staff will provide written review comments

Task 7 – 90% Contract Documents (New Task)

Objective:

The purpose of this task is to develop the draft Contract Documents including drawings, specifications and details.

Activities:

The following activities will be completed under this subtask:

- Review and coordinate Division 0 specifications provided by WES for specific project
- Prepare specifications to include Division 1 through Division 48 sections for general requirements, materials, submittals, equipment, installation, and warranty requirements
- Prepare conduit and conductor schedule
- Prepare special inspection matrix
- Prepare construction drawings and design details
- Prepare final calculations
- Prepare Engineering Report for Oregon Department of Environmental Quality submittal and coordinate review
- Review and comment on WES 60% Design Development submittal comments
- Coordinate with WES on advertising and bidding process

- Update construction cost estimate
- Update construction sequence and construction schedule
- Prepare stamped permit set to be used for permitting

Consultant will conduct one three-hour workshop to review the 90% design submittal with District staff. Both meetings will be attended by Murraysmith's Project Manager, Project Engineer, Principal-In-Charge, and multi-disciplinary subconsultants.

Deliverables:

- 90% Design Development Drawings
- 90% Construction Specifications
- 90% Construction Cost Estimate
- 90% Construction Sequence and Schedule
- Submittal review comment responses
- One full-size stamped drawing set will be provided at 90% for building permit submittal
- One set of stamped structural calculations for building permit submittal
- Meeting agenda and summary for workshop and review meeting

Assumptions:

- WES to provide project specific Division 0 specifications that include Instructions to Bidders, Bid Documents, Contract forms, General Conditions and Supplementary Conditions representing Clackamas County procurement and contracting requirements
- The 90% design will be submitted for permitting, and will be stamped by design professionals
- WES will coordinate with outside agency review and pay any review fees
- County land use application narrative or figures will be completed by others or outside of this contract.

Task 8 – Final Contract Documents (New Task)

Objective:

To prepare final, sealed contract documents to be used for publicly bidding the project.

Activities:

- Review WES, County Development Review, and internal Quality Control comments and modify the contract documents to address agreed-upon comments
- Coordinate final approval with DEQ
- Prepare reproducible final documents and submit to WES

Deliverables:

- Record of comments and responses
- Final stamped construction documents in PDF format.

Assumptions:

- Drawings will be provided in AutoCAD when record drawings are prepared at end of construction.
- Details that are on drawings will be provided in AutoCAD.
- Details bound separately will be provided in PDF format only.

Task 9 - Bid Period Services (New Task)

Objective:

Provide support to WES staff during bid phase of project.

Activities:

- Correspond with prospective bidders and document in writing
- Attend the pre-bid conference
- Assist in preparing technical addenda to the contract documents (if needed)
- Review bids and recommend award

Deliverables:

- Written documentation of correspondence with bidders
- Summary of pre-bid conference
- Technical addenda to the contract documents as needed
- Written recommendation of contract award

Assumptions:

- One addendum is budgeted
- WES will advertise and distribute bid documents and addenda

Task 10 – Quality Management (New Task)

Objective:

Carry out a quality assurance program (QAP) to monitor the quality of the Project using internal quality assurance/quality control (QA/QC) reviews as described herein.

Activities:

- Prepare Quality Management Plan (QMP) to serve as a guide for all phases
- Review process and cost calculations
- Review 60% deliverables concurrently with WES review
- Review 90% and Final deliverables prior to WES review
- Verify conformance with the approved QMP

Deliverables:

- Quality Management Plan to include:
 - Identify a single point of contact responsible for quality management.
 - Checklists for design review procedures
 - Independent quality review performed by principal level quality control reviewer to provide critical analysis.
- Written documentation of QC reviews to include:
 - Quality review forms used during internal quality reviews and issue tracking forms used to document those issues
 - Review-related correspondence with WES staff and other external agencies or entities

Assumptions:

- The level of effort for this task includes preparation of the QMP and QC reviews for each of the design phases.

Anticipated Project Milestones

- | | |
|----------------------------|---------------------------------|
| ▪ Notice to Proceed | December 1 st , 2017 |
| ▪ 60% Design PS&E | January 29 th , 2018 |
| ▪ 90% Design PS&E | March 19 th , 2018 |
| ▪ Final Contract Documents | April 30 th , 2018 |
| ▪ Ad for Bids | May 2018 |
| ▪ Construction Phase | July 2018 to January 2019 |

Attachments:

- Drawing list

ATTACHMENT A

DRAWING LIST HOODLAND WRRF MODERNIZATION PH II CLACKAMAS COUNTY WES

The following list of drawings are anticipated for the subject project. AWPA and WRRF drawings will be divided into separate drawing schedules.

General

Cover*
General Notes and Legend
Design Data Table*
Schedule and Sheet Key Plan

Schedule A AWPS Improvements (56 sheets)

Civil

Site Preparation and Erosion Control
Erosion Control Notes and Details
Bypass Pumping Plan and Details*
Site Demolition Plan*
Electrical Room Demolition*
Pump Room Demolition*
Wet Well Demolition Plan and Elevation*
Roof Demolition Plan*
Site and Staking Plan
Site Piping Plan*
Civil Details

Architectural

Building Elevations
CMU Wall Extension Plan and Section*

Mechanical

Pump Room Plan and Details*
Wet Well Plan and Details*
Wet Well Sections*
Valve Vault Plan and Sections*
Meter Vault Plan and Sections*

Building HVAC

Electrical and Pump Room HVAC Plan and Schedules
Wet well Foul Air Plan and Elevation*
Odor Fan Plan and Sections*

Structural

General Notes & Quality Assurance Plan*
Roof Plan, Section and Detail*
Wet Well Plan, Section and Details*
Wet Well Access Ladder and Platform Elevation and Details*
Wet Well Exhaust Vent Connection Details and Wall Penetration*
CMU Penetration Seal Details
Building Addition Plan, Section, and Details*
Structural Details

Electrical

Electrical Legend and Abbreviations*
Electrical Room Demolition plan*
Site Plan*
One-Line Diagram*
Pump Station Power Plan*
Pump Station Signal Plan*
VFD Schematic Diagrams*
Motor Control Diagrams*
Conduit and Conductor Schedule
Panel Schedules
Details

Instruments & Controls

Control Panel Index*
Control Panel IO List*
Control Panel Layout 1*
Control Panel Layout 2*
Control Panel Power Distribution*
Control Panel Digital Inputs*
Control Panel Digital Outputs*
Control Panel Analog Inputs*
Control Panel Analog Outputs*
Instrument Standard Details

Schedule B WRRF Improvements (31 sheets)

Mechanical

Generator Room Demo*
Acoustic Room Demo*
Generator Room Mechanical*

Acoustic Room Mechanical*

Electrical

Electrical Legend and Abbreviations*
Electrical Room Demolition plan*
Site Plan*
One-Line Diagram*
MCC A One-Line Diagram*
MCC B One-Line Diagram*
Electrical Room Power Plan*
Generator Room Power Plan*
MCC A Elevation*
MCC B Elevation*
Transfer Switch Details*
Generator Details*
Conduit and Conductor Schedules
Panel Schedules
Details

Instruments & Controls

Control Panel Index*
Control Panel IO List*
Control Panel Layout 1*
Control Panel Layout 2*
Control Panel Power Distribution*
Control Panel Digital Inputs 1*
Control Panel Digital Inputs 2*
Control Panel Digital Outputs 1*
Control Panel Digital Outputs 2*
Control Panel Analog Inputs*
Control Panel Analog Outputs*
Instrument Standard Details

*Denotes drawings to be included with 60% PS&E

**HOODLAND WRRF MODERNIZATION
CLACKAMAS WATER ENVIRONMENT SERVICES
PROPOSED FEE ESTIMATE**

	LABOR CLASSIFICATION (HOURS)												ESTIMATED FEES						
	Principal Engineer IV \$220.00	Principal Engineer II \$213.30	Professional Engineer VIII \$167.60	Professional Engineer VII \$172.14	Professional Engineer IV \$127.23	Professional Engineer III \$125.19	Engineering Designer I \$92.33	Technician IV \$115.18	Administrative II \$78.12	Administrative II \$74.33	Administrative I \$53.21	Hours	Labor	Subconsultants			Subconsultant Total	Expenses	Total
	Preston Van Meter	Mike Carr	Adam Crafts	Austin Ramblin	Eddie Kreipe	Kysa Cornrath	Patrick Davis	Doug Kuhlman	Kelsey Pitts	Jeff Haught	Morgan Steinberg			R&W Electrical	I&C PEI	PSE Structural			
	<i>QA/QC</i>	<i>PIC</i>	<i>PM</i>	<i>PE - AWPS</i>	<i>PE - AWPS</i>	<i>PE - WRRF</i>	<i>Designer</i>	<i>CAD</i>	<i>Billing Coord.</i>	<i>Contract Admin</i>	<i>Admin Assist</i>								
Task 1 - Project Management and Review																			
<i>Task 1 Subtotal</i>	0	16	76	0	0	0	0	0	18	16	12	138	\$ 19,384	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 19,384
Task 6 - 60% Design Development																			
<i>Task 6 Subtotal</i>	0	8	14	46	88	76	194	88	0	0	16	530	\$ 61,581	\$ 43,176	\$ 12,902	\$ 15,136	\$ 71,214	\$ 193	\$ 132,987
Task 7 - 90% Contract Documents																			
<i>Task 7 Subtotal</i>	0	8	18	54	74	32	98	50	8	0	16	358	\$ 43,723	\$ 23,100	\$ 5,914	\$ 2,604	\$ 31,618	\$ 180	\$ 75,521
Task 8 - Final Contract Documents																			
<i>Task 8 Subtotal</i>	0	4	12	16	32	8	28	12	0	0	12	124	\$ 15,297	\$ 10,878	\$ 1,882	\$ 1,465	\$ 14,225	\$ 148	\$ 29,670
Task 9 - Bid Period Services																			
<i>Task 9 Subtotal</i>	0	0	8	20	8	0	8	4	0	0	0	48	\$ 7,001	\$ 4,715	\$ 2,419	\$ 1,302	\$ 8,436	\$ 48	\$ 15,484
Task 10 - Quality Management Plan																			
<i>Task 10 Subtotal</i>	32	6	18	14	0	0	0	0	0	0	8	78	\$ 14,172	\$ 1,134	\$ 3,226	\$ 1,139	\$ 5,499	\$ -	\$ 19,671
TOTAL - ALL TASKS	32	42	146	150	202	116	328	154	26	16	64	1276	\$ 161,158	\$ 83,003	\$ 26,343	\$ 21,646	\$ 130,992	\$ 568	\$ 292,718