



AGENDA

Thursday, September 11, 2014 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2014-

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

II. READING AND ADOPTION OF PREVIOUSLY APPROVED LAND USE ORDINANCES

(No public testimony on this item)

(Nathan Boderman, County Counsel)

1. Adoption of Zoning and Development Ordinance 249, Amendments to the Urban Residential Zoning District Provisions of the Comprehensive Plan and the ZDO
2. Adoption of Zoning and Development Ordinance 250, Amendments to the Urban Residential Zoning District Provisions of the Comprehensive Plan and the ZDO
3. Adoption of Zoning and Development Ordinance 248, Amendments to the Land Use Permit Application Procedural Standards of the Comprehensive Plan and the ZDO

III. PUBLIC HEARINGS *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

4. 1. Second Reading Ordinance No. 04-2014 Amending Title 6 of the Clackamas County Code, Smoking Regulations In and Around County Facilities (Stephen Madkour, County Counsel)
5. 2. First Reading of Ordinance No. _____ Amending Chapter 2.05 of the County Code Personnel Policies and Procedures for Clackamas County Employees (Christina Thacker, County Counsel)

IV. DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

~NO DISCUSSION ITEMS SCHEDULED

V. 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 Study Session. 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

- 6
1. Approval of a Grant Agreement Amendment No. 1 for the US Department of Housing and Urban Development, Supportive Housing Program for the HOPE II Leasing Program for the Purpose of Providing Permanent Housing – *Social Services*
 - 7
 2. Approval of a Grant Agreement with the US Department of Housing and Urban Development Continuum of Care Program for Continuum of Care Planning – *Housing and Community Development*

B. Department of Transportation & Development

- 8
1. Approval of an Intergovernmental Agreement with Marion County for Right-of-Way Acquisition Related to the Pudding River (Whiskey Hill Road) Bridge Replacement Project
 - 9
 2. Approval of an Intergovernmental Agreement with Clackamas County Service District No. 1 for the SE Mabel & SE Webster Drainage Improvement Project
 - 10
 3. Approval of the Intergovernmental Agreement (Contract No. 932856) with Metro for Fiscal Year 14-15 'Early Adopter' Food Scrap Collection Activities

C. Department of Emergency Management

- 11
1. Approval of a Cooperative Agreement with Rhododendron Water Association for the Use of Clackamas County Emergency Notification System
 - 12
 2. Approval of an Intergovernmental Agreement with Canby Utility for the Use of Clackamas County Emergency Notification System

D. Elected Officials

- 13
1. Approval of Previous Business Meeting Minutes – *BCC*
 - 14
 2. Request by the Clackamas County Sheriff's Office to Enter into an Intergovernmental Agreement with Oregon Department of Human Services for Funding to Conduct a Specialist Interview Training – *CCSO*
 - 15
 3. Board Order No. _____ Cancelling Delinquent Manufacture Structure Personal Property Taxes – *Assessor's Office*
 - 16
 4. Board Order No. _____ Cancelling Delinquent Personal Property Tax Accounts – *Assessor's Office*
 - 17
 5. Resolution No. _____ Appointing Justice of the Peace Pro Tempore for the Clackamas County Justice of the Peace District – *Justice Court*

E. Juvenile Department

- 18 1. Approve of an Intergovernmental Agreement with Multnomah County for Assessment and Evaluation Beds

VI. WATER ENVIRONMENT SERVICES

- 19 1. Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Happy Valley for the Cedar Way Stream Stabilization Project.
- 20 2. Approval of a Joint Funding Agreement between Clackamas County Service District No. 1 and the US Geological Survey for Creek Flow Measuring Work.
- 21 3. Approval of a Joint Funding Agreement between Clackamas County Service District No. 1 and the US Geological Survey for Cooperative Hydrologic Monitoring Work in the Johnson Creek Watershed.
- 22 4. Approval of a Joint Funding Agreement between the Surface Water Management Agency of Clackamas County and the US Geological Survey for Tualatin River Monitoring.
- 23 5. Approval of Amendment No. 1 to the Agreement to Furnish Professional Services between Clackamas County Service District No. 1 and CH2M Hill Engineers, Inc. for Stage II of the Kellogg Water Pollution Control Plant Outfall Improvement Project.

VII. COUNTY ADMINISTRATOR UPDATE

VIII. 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 by the following Saturday. 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

Stephen L. Madkour
County Counsel

Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Adoption of Zoning and Development Ordinance 249, Amendments to the Urban Residential Zoning District Provisions of the Comprehensive Plan and the ZDO

Purpose/Outcome	Amend the Comprehensive Plan and the Zoning and Development Ordinance
Dollar Amount and Fiscal Impact	None
Funding Source	NA
Safety Impact	None anticipated
Duration	Indefinitely
Previous Board Action/Review	Board of County Commissioners held a planning session on July 9, 2014, and a public hearing on July 30, 2014
Contact Person	Kay Pollack, 503-742-4513
Contract No.	None

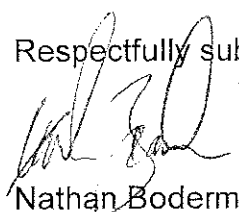
BACKGROUND:

The Planning and Zoning Division is in the midst of a five-year work program to "audit" the Zoning and Development Ordinance (ZDO). The intent is to complete, by the end of the five-year work program, a comprehensive review and proposed amendments for every section of the ZDO. This second year of the work program has focused, in part, on the County's urban residential zoning districts, resulting in the consideration of amendments to permitted uses, dimensional standards, and development standards in all 18 of the County's urban residential zones. Also included is a proposal to amend the Comprehensive Plan to ensure consistency with the ZDO.

changes for consistency (e.g., standardizing formatting, updating citations) ZDO-249 amends the Comprehensive Plan as follows:

RECOMMENDATION: Staff recommends the Board adopt the attached ordinance.

Respectfully submitted,



Nathan Boderman
County Counsel

ORDINANCE NO. ZDO-249

An Ordinance amending Chapters 4, 6, and 10 of the Clackamas County Comprehensive Plan and Sections 106, 202, 309, 312, 314, 601, 602, 824, 825, 903, 1005, 1009, 1012, 1014, 1016, 1018, 1102, 1203, 1206 and 1600 of the Clackamas County Zoning and Development Ordinance(ZDO); adopting Sections 315, 838 and 839 of the ZDO; and repealing Sections 301, 302, 303, 304, 311, 313, 1603, 1604, 1605 and 1706 of the ZDO.

WHEREAS, the approved work program for the Planning and Zoning Division includes a five-year audit of the Clackamas County Zoning and Development Ordinance (ZDO) intended to update, streamline and clarify the County's land use regulations; and

WHEREAS, the second year of the ZDO audit focused in part on the County's urban residential zoning districts, resulting in a proposal to amend permitted uses, dimensional standards, and development standards in all 18 of these zoning districts; and

WHEREAS, amendments to the Comprehensive Plan are necessary to ensure continued consistency between the Comprehensive Plan and the ZDO; and

WHEREAS, it is a policy of the Board of County Commissioners to provide excellent public service to citizens and the development community, streamline permitting processes, encourage sound land use and development and improve the Comprehensive Plan and ZDO as necessary; and

WHEREAS, the proposed amendments are consistent with the Statewide Planning Goals and Guidelines and the Metro Urban Growth Management Functional Plan; and

WHEREAS, after a duly-noticed public hearing on June 23, 2014, the Clackamas County Planning Commission recommended approval of amendments to the Comprehensive Plan and ZDO; and

WHEREAS, the Board of County Commissioners held a public hearing on July 30, 2014, and orally approved a modified version of the Planning Commission's recommendation; now therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapters 4, 6 and 10 of the Clackamas County Comprehensive Plan are hereby amended as shown in Exhibit A, hereto attached.

Section 2: Sections 106, 202, 309, 312, 314, 601, 602, 824, 825, 903, 1005, 1009, 1012, 1014, 1016, 1018, 1102, 1203, 1206 and 1600 of the Clackamas County Zoning and Development Ordinance(ZDO) are hereby amended; Sections 315, 838 and 839 of the ZDO are hereby adopted; and Sections 301, 302, 303, 304, 311, 313, 1603, 1604, 1605 and 1706 of the ZDO are hereby repealed, as shown in Exhibit B, hereto attached.

Section 3: This ordinance shall be effective on October 13, 2014.

ADOPTED this 11th day of September, 2014

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



2

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

Stephen L. Madkour
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Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Adoption of Zoning and Development Ordinance 250, Amendments to the Urban Commercial and Mixed-Use Zoning District Provisions of the Comprehensive Plan and the ZDO

Purpose/Outcome	Amend the Comprehensive Plan and the Zoning and Development Ordinance
Dollar Amount and Fiscal Impact	None
Funding Source	NA
Safety Impact	None anticipated
Duration	Indefinitely
Previous Board Action/Review	Board of County Commissioners held a planning session on July 9, 2014, and a public hearing on July 16, 2014
Contact Person	Jennifer Hughes, 503-742-4518
Contract No.	None

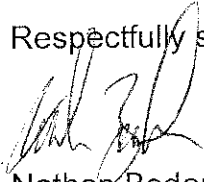
BACKGROUND:

The Planning and Zoning Division is in the midst of a five-year work program to "audit" the Zoning and Development Ordinance (ZDO). The intent is to complete, by the end of the five-year work program, a comprehensive review and proposed amendments for every section of the ZDO. This second year of the work program has focused, in part, on the County's urban commercial and mixed-use zoning districts, resulting in the consideration of amendments to permitted uses, dimensional standards, and development standards in 13 of the County's urban commercial and mixed-use zones, as well as a proposal to repeal the Village Commercial District provisions due to the annexation of the Village Commercial area to the City of Happy Valley. Also included is a proposal to amend the Comprehensive Plan to ensure consistency with the ZDO.

In preparing the final documents for adoption, staff made housekeeping changes for consistency (e.g., standardizing formatting, updating citations). Also, references to taverns, bars and cocktail lounges in proposed Section 510 of the ZDO were deleted to reflect the Board's direction to eliminate the regulatory distinctions in the code between these establishments and restaurants. (Refer to the listing for "Services—Commercial, Food and Beverage" in Table 510-1 for the final text.)

RECOMMENDATION: Staff recommends the Board adopt the attached ordinance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nathan Boderman", written over a faint circular stamp.

Nathan Boderman
County Counsel

ORDINANCE NO. ZDO-250

An Ordinance amending Chapters 4, 8, and 10 of the Clackamas County Comprehensive Plan and Sections 103, 315, 504, 601, 602, 827, 838, 839, 1001, 1005, 1007, 1009, 1010, 1011, 1012, 1015, 1016, 1102, 1104, 1202, 1203, 1204 and 1206 of the Clackamas County Zoning and Development Ordinance(ZDO); adopting Sections 510, 511 and 512 of the ZDO; and repealing Sections 501, 502, 503, 507, 508, 509, 1600, 1602, 1606, 1607, 1608, 1700, 1701, 1702, 1703, 1704 and 1707 of the ZDO.

WHEREAS, the approved work program for the Planning and Zoning Division includes a five-year audit of the Clackamas County Zoning and Development Ordinance (ZDO) intended to update, streamline and clarify the County's land use regulations; and

WHEREAS, the second year of the ZDO audit focused in part on the County's urban commercial and mixed-use zoning districts, resulting in a proposal to amend permitted uses, dimensional standards, and development standards in 13 such zoning districts, as well as a proposal to repeal the Village Commercial District provisions due to the annexation of the Village Commercial area to the City of Happy Valley; and

WHEREAS, amendments to the Comprehensive Plan are necessary to ensure continued consistency between the Comprehensive Plan and the ZDO; and

WHEREAS, it is a policy of the Board of County Commissioners to provide excellent public service to citizens and the development community, streamline permitting processes, encourage sound land use and development and improve the Comprehensive Plan and ZDO as necessary; and

WHEREAS, the proposed amendments are consistent with the Statewide Planning Goals and Guidelines and the Metro Urban Growth Management Functional Plan; and

WHEREAS, after a duly-noticed public hearing on June 9, 2014, the Clackamas County Planning Commission recommended approval of amendments to the Comprehensive Plan and ZDO; and

WHEREAS, the Board of County Commissioners held a public hearing on July 16, 2014, and orally approved a modified version of the Planning Commission's recommendation; now therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapters 4, 8 and 10, including Map X-SV-1, of the Clackamas County Comprehensive Plan are hereby amended as shown in Exhibit A, hereto attached.

Section 2: Sections 103, 315, 504, 601, 602, 827, 838, 839, 1001, 1005, 1007, 1009, 1010, 1011, 1012, 1015, 1016, 1102, 1104, 1202, 1203, 1204 and 1206 of the Clackamas County Zoning and Development Ordinance(ZDO) are hereby amended; Sections 510, 511 and 512 of the ZDO are hereby adopted; and Sections 501, 502, 503, 507, 508, 509, 1600, 1602, 1606, 1607, 1608, 1700, 1701, 1702, 1703, 1704 and 1707 of the ZDO are hereby repealed, as shown in Exhibit B, hereto attached.

Section 3: This ordinance shall be effective on October 13, 2014.

ADOPTED this 11th day of September, 2014

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



3

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

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Assistants

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Adoption of Zoning and Development Ordinance 248, Amendments to the Land Use Permit Application Procedural Standards of the Comprehensive Plan and the ZDO

Purpose/Outcome	Amend the Comprehensive Plan and the Zoning and Development Ordinance
Dollar Amount and Fiscal Impact	None
Funding Source	NA
Safety Impact	None anticipated
Duration	Indefinitely
Previous Board Action/Review	Board of County Commissioners held a planning session on July 9, 2014, and a public hearing on July 16, 2014
Contact Person	Jennifer Hughes, 503-742-4518
Contract No.	None

BACKGROUND:

The Planning and Zoning Division is in the midst of a five-year work program to "audit" the Zoning and Development Ordinance (ZDO). The intent is to complete, by the end of the five-year work program, a comprehensive review and proposed amendments for every section of the ZDO. This second year of the work program has focused, in part, on the procedural standards for reviewing land use permit applications, resulting in the consideration of amendments to these standards. Also included is a proposal to amend the Comprehensive Plan to ensure consistency with the ZDO.

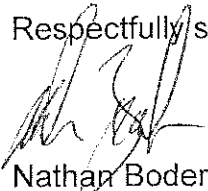
The amendments proposed for adoption by Ordinance were considered previously by the Board at a planning session and a public hearing and remain

substantive changes were made to reflect the Board's direction at the conclusion of the public hearing:

- The proposed increase in property owner notification distances for Type III land use permit applications in the rural and natural resource zones was removed.
- Additional language was added to the provisions for initiating a Type IV legislative land use proposal. This language is intended to clarify that initiating a legislative proposal does not obligate the County to further processing of such a proposal.

RECOMMENDATION: Staff recommends the Board adopt the attached ordinance.

Respectfully submitted,



Nathan Boderman
County Counsel

ORDINANCE NO. ZDO-248

An Ordinance amending Chapter 11 of the Clackamas County Comprehensive Plan and Sections 106, 202, 305, 306, 307, 308, 309, 310, 312, 314, 401, 406, 407, 504, 505, 601, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 813, 818, 822, 829, 830, 835, 837, 1002, 1011, 1013, 1016, 1018, 1102, 1103, 1105, 1106, 1107, 1202, 1203, 1204, 1205 and 1206 of the Clackamas County Zoning and Development Ordinance(ZDO); adopting Sections 1307, 1308, 1309 and 1310 of the ZDO; and repealing Sections 104, 105, 1201, 1301, 1302, 1303, 1304, 1305, 1400 and 1500 of the ZDO.

WHEREAS, the approved work program for the Planning and Zoning Division includes a five-year audit of the Clackamas County Zoning and Development Ordinance (ZDO) intended to update, streamline and clarify the County's land use regulations; and

WHEREAS, the second year of the ZDO audit focused in part on the procedural standards for reviewing land use permit applications, resulting in a proposal to amend these standards; and

WHEREAS, amendments to the Comprehensive Plan are necessary to ensure continued consistency between the Comprehensive Plan and the ZDO; and

WHEREAS, it is a policy of the Board of County Commissioners to provide excellent public service to citizens and the development community, streamline permitting processes, encourage sound land use and development and improve the Comprehensive Plan and ZDO as necessary; and

WHEREAS, the proposed amendments are consistent with the Statewide Planning Goals and Guidelines and the Metro Urban Growth Management Functional Plan; and

WHEREAS, after a duly-noticed public hearing on June 9, 2014, the Clackamas County Planning Commission recommended approval of amendments to the Comprehensive Plan and ZDO; and

WHEREAS, the Board of County Commissioners held a public hearing on July 16, 2014, and orally approved a modified version of the Planning Commission's recommendation; now therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 11 of the Clackamas County Comprehensive Plan is hereby amended as shown in Exhibit A, hereto attached.

Section 2: Sections 106, 202, 305, 306, 307, 308, 309, 310, 312, 314, 401, 406, 407, 504, 505, 601, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 813, 818, 822, 829, 830, 835, 837, 1002, 1011, 1013, 1016, 1018, 1102, 1103, 1105, 1106, 1107, 1202, 1203, 1204, 1205 and 1206 of the Clackamas County Zoning and Development Ordinance(ZDO) are hereby amended; Sections 1307, 1308, 1309 and 1310 of the ZDO are hereby adopted; and Sections 104, 105, 1201, 1301, 1302, 1303, 1304, 1305, 1400 and 1500 of the ZDO are hereby repealed, as shown in Exhibit B, hereto attached.

Section 3: This ordinance shall be effective on October 13, 2014.

ADOPTED this 11th day of September, 2014

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



4

OFFICE OF COUNTY COUNSEL

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

September 11, 2014

Stephen L. Madkour
County Counsel

Board of County Commissioner
Clackamas County

Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

Members of the Board:

Second Reading of Ordinance No.04-2014, Amending Title 6 of the Clackamas County Code, Smoking Regulations In and Around County Facilities

Purpose/Outcomes	To amend Title 6 of the County Code to prohibit E-Cigarettes and to further clarify the County's tobacco use policies.
Dollar Amount and Fiscal Impact	N/A
Funding Source	Existing general fund
Safety Impact	Prohibiting tobacco use in and around county facilities is in the best interest of the health, safety, and welfare of citizens and employees of Clackamas County
Duration	Effective immediately upon adoption.
Previous Board Action	The Board met in an April 2, 2014 study session on this matter and decided to proceed to a public hearing. The first reading of the ordinance was on August 21, 2014.
Contact Person	Stephen L. Madkour, County Counsel 503-655-8362

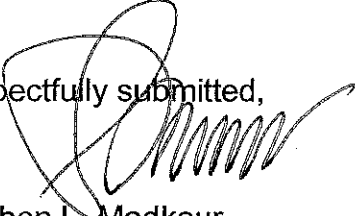
BACKGROUND:

Title 6.04 of the County Code regulated smoking in and around county facilities. The proposed amendments to the Code clarify some of the language in the existing code, and include in the definition of prohibited items chewing tobacco and electronic or e-cigarettes. The current ordinance does not prohibit chewing tobacco or electronic cigarettes. The amendments also include some housekeeping items, such as a change in title, and prohibiting tobacco use in county vehicles. A redlined version of the proposed ordinance is attached as Exhibit A.

RECOMMENDATION:

Staff recommends the Board of County Commissioners read the proposed ordinance by title only. After the second reading the proposed ordinance would be adopted and declaring an emergency would be effective immediately.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Madkour', written over the text 'Respectfully submitted,'.

Stephen L. Madkour
County Counsel

ORDINANCE NO. 04-2014

**An Ordinance Amending Chapter 6.04 Smoking Regulations In and Around
County Facilities of the Clackamas County Code**

WHEREAS, the Clackamas County Board of Commissioners finds that Title 6, Smoking Regulations in and Around County Facilities, of the Clackamas County Code should be updated to reflect public health concerns about all tobacco use and electronic cigarettes; and

WHEREAS, the Clackamas County Board of Commissioners finds that the use of electronic or e-cigarettes to be contrary to the public health, safety and welfare; and

Now, therefore, the Board of Commissioners of Clackamas County amends the Clackamas County Code as follows:

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 6.04 of the Clackamas County Code is hereby amended in title and substance as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

Section 2: Emergency Clause. The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the health, safety, and welfare of the employees and residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this _____ day of September 2014.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

EXHIBIT A

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2006, 6-29-06]

Chapter 6.04

~~6.04~~ **6.04 TOBACCO USE SMOKING REGULATIONS IN AND AROUND COUNTY FACILITIES**

[The Title of Chapter 6.04 changed by Ord. 04-2008, 12/18/08]

6.04.010 Purpose

The purpose of this chapter is to protect the health and welfare of the public, County employees and of all Clackamas County by providing a place that is free of tobacco, tobacco smoke, vapor and other smoking instruments for all employees, clients, contractors, volunteers, and visitors to County facilities, and to reduce costs for the repair, maintenance and cleaning of County property, and to reduce the risk of fire.

[Codified by Ord. 05-2000, 7/13/00; Repealed and Replaced by Ord. 04-2008, 12/18/08]

6.04.020 Definitions

As used in this chapter:

- A. COUNTY FACILITY means an enclosed area that is operated, owned, leased, or rented by Clackamas County, or any of its departments or agencies. It includes, but is not limited to buildings, portions of buildings, meeting rooms, elevators, stairways, and motor vehicles that are operated in the course of County business ~~that are not operated exclusively by one employee.~~
- B. DESIGNATED SMOKING AREA means a location sheltered or unsheltered that is designated by Clackamas County and posted with signage that indicates it is a permissible smoking area.
- C. ENCLOSED AREA means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways that extend from the floor to the ceiling.
- D. SMOKING means using, inhaling, exhaling, burning or carrying any smoking instrument, or lighted or heated cigar, cigarette, pipe, weed, plant, or other tobacco like product or substance in any manner or in any form, including the use of electronic smoking devices which create a vapor.
- E. SMOKING INSTRUMENT means any cigar, cigarette, pipe, or other smoking equipment, including any form of electronic cigarette or smoking apparatus; also includes smokeless dissolvable tobacco or nicotine product; chewing tobacco, also known as chew, snuff, or dip.
- F. TOBACCO PRODUCT includes any means any product that contains tobacco or is derived from tobacco and is intended to be introduced into the human body. "Tobacco Product" includes any electronic smoking device. "Tobacco Product" does not mean any

product that the United States Food and Drug Administration has approved as a tobacco use cessation product.

[Codified by Ord. 05-2000, 7/13/00; Repealed and Replaced by Ord. 04-2008, 12/18/08]

6.04.030 Policy

- A. Smoking is prohibited inside all County facilities. Smoking is restricted to designated smoking areas outside County facilities on County property. These prohibitions shall apply to all employees, clients, contractors, volunteers, and visitors.
- B. A person may not smoke ~~or use or carry any lighted~~ smoking instrument within 25 feet of the following parts of a County facility:
 - 1. Entrances;
 - 2. Exits;
 - 3. Windows that open; and
 - 4. Ventilation intake that serves an enclosed area.
- C. A conspicuous sign stating that smoking is prohibited shall be posted at the entrance of every County facility where smoking is prohibited by this chapter.

[Codified by Ord. 05-2000, 7/13/00; Repealed and Replaced by Ord. 04-2008, 12/18/08]

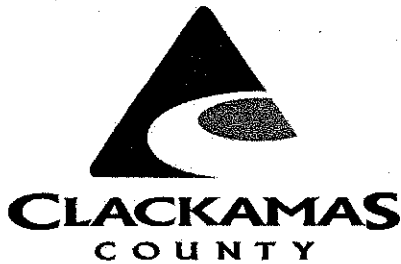
6.04.040 Violation

It is a violation of this chapter for any person to smoke in any area where smoking is prohibited by this chapter.

[Codified by Ord. 05-2000, 7/13/00; Repealed and Replaced by Ord. 04-2008, 12/18/08]

6.04.050 Severability

If any clause, section or provision of this chapter is declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall remain in full force and effect and be valid as if the invalid portion had not been incorporated herein. [Codified by Ord. 05-2000, 7/13/00; Repealed and Replaced by Ord. 04-2008, 12/18/08]



5

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

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Nathan K. Boderman
Christina Thacker
Assistants

Members of the Board:

First Reading of an Ordinance Amending Chapter 2.05 of the County Code
Personnel Policies and Procedures for Clackamas County Employees

Purpose/Outcomes	Amendments conform County Code to certain changes in Oregon Law and update other sections, per management concerns.
Dollar Amount and Fiscal Impact	N/A
Funding Source	Existing general fund
Safety Impact	N/A
Duration	Effective 90 days after adoption.
Previous Board Action	The Board held a study session on July 22, 2014.
Contact Person	Christina Thacker, Office of County Counsel, 503-655-8362

BACKGROUND:

County Counsel and Department of Employee Services presented proposed changes to the personnel ordinance section of the County Code (Chapter 2.05) to this Board in study session on July 22, 2014.

County Counsel and DES updated the personnel ordinance in order to be reflective of the needs of the departments and the changing employment environment. Legally, these proposed changes are intended to protect the County and employees by establishing clear language regarding employee behavior and County procedures. DES has negotiated with the unions as

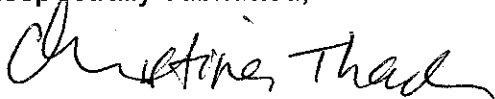
required by law for those changes that affect mandatory subjects of bargaining under Oregon law.

Attachment A shows the revisions to County Code Chapter 2.05, Personnel Policies and Procedures for Clackamas County Employees.

RECOMMENDATION:

Staff recommends the Board of County Commissioners read the proposed ordinance by title only and schedule for second reading.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christina Thacker".

Christina Thacker
County Counsel

ORDINANCE NO. _____

**An Ordinance Amending Chapter 2.05 Personnel Policies and Procedures of the
Clackamas County Code**

WHEREAS, the County Code should be updated to be reflective of the needs of the departments and the changing employment environment;

Now, therefore, the Board of Commissioners of Clackamas County amends the Clackamas County Code as follows:

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 2.05, Personnel Policies and Procedures of the Clackamas County Code is hereby as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

ADOPTED this _____ day of September 2014.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Chapter 2.05, Personnel Policies and Procedures
(new text is underlined; deletions are struck through)

2.05.030 Definitions

- A. ADVERSE IMPACT means a substantially different rate of selection in any phase of the employment process which works to the disadvantage of members of a protected class.
- B. AFFIRMATIVE ACTION means identifying existing or potentially discriminatory conditions and making specific goal oriented corrective actions to eliminate and prevent unlawful discrimination.
- C. ALLOCATED POSITION means a position which is specifically identified in the budget.
- D. APPEAL means a request for a hearing before the Hearings Officer as provided by this chapter.
- E. APPOINTING AUTHORITY means any person vested with the authority to appoint individuals to County positions. Such authority will be vested in elected officials and department directors, and may be delegated to supervisory employees within a department or division.
- F. APPOINTMENT means the offer and acceptance of a job made in accordance with these rules.
- G. BONA FIDE OCCUPATIONAL QUALIFICATIONS means attributes that are job related and necessary for the safe and efficient operation of a business.
- H. CAUSE is defined in section 2.05.190.3.
- I. CLASSIFICATION means a group of positions sufficiently similar in duties, authority and responsibility to permit grouping under a common title and which call for similar qualifications and the same schedule of pay.
- J. CLASSIFICATION PLAN means a document which embodies all classifications that have been established, and the specification or descriptions of these classes.
- K. CLASSIFICATION SPECIFICATION means a written description of a classification containing a title, the general characteristics of the kind and level of work, description of typical duties, responsibilities, skills and knowledge required; other qualifications which may include requirements of training and experience; EEO category designation; and other pertinent information.
- L. CLASSIFIED EMPLOYEE means a person who has been appointed to a position in the classified service.
- M. CLASSIFIED SERVICE means those County positions which are not specifically exempt under 2.05.040.3 (B).
- N. DEMOTION means changing an employee's position to a classification that has a lower salary grade than the employee's present classification.
- O. DEPARTMENT means a County organizational unit under the direction of a single appointing authority.
- P. DIRECTOR OF EMPLOYEE SERVICES means a person appointed as the Director of the

Department of Employee Services or a staff person, which the Director has designated as a representative.

- Q. DISCIPLINARY ACTION means any action taken by an appointing authority which reprimands the employee, or reduces temporarily or permanently, an employee's pay status, benefits, or other incidents of employment.
- R. DISCRIMINATION means illegal discrimination on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, age, disability, or other protected status as those terms are understood under Oregon and federal law.
- S. DOMESTIC PARTNER means persons who are eligible for County employee benefits domestic partner coverage.
- T. DOWNGRADING means a reclassification of a position where the newly assigned classification has a lower salary grade.
- U. EEO OCCUPATIONAL CATEGORY means a group of occupations deemed to be similar in duties, authority or responsibility as determined by the Equal Employment Opportunity Commission.
- V. ELIGIBLE REGISTER means a list of applicants for County employment or advancement in County employment who have successfully completed the selection process. In a banded recruitment, the eligible register consists of bands A, B and C, (if applicable) but not band D.
- W. EQUIVALENT CLASSIFICATION means a classification that requires both the same kind of knowledge and the same degree of skills.
- X. FRAUD means conduct which meets all of the following elements of fraud as defined in the common law of the State of Oregon: (1) a representation is made; (2) the representation is false; (3) the representation is material; (4) the representation is made by the speaker with knowledge of its falsity or ignorance of its truth; (5) the speaker intends that the hearer should act upon the representation and do so in the manner reasonably contemplated; (6) the hearer is ignorant of the falsity of the representation; (7) the hearer relies on the truth of the representation; (8) the hearer has a right to rely on the truth of the representation; and (9) the hearer is injured as a consequent and proximate cause of reliance on the representation.
- Y. GRIEVANCE means a complaint filed pursuant to a collective bargaining agreement.
- Z. HEARING means a hearing that is established as a result of an appeal to the Hearings Officer to resolve employment disputes.
- AA. HEARINGS OFFICER means a person who is not an officer or employee of the County and is designated by the Board of County Commissioners to preside at hearings regarding employee appeals.
- BB. HIGHER SALARY GRADE means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades.
- CC. JOB SHARE means a situation in which two people share duties and responsibilities of one full-time position.
- DD. LAYOFF means a separation from the County service due to a shortage of funds or materials, elimination of position, material change in duties, changes in an organizational unit, inability to perform assigned duties due to a medical condition, or for any other

- reasons not reflecting discredit on an employee and outside of the employee's control.
- EE. LIMITED TERM APPOINTMENT means an appointment to a position which has been budgeted and allocated for a limited duration not to exceed two (2) years but which is in excess of the time requirements for temporary positions.
- FF. LOWER SALARY GRADE means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades.
- GG. NONREPRESENTED EMPLOYEE means an employee whose position is not included in one of the recognized County collective bargaining units.
- HH. OPEN REGISTER means an eligibility register consisting of all persons who have successfully completed an open competitive selection process. An open register may be a ranked open register, an unranked open register, or a banded open register.
- II. PERSONNEL ACTION means any action taken with reference to appointment, compensation, promotion, transfer, layoff, dismissal or any other action affecting an employee's status.
- JJ. PERSONNEL FILE means the official record of each employee in the County service as established and maintained by the Department of Employee Services.
- KK. POSITION ALLOCATION means the number of positions budgeted in a classification within each department.
- LL. POSITION CONTROL means the process for obtaining budgetary approval for the allocation and filling of a position.
- MM. POSITION REQUISITION means a Department of Employee Services form used to request the budgeting or filling of a position.
- NN. PROBATION means a working test period during which a classified employee is required to demonstrate fitness by actual performance of the duties of the position to which the employee is appointed.
- OO. PROMOTION means the appointment of an employee to a position in a classification that has a higher salary grade.
- PP. PROMOTIONAL/INTERNAL REGISTER means an eligible register consisting only of County employees who have regular status with the County or who have completed six (6) months of continuous service in a classified position and who have successfully completed an internal selection process.
- QQ. PROTECTED CLASS means members of groups of persons afforded protection under State and/or Federal law.
- RR. PROVISIONAL means an appointment of a person not on an eligible register to a classified position, for a limited duration of time not to exceed three (3) months.
- SS. RATERs means representatives of departments, the public, interested organizations or other public jurisdictions who have been designated to administer and score selection procedures.
- TT. RECLASSIFICATION means a change in allocation of an individual position by raising it to a higher classification, reducing it to a lower classification or moving it to another classification at the same level on the basis of significant changes in the kind, difficulty or responsibility of the work performed in such a position.
- UU. RED CIRCLE means a process authorized by the Board of County Commissioners and

- used to continue the same salary rate as an employee received prior to a downgrading of the position or prior to the reduction of the salary grade for the classification.
- VV. REFERRAL OF ELIGIBLES means the process by which eligible applicants are referred by the Department of Employee Services to the appointing authority for selection.
 - WW. REGULAR EMPLOYEE means a classified employee who has been appointed to an allocated position and who has successfully completed a probationary period for the position.
 - XX. REGULAR STATUS means the status a classified employee acquires after successful completion of a probationary period for the particular allocated position to which the employee was appointed.
 - YY. RULES OF PRIVILEGE means the definition found in ORS 40.225 - 40.295 shall apply.
 - ZZ. SALARY GRADE means the number assigned by the County to a particular employee group and pay range in the County compensation plan. A salary grade will have a maximum and minimum pay rate, and may or may not have specific pay steps between the maximum and minimum pay rates, depending on the employee group to which the salary grade pertains.
 - AAA. SELECTION PROCEDURE means a reasonable and impartial method of systematically and fairly evaluating an applicant's fitness for performing the requirements of a position.
 - BBB. SENIORITY means the definition found in the applicable collective bargaining contract will apply. If no such definition exists, then seniority will be defined as length of continuous years of service with the County.
 - CCC. TEMPORARY POSITION means an unallocated position. Temporary positions are subject to an annual limit on hours worked as provided in Section 2.05.040.5.
 - DDD. TRANSFER means the movement of an employee to a different position in the same classification.
 - EEE. UNALLOCATED POSITION means a position which is not specifically identified in the budget. Unallocated positions are funded by a budget entry for "temporary workers" or similar entry. Unallocated positions are subject to an annual limit on hours worked as provided in Section 2.05.040.5.
 - FFF. UNCLASSIFIED SERVICE means those County positions which are exempt under 2.05.040 3B.
 - ~~GGG. UNDERFILL means an appointment to a position from a lower level eligibility register when no current eligibility register exists for the position.~~
 - HHHGGG. UNRANKED OPEN REGISTER means a register that is created when there are ten (10) or fewer applicants qualified for an open register for a single recruitment, and there are no names on the layoff or promotional/internal register for the position.
 - HHHHH. UPGRADING means a reclassification of a position in which the newly assigned classification has a higher salary grade.
 - JJJIII. ——— VOLUNTARY DEMOTION means a demotion approved by the County and requested by an employee in order to retain employment when layoff is imminent or for other reasons where the action is still entirely voluntary on the part of the employee.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2004, 11/18/04; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2007, 6/7/07; Amended by Ord. 05-2009, 10/29/09;

2.05.040.3 Application Of Personnel Chapter

All positions within the County government shall be divided into the classified or unclassified service.

- A. Classified Services: The classified service shall include all positions that are not included in the unclassified service. Positions in the classified service are subject to all of the provisions in this Personnel Chapter.
- B. Unclassified Service: The unclassified service shall include the following offices and positions:
 - 1. Any officer, chosen by popular election or appointed to fill a vacancy caused by death, resignation or removal of any officer chosen by election.
 - 2. Any special Deputy Sheriff or peace officer appointed to act without compensation from the County.
 - 3. Any Deputy District Attorney, the District Attorney Office Manager, the District Attorney Victim Assistance Manager, and the District Attorney Senior Administrative Services Manager.
 - 4. Any member of a board or commission whose principle vocation is other than as a County employee.
 - 5. Persons employed as on-site property managers residing in County-owned or County--provided facilities.
 - 6. Persons employed in unallocated positions (also known as temporary positions).
 - 7. Any part-time employee working less than half time.
 - 8. Persons employed under a limited term appointment status.
 - 9. The County Administrator, under employment contract with the Board of County Commissioners.
 - 10. Department directors, and the County Surveyor, under employment contract with the County Administrator.
 - 11. Persons holding positions whose positions are designated by the County Administrator as appropriate for unclassified status, who hold positions under employment contract with the County Administrator.
 - 12. Persons employed in the Sheriff's Office as a Captain or Undersheriff.
 - 13. The County Counsel, under employment contract with the Board of County Commissioners.
 - 14. Employees of the Office of County Counsel, under employment contracts with the County Counsel.
 - 15. Persons employed in unrepresented positions in the County Justice Court.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 13-2003, 7/13/03; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 04-2007, 4/26/07; Amended by Ord. 01-2009, 2/5/09; Amended by Ord. 05-2009, 10/29/09; Amended by Ord. 02-2012, 1/5/12]

2.05.060.2 Administration Of Compensation Plan

- A. Rates of Pay: Classified employees shall be paid at a rate established within the salary grade for the classification in which they are employed, unless otherwise authorized by the County Administrator.
- B. Entrance Salary: An employee will be appointed at the entrance rate for each classification. The entrance rate shall be ~~either the first step or~~ minimum pay rate in a salary grade established by a collective bargaining agreement or, for nonrepresented employees, it shall be any rate from minimum to midpoint in the established salary grade. If an appointment or reinstatement above the entrance rate (“upper-step”) is requested, authorization must be obtained from the County Administrator, through the Department of Employee Services. In determining such requests, the County Administrator shall give consideration to qualifications of the candidate, availability of applicants and the resulting salary relationship with other positions.
- C. Salary Increases: Salary increases are not automatic. Appointing authorities shall recommend to the County Administrator salary increases only for those employees who have demonstrated high standards of work performance. Work performance should be reviewed periodically to determine whether increases have been earned. (Refer to Performance Evaluation 2.05.120.)
1. Eligibility for Salary Increases: New employees or promoted employees shall be eligible for advancement to the next step or applicable percentage increase within of the salary grade for their classification six (6) months from the first of the month following their first day of work in the position. Thereafter, employees are eligible for a salary increase at the conclusion of twelve (12) months of continuous service since their last in-grade salary adjustment other than an exceptional increase. Eligibility for salary increases shall continue until employees reach the last step in their respective salary grade.
 2. Exceptional Increases: An appointing authority may request an exceptional increase for any employee when:
 - a. The employee’s performance is outstanding in relation to other employees in the same department, and the employee’s outstanding performance is documented according to an approved performance evaluation program; or
 - b. Other factors exist, such as compression of pay rates, which justify an exceptional increase; and;
 - c. Funds for such “special” increases are budgeted; and,
 - d. At least six (6) months have passed since the last “salary” or “step”

increase, or last promotion.

Exceptional increases will generally be limited to one step or percentage amount equivalent to one salary increase. Exceptional increases will not affect an employee's established salary increase date.

3. Interim Increases: An employee whose salary increase is denied may be eligible for an increase following an additional six-month period during which successful performance is monitored and documented. If such a salary increase is granted, the employee's new date of eligibility for a salary increase shall be one year from the date of the last salary increase.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

2.05.070.9 Modification Or Suspension Of Selection Procedures

- A. If there are fewer than five (5) or fewer eligible competitors in any part of the selection process, subsequent parts may be modified or suspended. In such a case, referral may be made, provided that there is no existing eligible register and all eligible applicants are to be referred and interviewed by the appointing authority.
- B. If there are ten (10) or fewer applicants qualified for an open register following review by the Department of Employee Services, and there are no names on the layoff or promotional/internal register, an unranked open register may be developed. Except as provided below in this section, all applicants on the unranked open register will be referred and interviewed by the appointing authority.
- C. An unranked open register will not be used if it conflicts with the terms of applicable collective bargaining agreements.
- D. An unranked open register will not be used if, prior to the job announcement open date, a department director specifically requests a ranked open register for that recruitment.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2004, 11/18/04; Amended by Ord. 05-2009, 10/29/09; Amended by Ord. 01-2011, 4/28/11]

2.05.090.1 Insufficient Names

When the total number of names on the available eligible register is fewer than five, (5), or a banded register has fewer than five (5) names on the A, B, and C bands, the appointing authority may elect to:

- A. Make a probationary appointment from those referred, or
- B. Accept referral of additional names from the most nearly appropriate eligible register as

- determined by the Director of Employee Services, or
- C. Request a provisional appointment, pending establishment of a new eligible register, and call for a new recruitment, or
 - D. ~~Accept referral of additional names from eligible registers of a lower grade classification in order to underfill the higher level position.~~

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2011, 4/28/11]

2.05.150.2 Types Of Leave

A. Military Leave:

In accordance with State and Federal law, employees are entitled to a cumulative five (5) year length of time in which they may be absent for military duty. Employees taking leave, either voluntarily or involuntarily, shall have a right to be restored to their former position or an equivalent position. The leave of absence shall be without pay and will not count towards monthly vacation, sick leave or longevity payments. However, seniority and employment credit towards vacation, salary increases, and longevity do accrue while on military leave. Employees returning from military leave shall be re-employed at the salary and service accrual level they would have achieved had they not left on military leave. To be eligible for such reinstatement the employee must be discharged under honorable conditions from the military and register an intent to return to County employment within timelines specified by State and Federal law.

Any employee, who has served in the County service for six (6) months preceding notification of duty and is a member of the National Guard, National Guard Reserve or any reserve component of the Armed Forces of the United States or of the United States Public Health Service, is entitled to an annual paid leave of absence for training for a period not exceeding fifteen (15) calendar days in any one training year. In the case of an employee on a five, (5) day workweek, this is equivalent to eleven (11) paid workdays in each training year. An employee on a four, (4) day workweek is entitled to a leave of nine (9) paid workdays per training year. The training year is defined as the Federal fiscal year commencing on October 1st and ending on September 30. Days for annual military reserve duty may be taken either consecutively or intermittently.

An employee taking military leave may be required to show proof of military service to have time credited toward leave of absence for military duty. If the employee does not show proof of military service either in advance or upon return to work, the employee may choose to utilize vacation or leave without pay during time away from work.

B. Family and Medical Leave:

In accordance with Federal and State law, an employee may be entitled to take up to 12 weeks family and medical leave within any 12 month period of time. Family and medical leave shall be for the purpose of caring for serious medical conditions of the employee or

an immediate family member of the employee, pregnancy-related disability, or for parental leave following the birth or adoption of a child. Also, Oregon law allows additional family and medical leave to care for a child with a non-serious health condition, and may allow a woman to take up to 12 weeks each for pregnancy-related disability, parental leave and sick child leave.

For purposes of granting family and medical leave a family member shall be defined as: a spouse, domestic partner, , or child or parent of the employee, spouse or domestic partner, or someone with whom the employee has an ““In Loco Parentis”” relationship. A serious health condition is defined as one which requires either inpatient care or continuing treatment by a health care provider.

In situations where the leave is to care for the employee's own illness including disability related to pregnancy or childbirth, or the illness of a family member, the employee is required to use all accrued sick leave. When all accrued sick leave has been exhausted, an employee may elect to use other paid leave or leave without pay. When an employee chooses to use accrued paid leave, such leave must be used prior to the commencement of unpaid leave.

Requests for family and medical leave must be made in writing at least thirty (30) days prior to the effective date of the leave if the leave is anticipated. In cases of sudden illness or injury, or unexpected birth or placement for adoption, an employee may make an oral request to his/her supervisor as soon as practicable, but must complete a written request form within fifteen (15) days. When the leave is for a serious health condition, the request for leave must include certification from the attending health care provider that the employee or family member qualifies for leave.

A female employee who has taken Family Medical Leave for disability due to pregnancy and childbirth is eligible to begin her parental leave entitlement on the date her health care provider certifies she is no longer disabled. Parental Leave must be taken in a consecutive period of time, unless the employee's supervisor approves leave to be taken in two or more non-consecutive periods.

Employees who report for work at the expiration of a family and medical leave of absence shall be reinstated to their last held position at the prevailing salary rates, without loss of seniority. If their former position no longer exists, the employee shall be reinstated to an equivalent position. An employee who fails to report for work at the expiration of a family medical leave of absence and does not have any additional leave approved by the appointing authority shall be deemed to have resigned.

C. Bereavement or Funeral Leave:

Two types of bereavement leave are available, paid and unpaid.

Paid bereavement leave may be granted in each case of bereavement due to the death of a

member of the immediate family (see Sick Leave, 2.05.160.3, for definition of immediate family). A request to use paid bereavement leave for the death of an individual outside of the immediate family is subject to approval by the appointing authority. The purpose of such leave shall be to allow time to attend a funeral and make necessary funeral and household adjustments. Paid Bereavement leave shall not exceed the equivalent of three (3) days, including all travel time. This Paid bereavement leave will not be counted against accumulated sick or vacation leave balances, but will be counted under the Oregon Family Leave Act (OFLA).

Unpaid bereavement leave is established by the Oregon Family Leave Act (OFLA) and is available in the event of death of a family member up to a maximum of 42 weeks in a 12-month period. Unpaid bereavement leave may be used to attend the funeral or memorial service, make arrangements related to the death of the family member, and/or grieve the death of the family member. All bereavement leave (whether paid or unpaid) counts towards the employee's OFLA entitlement and must be completed within 60 days after the date the employee receives notice of the death. If the employee is using bereavement leave, they must first use any paid bereavement leave as contained within the appropriate collective bargaining agreement, unless such agreement allows for the use of bereavement leave in a time period in excess of 60 days, or the County Code prior to using vacation or sick leave or unpaid time. Leave without pay may not begin until all required or requested paid leave is used. Any remaining paid leave may not be used for the duration of the leave once unpaid leave has begun.

D. Workers' Compensation Leave:

If an employee is injured on-the-job and is unable to work, supervisors should immediately contact the Risk and Benefits Division and complete the appropriate Workers' Compensation forms. If the employee's Workers' Compensation claim is accepted, the County will place the employee on Worker's Compensation leave with pay with full benefits (unless prohibited by law or provider contact) for up to six (6) months, or as extended by the Board of County Commissioners or designee. Procedures for Workers' Compensation will conform to ORS regulations and County policy.

E. Disability Leave:

If an employee is disabled as result of non-job-related reasons, the employee shall apply for Family and Medical Leave, utilize sick leave and file a disability insurance claim with the Risk and Benefits Division. When an employee has used the twelve (12) week Family and Medical Leave entitlement and has a continuing need for leave, the employee may use available paid leave or request a leave of absence without pay. Leave without pay is subject to the appointing authority's approval. Employees who return to their former positions following a disability leave will have all unused previously accrued sick, vacation, seniority and longevity credit restored.

F. Compulsory Leave:

If, in the opinion of the appointing authority, an employee is incapacitated for work, a medical examination by a psychologist or physician may be required. If the appointing

authority disagrees with the medical report, the appointing authority may require the employee to be examined by a psychologist or physician designated or approved by the Director of Employee Services. If the medical report does not show the employee to be in a fit condition required to perform the duties of the position, the appointing authority shall have the right to compel such employee to take sufficient leave of absence with or without pay until medically qualified to perform the duties of the position.

G. Jury Duty:

When an employee with regular or probationary status is called for jury duty, or subpoenaed as a witness by proper authority for cases in which the employee is not a party, the employee shall be granted a leave of absence with pay. All jury duty and witness fees other than mileage reimbursement shall be surrendered to Clackamas County. Employees who are excused from jury service or court appearance before the end of their workday shall immediately report their availability for assignment to their supervisor. Employees scheduled to work on shifts other than day shift shall be considered to be on day shift for the duration of jury duty.

H. Administrative Leave:

Employees may be placed on administrative leave, with pay, if the appointing authority feels they should be relieved of their duties or removed from the workplace pending a job-related investigation. Administrative leave, while not considered discipline, is commonly used during a discipline-related investigation prior to discipline being administered. No administrative leave shall extend beyond thirty (30) days unless approved by the Director of Employee Services.

I. Special Leave Without Pay:

A special leave without pay for a period not exceeding one (1) year may be granted to an employee who:

1. Desires to engage in a relevant course of study which will enhance the employee's value to perform the duties of the position; or
2. Is a candidate for a public office and requests a leave of absence for a reasonable period to campaign for the election; or
Has any reason considered appropriate by the appointing authority and the Director of Employee Services and is approved by the Board of County Commissioners.

J. Criminal Charges/Indictment Trial Leave:

1. Felony Charges Arrest or Indictment. An appointing authority may place an Employees may be placed on criminal trial leave, without pay, if the employee has they have been charged with a arrested-on-felony, eriminal charges, or if felony eriminal charges have been filed against them by grand jury indictment or other formal filing. The foregoing applies only to felonies that (1) are related to an employee's position or (2) that may affect an employee's effectiveness in performing the duties of his/her position, as determined by the appointing authority.-
2. Hearing. An employee placed on leave has the right to opportunity for a prompt hearing with the Aappointing Aauthority.

- a. The employee must submit a request in writing to the Director of DES shall be offered to an employee placed upon criminal trial leave within 7 calendar days of the date the leave commences. If a hearing is requested by the employee, the County must set the date of the hearing within 14 calendar days of the request, unless the employee requests a later hearing date or within a longer time of the request for hearing if so requested by the employee (but in no case will the hearing date be longer than 30 calendar days after the employee's request).
 - b. The purpose of the hearing is to allow the employee or the employee's representative to show that there are no reasonable grounds to believe that the charges are true, or to otherwise refute the charges, or to challenge the appropriateness of the leave decision.
 - c. Following such a hearing, the County must issue a decision as to whether the leave without pay will continue. The decision must be issued within 20 calendar days of the hearing, unless additional time is required for reasons articulated by the County in writing, and in any event within 40 calendar days of the hearing. If the determination is made by the Appointing Authority following the hearing that the leave without pay will not continue, the employee shall be paid any salary and reinstated to any benefits lost during the time after being placed on leave and before the determination by the Appointing Authority. If the employee is found not guilty or charges against the employee are dismissed, the employee will may be paid any salary and/or reinstated to any benefits lost during the leave time, unless disciplinary action is taken, as stated in the Reservation of Rights.—
3. Duration. Criminal trial leave without pay may continue only during the pendency of the criminal charges, during sentencing proceedings, and for 55 days after the entry of judgment (the time allowed for granting a motion for new trial under ORS 136.535).
 4. Reservation of Rights. Nothing in this provision prevents an appointing authority from disciplining an employee or exercising management rights under any applicable collective bargaining agreement to discipline an employee in accordance with the applicable agreement.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

2.05.180.2 Work Rules

The following work rules shall apply to all County employees. The environment, context, or particular circumstances will be taken into consideration in applying these work rules. These rules are not intended to be all-inclusive. Additionally, County departments may, consistent with the provisions of applicable collective bargaining agreements, establish other rules to ensure the effective operation of the County government, besides:

- A. Employees shall be at their designated work area on time and ready to work; employees shall report to and remain at their work area, at work, until the scheduled quitting time consistent with department policy;
- B. Where operations are continuous, employees shall not leave their position until replaced by the next shift employee or until relieved by their supervisor;
- C. Employees shall follow all safety regulations including the wearing of safety articles and the use of protective equipment, when appropriate; employees shall immediately report safety hazards, accidents, or injuries to their supervisor;
- D. Employees shall be responsible for, and not misuse County property, records or other materials in their care, custody and control;
- E. Employees shall deal with the public and other employees in a courteous and professional manner;
- F. Employees shall immediately report to their supervisor any inability to work and the reason therefore;
- G. Employees shall notify their supervisor whenever there is a change in their personal data affecting their personnel or payroll records;
- H. Employees shall not restrict, interrupt or interfere with the work of other County employees outside their assigned duties or authority;
- I. Employees shall report for and remain at work only in a condition which will enable them to perform their regular duties;
- J. Employees shall perform all work assigned unless performance of such work will constitute a safety hazard which violates established safety standards or law;
- K. Employees shall not engage in conduct that reflects discredit on the County while on duty or while conducting County business;
- L. Employees shall not engage in unauthorized political soliciting or political activity while on duty or while conducting County business;
- M. Employees shall not use their position, or County property, or County-paid work time, for undue personal or financial gain, other than official salary and benefits. Employees shall not use their position, or County property, or County-paid work time, as a means to solicit or conduct personal business, including but not limited to sales of products or services;
- N. Employees shall not use their position to coerce other employees;
- O. Unless required or permitted by an employee's job classification, employees shall not possess or use unauthorized firearms, weapons, firearms, or weapons -while on duty or during your work shift (while on duty and including breaks in which you remain on County premises) on County premises unless required or permitted by their job classification, illegal drugs, controlled substances (other than those lawfully prescribed), or intoxicating beverages during an employee's work shift (including breaks in which the employee remains on County premises)while on duty or while on County premises;
- P. Employees shall not falsify any reports or records; all reports, records and claims completed by employees shall be true and accurate, to the best of their knowledge;
- Q. Employees shall not remove County property or the property of other employees without express approval of their supervisor or the owner of such property; and

- R. Employees shall not violate any of the laws, statutes, or ordinances of Federal, State or local government while on duty, while on County premises, or while conducting County business.
- S. Employees shall not retaliate against another employee because of (1) the other employee's exercise of rights provided by law, such as but not limited to the right to file a discrimination complaint with the Director of Employee Services under 2.05.240.3, or (2) because the other employee participated in an investigation or personnel matter;
- T. Employees shall not use abusive or profane language, (including ethnic slurs), directed at other employees or County visitors that is offensive;
- U. Employees shall not use county computers or work time to access the internet for personal reasons in violation of the County's "appropriate use" policy (EPP 59);
- V. Employees shall not engage in employment-related transactions with any business entity in which the employee has a financial interest;
- W. Employees shall inform their department head (or designee) of any outside employment or outside affiliation activity which that could potentially affect impair their independence of judgment in the performance of work duties, or create a conflict of interest in the performance of work duties;
- X. Employees shall not engage in any outside affiliation activities or outside employment that which would affect impair the employee's independence of judgment in the performance of work duties, or otherwise create a conflict of interest in the performance of work duties;
- Y. Employees shall report to their supervisor any lapse of certification or licensure which is required for the performance of their duties;
- Z. Employees shall not solicit, receive or exchange personal favors, compensation, or gifts from clients of their department, where such action could financially impact the employee (or the employee's relative) or where the appearance of such action would decrease the public's confidence in the employee or department; (Any questions or uncertainty regarding employee ethics or conflicts of interest should be directed to DES.)
- AA. Employees shall not engage in sexual or exploitive relationships with clients of their department where an employee has the authority to control (improve, increase, decrease, etc.) County services or benefits that the other individual receives;
- R-BB. Employees shall not consume alcoholic beverages on county premises, nor between the time between starting work and quitting work each day (including during breaks and lunch).

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

2.05.190.4 Kinds Of Disciplinary Action

- A. Oral Reprimand: This is a warning procedure rather than a punitive action. The oral reprimand should serve to forestall the employee from being in such a position that a more severe form of action must be used.
- B. Written Reprimand: The written reprimand is also a warning procedure. The written reprimand is used to place an employee on official notice that failure of the employee to take corrective action will result in a more severe form of action. The written reprimand will list the unacceptable behavior, the time it occurred, the rule/procedure violated and an outline of improvement that is needed. The reprimand is to be included in the employee's official personnel file.
- C. Suspensions: Suspensions are an ordered absence from duty, other than administrative leave, and may be with or without pay, for an established length of time. The period of suspension shall not exceed thirty (30) consecutive calendar days at any one time. No service accruals may be given to an employee during a period of suspension without pay regardless of the length of suspension. No disciplinary suspension without pay shall be given to an employee performing executive, administrative or professional duties as defined by the Federal Fair Labor Standards Act, unless Disciplinary suspensions without pay of nonrepresented employees who are exempt from coverage under the federal Fair Labor Standards Act must be for a period of one full work week or multiples of one work week unless: (1) the reason for the suspension is violation by the employee of a safety rule of major significance, or (2) the suspension is for a period of one full work week or a multiple of one work week the suspension is for a violation of workplace conduct rules and is for a period of one or more full days.
- D. Demotion: Demotion, both in pay and to a lower classification, may be used as a form of discipline when discharge is not warranted or when the appointing authority believes that the employee has the potential for corrective conduct. Such action shall be subject to 2.05.140.2, and shall not cause the displacement of another employee.
- E. Dismissal: An appointing authority may dismiss for cause any regular employee under the appointing authority's jurisdiction. In carrying out such actions, the appointing authority shall consult with County Counsel and the Director of Employee Services.

[Codified by Ord. 05-2000, 7/13/00]

2.05.230.4 Process Of The Classification/Compensation Review Panel

An employee has ten (10) calendar days from the date the written response to the request for review was mailed, to submit a written request to the Director of Employee Services to have the matter forwarded to the Classification/Compensation Review Panel. The employee and the employee's representative, the employee's appointing authority and/or the appointing authority's representative, and Personnel staff may present information to the panel in support of their

respective positions. The Classification/Compensation Review Panel shall review the reasons for the classification allocation and/or the salary grade recommendation and may ask questions of the parties presenting information. Following the collection of information, the panel shall discuss their opinions with the Director of Employee Services.

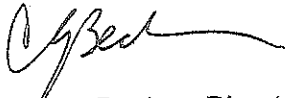
- A. Final Determination of Classification Allocation: The Director of Employee Services shall consider opinions of the panel when determining the final classification allocation of a position. The Director of Employee Services shall prepare a written report of the final recommendation, issues raised during the request for review and the opinions of the panel. Copies of the report shall be delivered to the affected parties. The Director of Employee Services shall have the final authority for all classification allocation determinations.
- B. Final Recommendation of Salary Grades: The Director of Employee Services shall consider the opinions of the Classification/Compensation Review Panel when recommending the final salary grade recommendation to the ~~Board of County Commissioners~~ County Administrator. The Director of Employee Services shall include in this recommendation a summary of issues raised during the request for review process and the opinions of the panel. The ~~Board of County Commissioners~~ County Administrator shall have the final authority for all salary grade determinations.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

Recommendation

We recommend the approval of this grant agreement amendment and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Becker', with a long horizontal flourish extending to the right.

Cindy Becker, Director

Tax ID Number: 93-6002286
Grant Number: OR0141L0E071302
DUNS Number: 096992656

EXHIBIT 2
SCOPE OF WORK for FY2013 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2013 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$49065 for project number OR0141L0E071302. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$ 0
b. Acquisition	\$ 0
c. New construction	\$ 0
d. Rehabilitation	\$ 0
e. Leasing	\$ 0
f. Rental assistance	\$ 42444
i. Tenant-based rental assistance	\$
ii. Project-based rental assistance	\$
iii. Sponsor-based rental assistance	\$
g. Supportive services	\$ 6000
h. Operating costs	\$ 0
i. HMIS	\$ 0
j. Administration	\$ 621

4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.

5. Nothing in this grant agreement shall be construed as creating or justifying any claim against the federal government or the grantee by any third party.

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,
Secretary of Housing and Urban Development**

By:



(Signature)

Douglas Carlson, Director

(Typed Name and Title)

August 26, 2014

(Date)

RECIPIENT

Clackamas Dept. Health, Housing & Human Svcs

(Name of Organization)

By:

(Signature of Authorized Official)

Cindy Becker, Director

(Typed Name and Title of Authorized Official)

(Date)

Exhibit 1a

Continuum of Care Program Interim Rule

Ofc. of Assf. Secy., Comm. Planning, Develop., HUD

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(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The re-

ipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

PART 578—CONTINUUM OF CARE PROGRAM

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- 578.3 Definitions.

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- 578.105 Grant and project changes.
- 578.107 Sanctions.
- 578.109 Closeout.

AUTHORITY: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

SOURCE: 77 FR 45442, July 31, 2012, unless otherwise noted.

Subpart A—General Provisions**§ 578.1 Purpose and scope.**

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381-11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by non-profit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

§ 578.3 Definitions.

As used in this part:

Act means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

Annual renewal amount means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenovable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

Applicant means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

At risk of homelessness. (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "Homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid

by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Centralized or coordinated assessment system means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

Chronically homeless. (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

Collaborative applicant means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and Continuum means the group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including non-profit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school

districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

Eligible applicant means a private nonprofit organization, State, local government, or instrumentality of State and local government.

Emergency shelter is defined in 24 CFR part 576.

Emergency Solutions Grants (ESG) means the grants provided under 24 CFR part 576.

Fair Market Rent (FMR) means the Fair Market Rents published in the FEDERAL REGISTER annually by HUD.

High-performing community (HPC) means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637

of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of

Care to comply with the HMIS requirements prescribed by HUD.

HMIS Lead means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

Program participant means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

Project means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance

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or annual payments for operating costs, or supportive services under this subtitle.

Recipient means an applicant that signs a grant agreement with HUD.

Safe haven means, for the purpose of defining chronically homeless, supportive housing that meets the following:

- (1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;
- (2) Provides 24-hour residence for eligible persons for an unspecified period;
- (3) Has an overnight capacity limited to 25 or fewer persons; and
- (4) Provides low-demand services and referrals for the residents.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

Subrecipient means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a subgrant from the recipient to carry out a project.

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic vio-

24 CFR Ch. V (4-1-13 Edition)

lence transitional housing programs, and other programs.

Subpart B—Establishing and Operating a Continuum of Care

§ 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

- (1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- (2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012 to comply with the requirements of paragraph (b) of this section.

§ 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

- (1) Hold meetings of the full membership, with published agendas, at least semi-annually;
- (2) Make an invitation for new members to join publicly available within the geographic area at least annually;
- (3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(i) Homeless persons who are living in a place not designed or ordinarily

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used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

§578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under §578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application

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information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

§578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in §578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the

Continuum of Care before submitting a request for an amendment to HUD.

§ 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

- (1) Designating a replacement Continuum of Care for the geographic area;
- (2) Designating a replacement collaborative applicant for the Continuum's geographic area; and
- (3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

Subpart C—Application and Grant Award Process

§ 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

§ 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the

Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

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(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

§578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD

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will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

§578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24 months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of

compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

§ 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

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(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

§ 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the

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applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

§ 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the

State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

§ 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has per-

formed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

§ 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their

most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

§ 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate,

that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.* (1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10

days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

Subpart D—Program Components and Eligible Costs

§578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in §578.39 through §578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in §578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of

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stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH)*. PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing*. Continuum of Care funds may provide supportive services, as set forth in §578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in §578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to §578.51(a)(1), but not §578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH)*. Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO)*. Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS*. Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention*. Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance*. Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

(1) Establish new housing or new facilities to provide supportive services;

(2) Expand existing housing and facilities in order to increase the number of homeless persons served;

(3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;

(4) Preserve existing permanent housing and facilities that provide supportive services;

(5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes*. Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, con-

struction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

§ 578.39 Continuum of Care planning activities.

(a) *In general*. Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

(1) Designing and carrying out a collaborative process for the development of an application to HUD;

(2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities*. Eligible planning costs include the costs of:

(1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;

(2) Determining the geographic area that the Continuum of Care will serve;

(3) Developing a Continuum of Care system;

(4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

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(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

§ 578.41 Unified Funding Agency costs.

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

§ 578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

§ 578.45 Rehabilitation.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

§ 578.47 New construction.

(a) *Use.* Grant funds may be used to:

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(1) Pay up to 100 percent of the cost of new construction, including the building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§ 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable

in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in §578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in §578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under §578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics

of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

§578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in §578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder

of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the

excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

§ 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security,

furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

- (i) The children must be under the age of 13, unless they are disabled children.
- (ii) Disabled children must be under the age of 18.
- (iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing;

individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
- (B) Structured job skills and job-seeking skills;
- (C) Special training and tutoring, including literacy training and pre-vocational training;
- (D) Books and instructional material;
- (E) Counseling or job coaching; and
- (F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

- (A) Mediation with property owners and landlords on behalf of eligible program participants;
- (B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and
- (C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision

of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interven-

tions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and
(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

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(15) *Transportation*. Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits*. This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services*. If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or

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subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

§ 578.55 Operating costs.

(a) *Use*. Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs*. (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs*. Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter- and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

§ 578.57 Homeless Management Information System.

(a) *Eligible costs*. (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

§ 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

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(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

§ 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

§ 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

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(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

Subpart E—High-Performing Communities

§ 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

§ 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking des-

ignation as an HPC meets the standards for being one.

§ 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

§ 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

Subpart F—Program Requirements

§ 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that

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funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under §578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

§578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable

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to the type of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still

have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the

maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

§ 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

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(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (i) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's

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contribution toward the rental payment.

§ 578.79 Limitation on transitional housing.

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy,

HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

§ 578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year

must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(i)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property,

permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or

demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

(3) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the

obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

(E) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project

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where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

§ 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

§ 578.87 Limitation on use of funds.

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds

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previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local

government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of §578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construc-

tion, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

- (1) Leasing and acquisition, rehabilitation, or new construction;
- (2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;
- (3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;
- (4) Rental assistance and leasing; or
- (5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

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§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

§ 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process be-

fore the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

§ 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (*e.g.*, housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (*e.g.*, substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

§ 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under

this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under §578.49(b)(2) and §578.51(g) and housing quality inspections of property under §578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as

are being made available or provided to the group or class; and

(G) Any other relevant considerations.

§ 578.97 Program income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

§ 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site www.fsrs.gov or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A-122); and 2 CFR part

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220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

Subpart G—Grant Administration

§578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

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(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

§578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of §578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in §578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in §578.105, must keep evidence that the

grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under §578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other pro-

fessional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (*e.g.*, most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual

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assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-

based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of

the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of

Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

§ 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.* (1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

§578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation

to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary

to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

§ 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

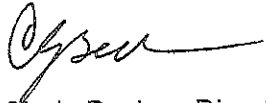
(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

funding of over \$1.6 million dollars can continue to serve families and individuals who are homeless in Clackamas County.

RECOMMENDATION:

We recommend the approval of this grant agreement and that Cindy Becker, Director of Health, Housing and Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Becker', with a long horizontal flourish extending to the right.

Cindy Becker, Director

Tax ID No.: 93-6002286
Project Location: 419005 (Clackamas County, OR)
Grant Number: OR0177L0E071300 (Rent Well RRH)
DUNS No.: 096992656

FY 2013 CONTINUUM OF CARE PROGRAM GRANT AGREEMENT

This Grant Agreement ("this Agreement") is made by and between the United States Department of Housing and Urban Development ("HUD") and Clackamas County Department of Health, Housing and Human Services (the "Recipient").

This Agreement is governed by title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. (the "Act") and the Continuum of Care Program regulation (the "Regulation").

The terms "Grant " or "Grant Funds" mean the funds that are provided under this Agreement. The term "Application" means the application submissions on the basis of which the Grant was approved by HUD, including the certifications, assurances, and any information or documentation required to meet any grant award condition. All other terms shall have the meanings given in the Regulation.

The Application is incorporated herein as part of this Agreement, except that only the project listed, and only in the amount listed on the Scope of Work, is funded by this Agreement. In the event of any conflict between any application provision and any provision contained in this Agreement, this Agreement shall control.

Exhibit 1, the FY2013 Scope of Work, is attached hereto and made a part hereof. If appropriations are available for Continuum of Care grants; and if Recipient applies under a Notice of Funds Availability published by HUD; and, if pursuant to the selection criteria in the Notice of Funds Availability, HUD selects Recipient and the project for renewal, then additional exhibits may be attached to this Agreement. Those additional exhibits, when attached, will also become a part hereof.

The effective date of the Agreement shall be the date of execution by HUD and it is the date use of funds under this Agreement may begin. If the project funded by this Agreement is a new project, Recipient and HUD will set an operating start date in LOCCS for the project, which will be used to track expenditures and to determine when the project is eligible for renewal. If this Agreement renews funding for a project, the term of this Agreement shall begin at the end of the Recipient's final operating year for the grant being renewed, and eligible costs incurred for the project between the end of Recipient's final operating year under the grant being renewed and the execution of this Agreement may be paid with funds from the first operating year of this Agreement.

This Agreement shall remain in effect until termination either 1) by agreement of the parties; 2) by HUD alone, acting under the authority of 24 CFR 578.107; or 3) upon expiration of the final operating year of the project funded under this Agreement.

Recipient agrees:

1. To ensure the operation of the project listed on the Scope of Work in accordance with the provisions of the Act and all requirements of the Regulation;
2. To monitor and report the progress of the project to the Continuum of Care and HUD;
3. To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;
4. To require certification from any subrecipient that:
 - a. Subrecipient will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;
 - b. The address or location of any family violence project assisted with grant funds will not be made public, except with written authorization of the person responsible for the operation of such project;
 - c. Subrecipient will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;
 - d. In the case of a project that provides housing or services to families, that subrecipient will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;
 - e. The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and
 - f. Subrecipient will provide information, such as data and reports, as required by HUD; and
5. To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the Recipient is a Unified Funding Agency;
6. To monitor subrecipient match and report on match to HUD;
7. To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;
8. To monitor subrecipient at least annually;

9. To use the centralized or coordinated assessment system established by the Continuum of Care as required by §578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;
10. To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in §578.7(a)(9);
11. Enter into a subrecipient agreement requiring subrecipient to operate the project in accordance with the provisions of this Act and all requirements under 24 CFR 578; and
12. To comply with such other terms and conditions as HUD may have established in the applicable Notice of Funds Availability.

HUD notifications to the Recipient shall be to the address of the Recipient as stated in the Application, unless HUD is otherwise advised in writing. Recipient notifications to HUD shall be to the HUD Field Office executing the Agreement. No right, benefit, or advantage of the Recipient hereunder may be assigned without prior written approval of HUD.

The Agreement constitutes the entire agreement between the parties hereto, and may be amended only in writing executed by HUD and the Recipient.

Nothing in this grant agreement shall be construed as creating or justifying any claim against the federal government or the grantee by any third party.

By signing below, Recipients that are states and units of local government certify that they are following a current HUD approved CHAS (Consolidated Plan).

Nothing in this grant agreement shall be construed as creating or justifying any claim against the federal government or the grantee by any third party.

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,
Secretary of Housing and Urban Development**

BY: Henry G. Donovan
(Signature)

6 Douglas Carlson, Director
(Typed Name and Title)

8/12/14
(Date)

RECIPIENT

Clackamas County Department of Health, Housing and Human Services
(Name of Organization)

BY: _____
(Signature of Authorized Official)

Cindy Becker, Director
(Typed Name and Title of Authorized Official)

(Date)

Tax ID No.: 93-6002286
Project Location: 419005 (Clackamas County, OR)
Grant Number: OR0177L0E071300 (Rent Well RRH)
DUNS No.: 096992656

EXHIBIT 1
 SCOPE OF WORK for FY 2013 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2013 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$ 110,289 for project number OR0177L0E071300. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$
b. Acquisition	\$
c. New construction	\$
d. Rehabilitation	\$
e. Leasing	\$
f. Rental assistance	\$ 23,976
i. Tenant-based rental assistance	\$ 23,976
ii. Project-based rental assistance	\$
iii. Sponsor-based rental assistance	\$
g. Supportive services	\$ 79,114
h. Operating costs	\$
i. HMIS	\$
j. Administration	\$ 7,199

4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be

drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.

5. Nothing in this grant agreement shall be construed as creating or justifying any claim against the federal government or the grantee by any third party.

Exhibit 1a

Continuum of Care Program Interim Rule

Ofc. of Asst. Secy., Comm. Planning, Develop., HUD

Pt. 578

(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The re-

ipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in §576.203.

PART 578—CONTINUUM OF CARE PROGRAM

Subpart A—General Provisions

- Sec.
578.1 Purpose and scope.
578.3 Definitions.

Subpart B—Establishing and Operating a Continuum of Care

- 578.5 Establishing the Continuum of Care.
578.7 Responsibilities of the Continuum of Care.
578.9 Preparing an application for funds.
578.11 Unified Funding Agency.
578.13 Remedial action.

Subpart C—Application and Grant Award Process

- 578.15 Eligible applicants.
578.17 Overview of application and grant award process.
578.19 Application process.
578.21 Awarding funds.
578.23 Executing grant agreements.
578.25 Site control.
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- 578.37 Program components and uses of assistance.
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- 578.91 Termination of assistance to program participants.
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- 578.97 Program income.
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- 578.101 Technical assistance.
- 578.103 Recordkeeping requirements.
- 578.105 Grant and project changes.
- 578.107 Sanctions.
- 578.109 Closeout.

AUTHORITY: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

SOURCE: 77 FR 45442, July 31, 2012, unless otherwise noted.

Subpart A—General Provisions**§ 578.1 Purpose and scope.**

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381-11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by non-profit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

§ 578.3 Definitions.

As used in this part:

Act means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

Annual renewal amount means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenovable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

Applicant means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

At risk of homelessness. (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "Homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid

by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5782a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Centralized or coordinated assessment system means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

Chronically homeless. (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

Collaborative applicant means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and Continuum means the group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including non-profit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school

districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

Eligible applicant means a private nonprofit organization, State, local government, or instrumentality of State and local government.

Emergency shelter is defined in 24 CFR part 576.

Emergency Solutions Grants (ESG) means the grants provided under 24 CFR part 576.

Fair Market Rent (FMR) means the Fair Market Rents published in the FEDERAL REGISTER annually by HUD.

High-performing community (HPC) means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637

of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of

Care to comply with the HMIS requirements prescribed by HUD.

HMIS Lead means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

Program participant means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

Project means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance

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or annual payments for operating costs, or supportive services under this subtitle.

Recipient means an applicant that signs a grant agreement with HUD.

Safe haven means, for the purpose of defining chronically homeless, supportive housing that meets the following:

- (1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;
- (2) Provides 24-hour residence for eligible persons for an unspecified period;
- (3) Has an overnight capacity limited to 25 or fewer persons; and
- (4) Provides low-demand services and referrals for the residents.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

Subrecipient means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a subgrant from the recipient to carry out a project.

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in §578.11(b), which is approved by HUD and to which HUD awards a grant.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic vio-

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lence transitional housing programs, and other programs.

Subpart B—Establishing and Operating a Continuum of Care

§578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by §578.7(a)(3) and must comply with the conflict-of-interest requirements at §578.95(b). The board must:

- (1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- (2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012 to comply with the requirements of paragraph (b) of this section.

§578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

- (1) Hold meetings of the full membership, with published agendas, at least semi-annually;
- (2) Make an invitation for new members to join publicly available within the geographic area at least annually;
- (3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD:

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(i) Homeless persons who are living in a place not designed or ordinarily

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used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

§578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under §578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application

information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

§578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in §578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the

Continuum of Care before submitting a request for an amendment to HUD.

§ 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

Subpart C—Application and Grant Award Process

§ 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

§ 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the

Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations-listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

§578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD

will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

§578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24 months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of

compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

§ 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

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(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

§ 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the

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applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(1) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

§ 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the

State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

§ 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has per-

formed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

§ 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their

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most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

§ 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate,

that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.* (1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10

days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

Subpart D—Program Components and Eligible Costs

§578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in §578.39 through §578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in §578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of

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stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH)*. PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing*. Continuum of Care funds may provide supportive services, as set forth in §578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in §578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to §578.51(a)(1), but not §578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH)*. Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO)*. Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS*. Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention*. Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance*. Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

(1) Establish new housing or new facilities to provide supportive services;

(2) Expand existing housing and facilities in order to increase the number of homeless persons served;

(3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;

(4) Preserve existing permanent housing and facilities that provide supportive services;

(5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes*. Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, con-

struction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

§ 578.39 Continuum of Care planning activities.

(a) *In general*. Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

(1) Designing and carrying out a collaborative process for the development of an application to HUD;

(2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities*. Eligible planning costs include the costs of:

(1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;

(2) Determining the geographic area that the Continuum of Care will serve;

(3) Developing a Continuum of Care system;

(4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

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(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

§578.41 Unified Funding Agency costs.

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

§578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

§578.45 Rehabilitation.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

§578.47 New construction.

(a) *Use.* Grant funds may be used to:

(1) Pay up to 100 percent of the cost of new construction, including the building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable

in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in §578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in §578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under §578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics

of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

§578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in §578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder

of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the

excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

§ 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security,

furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

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(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing;

individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
- (B) Structured job skills and job-seeking skills;
- (C) Special training and tutoring, including literacy training and pre-vocational training;
- (D) Books and instructional material;
- (E) Counseling or job coaching; and
- (F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

(A) Mediation with property owners and landlords on behalf of eligible program participants;

(B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and

(C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision

of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interven-

tions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

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(15) *Transportation*. Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits*. This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services*. If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or

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subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

§ 578.55 Operating costs.

(a) *Use*. Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs*. (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs*. Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter- and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

§ 578.57 Homeless Management Information System.

(a) *Eligible costs*. (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

§ 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

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(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under §578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

§578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with §578.83.

§578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

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(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

Subpart E—High-Performing Communities

§578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

§ 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking des-

ignation as an HPC meets the standards for being one.

§ 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

§ 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

Subpart F—Program Requirements

§ 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that

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funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under §578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

§578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable

to the type of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still

have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the

maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

§ 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

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(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (1) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's

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contribution toward the rental payment.

§578.79 Limitation on transitional housing.

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

§578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy,

HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

§ 578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year

must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(i)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property,

permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or

demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in §578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

(3) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see §578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the

obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (e.g., the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under §578.79; or

(E) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project

where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

§ 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

§ 578.87 Limitation on use of funds.

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds

previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local

government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of §578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construc-

tion, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

- (1) Leasing and acquisition, rehabilitation, or new construction;
- (2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;
- (3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;
- (4) Rental assistance and leasing; or
- (5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

§ 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process be-

fore the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

§ 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (*e.g.*, housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (*e.g.*, substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

§ 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under

this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under §578.49(b)(2) and §578.51(g) and housing quality inspections of property under §578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(i) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as

are being made available or provided to the group or class; and

(G) Any other relevant considerations.

§578.97 Program income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

§578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in §578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site www.fsrs.gov or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A-122); and 2 CFR part

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220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, “Audits of States, Local Governments, and Non-profit Organizations.”

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

Subpart G—Grant Administration

§ 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

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(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

§ 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the

grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other pro-

fessional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual

assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-

based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of

the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of

Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

§ 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.* (1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

§ 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation

to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary

to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

§ 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

September 11, 2014

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

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Marion County for Right of Way Acquisition related to the Pudding River (Whiskey Hill Road) Bridge Replacement Project

Purpose/Outcomes	This agreement allows Clackamas County to perform right of way negotiations and acquisitions in Marion County for the sole purpose of replacing the Pudding River (Whiskey Hill Road) Bridge.
Dollar Amount and Fiscal Impact	Total Project Estimate: \$8,773,349 of which \$260,000 is estimated for right of way acquisition Clackamas County will reimburse Marion County for costs incurred related to right of way negotiations for the project. These expenses are included as part of the project budget and are reimbursable project expenses.
Funding Source	Highway Bridge Program (HBP) \$7,868,557 County Road Fund \$904,792
Safety Impact	Proper right of way acquisition will allow the bridge replacement project to be constructed on time and according to plans. The new bridge will meet current safety and design standards.
Duration	Effective upon execution and expires upon completion of the project or December 31, 2016, whichever occurs first.
Previous Board Action	04/14/11: BCC Approval of Agreement No. 27472 for design of the subject project 07/18/13: BCC Approval of Agreement No. 27929 for right of way services for the subject project 07/25/13: BCC Approval of Amendment No. 1 to Agreement No. 27472 07/17/14: BCC Approval of Resolution No. 2014-77, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions for the subject project
Contact Person	Kath Rose, Sr. Right of Way Agent, Engineering 503-742-4713

BACKGROUND:

As part of the Highway Bridge Program (HBP), Clackamas County has received funding for the replacement of the Pudding River (Whiskey Hill Rd) Bridge. This project will design and construct a replacement for the existing bridge with a new structure which meets current design standards.

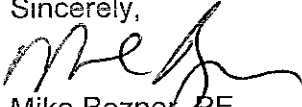
The Pudding River (Whiskey Hill Rd) Bridge connects Clackamas County and Marion County. To complete the project, right of way acquisitions will be required on both sides of the bridge. Marion County has passed a resolution authorizing the exercise of eminent domain and through this agreement agrees to allow Clackamas County to perform right of way negotiations in Marion County for the sole purpose of constructing this project. Right of way negotiations and acquisitions are reimbursable through HBP.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends approval of the Intergovernmental Agreement with Marion County for right of way acquisition related to the Pudding River (Whiskey Hill Rd) Bridge Replacement Project.

Sincerely,



Mike Beznec, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Kath Rose at 503-742-4713

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY
AND MARION COUNTY**

THIS AGREEMENT is made and entered into by and between CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Clackamas," and MARION COUNTY, acting by and through its elected officials, hereinafter referred to as "Marion," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

ORS 190.003 TO 190.030 allows units of local government to enter into agreement for performance of any or all functions and activities which such units have authority to perform; and

Clackamas has obtained federal funding for the project through the Oregon Department of Transportation (ODOT) to replace the existing bridge on Whiskey Hill Road over the Pudding River with a four-span, steel girder superstructure spanning the Pudding River inside of the current curve, slightly south of the current location; and

The new bridge will be 440 feet long and 40 feet wide and will affect land under the jurisdiction of both Marion and Clackamas; and

The parties to this Agreement wish to outline the terms for a cooperative working relationship for the Pudding River (Whiskey Hill Rd) Bridge Replacement Project, including the acquisition of rights of way and easements therefore; and

The bridge replacement project is referred to herein as the "Project" and is more particularly described in "Attachment 1", which is attached hereto and incorporated by reference herein.

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

AGREEMENT

- 1. Term of Agreement.** This agreement becomes effective upon execution by both parties and will terminate on either December 31, 2016 or upon completion of the Project, as determined by the Parties, whichever occurs first.

- 2. Marion's Obligations.** Marion agrees to:
 - A. Develop and process a resolution authorizing the exercise of the eminent domain within four weeks of the date of this Agreement being approved by both parties. The resolution will be based on the legal descriptions and map exhibits provided in

INTERGOVERNMENTAL AGREEMENT

Attachment 2, which is attached hereto and incorporated by reference herein. Clackamas will provide an electronic Word version of the legal descriptions contained in Attachment 2 for Marion's use in developing its resolution authorizing the exercise of eminent domain.

- B. Provide Clackamas with a copy of the executed resolution authorizing the exercise of the eminent domain.
- C. Provide Clackamas with Marion's permanent road right of way easement form.
- D. Review Clackamas's standard Permanent Easement for Ingress and Egress form. If Marion wishes to use an alternative form, Marion shall provide an electronic copy of its form.
- E. Review Clackamas's "Letter of Agreement" form (LOA) to be included in the standard right of way 40-day offer packet. If Marion wishes to use an alternative LOA form, Marion shall provide an electronic copy of its LOA.
- F. Process and record signed easement forms through the Marion County Recorder's Office and return the original recorded copies to Clackamas within a reasonable period thereafter so that Clackamas may order payment for acquisitions in time to meet the project schedule. At the conclusion of the project, Clackamas will return Marion's recorded easements, along with copies of other acquisition support documents for the files to be negotiated in Marion County.
- G. Participate in any lawsuit, related to the Project which affects property in Marion County, including but not limited to an action to acquire right of way or easements through eminent domain. It is understood that in such a lawsuit the lawsuit shall be brought in the name of Marion County and legal counsel for Marion and Clackamas shall work jointly to manage the case and perform necessary work with the understanding that Clackamas will be primarily responsible for prosecuting the suit. Clackamas will reimburse Marion at Marion's hourly rate for outside agencies for the labor and overhead costs of its employees related to these proceedings.
- H. Marion will coordinate with Clackamas in the event that Clackamas encounters conflicts or complications during right of way negotiations.
- I. Labor and overhead costs of employees performing eminent domain work will be reimbursed by Clackamas provided those costs are estimated in advance by Marion and approved in advance by Clackamas. Invoices and any settlement cost submitted to Clackamas will be due and payable within thirty (30) days of receipt. All charges will be billed monthly to Clackamas.
- J. Marion agrees not to act in a manner that in any way prejudices Clackamas' ability to secure the necessary rights of way or easements for the Project, and generally agrees to work with Clackamas as reasonably needed in order to ensure all such real property rights are timely obtained.

INTERGOVERNMENTAL AGREEMENT

3. **Clackamas's Obligations.** Clackamas agrees to:

- A. Perform right of way work in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, including: develop and deliver general information notices, perform appraisals and appraisal reviews, negotiate agreements and obtain permanent and temporary easements and rights of way for the Project, or contract with a competent consultant to do so.
- B. Contract with a competent consultant to perform appraisals and appraisal reviews, negotiations and obtain permanent and temporary easements and rights of way for the Project.
- C. Provide payments for just compensation, and pay for consultant services for the Project and seek reimbursement from ODOT in accordance with the federal grant requirements.
- D. When Clackamas approves and accepts its permanent easements for road and right of way purposes, the easements are recorded at no cost to the county. If Marion's policy is to pay for such recording fees, then Clackamas will reimburse Marion for recording fees.
- E. Participate in any suit related to the Project which affects property in Marion County with the understanding that Clackamas will be primarily responsible for prosecuting the suit and that Clackamas will reimburse Marion at Marion's hourly rate for outside agencies for the labor and overhead costs of its employees related to these proceedings.
- F. Design and construct the Project, pay for the Project and seek reimbursement from ODOT in accordance with the federal grant requirements.
- G. Reimburse Marion for costs it incurs for eminent domain work related to the Project.
- H. Reimburse Marion for costs it may incur in defending the Project through litigation.
- I. Provide updates to Marion County's liaison on the status of the right of way negotiations on a bi-weekly basis.
- J. Clackamas will promptly notify Marion of any conflicts or complications which arise in right of way negotiations.

4. **Compensation.** Clackamas and Marion agree that no money or funds will be exchanged directly between the parties as a result of this agreement, except as otherwise set forth in this agreement.

INTERGOVERNMENTAL AGREEMENT

5. Termination

- A. This agreement may be terminated by either party upon 30 days written notice delivered to the other party. Notice is deemed to be delivered when actually received by the party receiving notice.
- B. This agreement may be terminated at any time by mutual agreement by Clackamas and Marion.
- C. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination

6. Contact Information.

Marion's liaison for the Project will be:

*Mark Riggins, PLS
County Surveyor
Marion County- Dept of Public Works
5155 Silverton Rd NE, Salem OR 97305
503-365-3112*

Clackamas's liason for the Project will be:

*Kath Rose
Sr. Right of Way Agent
150 Beaver creek Rd
Oregon City, OR 97045
503-742-4658
jhowie@co.clackamas.or.us*

7. General Terms

- A. Compliance with Laws. Clackamas and Marion agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Negation of Agency and Partnership. Any agreement by either party to cooperate with the other in connection with any provision of this Agreement shall not be construed as making either party an agent or partner of the other party.
- C. Hold Harmless. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, Clackamas shall hold harmless and indemnify Marion, its, officers, employees, and-agents against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of, or resulting from the Clackamas's performance of this agreement when the loss or claim is attributable to the acts or omissions of the Clackamas.

INTERGOVERNMENTAL AGREEMENT

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, Marion shall hold harmless and indemnify Clackamas, its officers, employees, and agents against all claims, damages, losses and expenses (including all attorney fees and costs) arising out of or resulting from Marion's performance of this agreement when the loss or claim is attributable to the acts or omissions of Marion.

- D. Availability of Funding. This agreement is expressly conditioned upon Clackamas receiving federal funding through ODOT and having sufficient funds available to make the payments and complete the entirety of the bridge project described herein. If the funding source supporting this Agreement is lost or becomes unavailable to Clackamas, the parties shall be relieved of their duty to perform and the Agreement shall terminate. Clackamas shall inform Marion promptly in writing if funding for this agreement is lost or becomes unavailable.
- E. Authorization. The Parties certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind each Party.
- F. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed will constitute an original.
- G. Entire Agreement. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement will not constitute a waiver by either party of that or any other provision.
- H. Severability. The Parties agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

INTERGOVERNMENTAL AGREEMENT

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

CLACKAMAS COUNTY

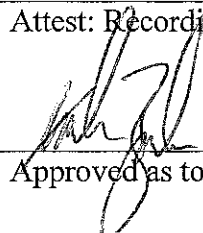
By: Board of County Commissioners

Name: _____

Title: _____

Date: _____

Attest: Recording Secretary



Approved as to form

MARION COUNTY

Recommended by:

Al M. Haley 7-31-14
Director of Public Works Date

APPROVED AS TO FORM:

Camber Schlag 8-1-14
Marion County Contracts Date

Alison M. Boy 8/01/14
Marion County Legal Counsel Date

APPROVED BY:

Samuel A. Bentz 8/13/14
Commissioner Date

Paet Larson 8/13/14
Commissioner Date

Not Present at meeting

Commissioner Date

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of authorizing acquisition)	
and eminent domain of certain real)	Department of Public Works
properties for the Whiskey Hill Road)	
over the Pudding River Bridge Replacement)	
Project)	

RESOLUTION NO. 14R-36

WHEREAS, Marion County is authorized by the provisions of ORS Chapters 203 and 368 to locate, acquire, construct, operate, and maintain county roads as its Board deems necessary; and

WHEREAS, Marion County is authorized by the provisions of ORS Chapters 203 and 368 to acquire by purchase, gift, devise, eminent domain, or any other means, such real and personal property interests therein and rights-of-way either inside or outside the limits of the county, as in the judgment of its Board are necessary; and

WHEREAS, Clackamas County plans to remove and replace the bridge over the Pudding River on Whiskey Hill Road. The Pudding River at this point constitutes the boundary between Marion and Clackamas Counties, and Whiskey Hill Road crosses the county line at this point; and

WHEREAS, replacement of the Whiskey Hill Road bridge over the Pudding River will provide a safer bridge that meets current safety and design standards; and

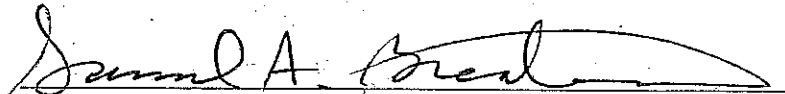
WHEREAS, for the purpose of providing a county road system to serve local residents and businesses and for the health, safety, benefit, and general welfare of the public, it will be necessary to acquire additional right of way on the Marion County side of the Pudding River in order to complete the Whiskey Hill Road bridge project ; now, therefore,

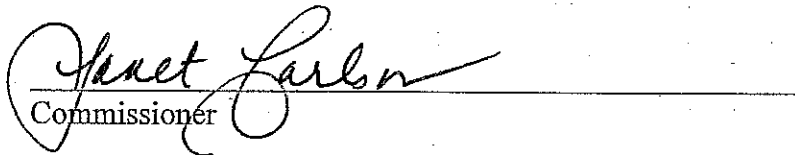
BE IT RESOLVED by the Marion County Board of Commissioners as follows:

- (1) The Board declares that there is a need to reconstruct the bridge on Whiskey Hill Road over the Pudding River, on real properties and interests therein, more particularly set forth in the attached Exhibits. The real properties and interests set forth in the Exhibits are reasonably necessary to protect the full use and enjoyment by the public of Whiskey Hill Road.
- (2) In order to proceed with the acquisition of the right-of-way for this project, which will be located and constructed in a manner most compatible with the greatest public benefit and the least private injury or damage, the real properties must be acquired without delay.

- (3) The County, its agents, and attorneys are authorized to attempt to reach agreement with the owners and other persons with interest in the real properties and interests therein, shown in the attached Exhibits, as to the compensation to be paid for the appropriation of the properties. In the event that no satisfactory agreement can be reached, the attorneys are directed and authorized to commence Eminent Domain proceedings as prescribed in ORS 35.205 to 35.415 and prosecute to final determination such proceedings as may be necessary to acquire the real properties and interest therein and that upon the filing of such proceeding, possession of the real property and interest therein may be taken immediately.
- (4) Upon the trial of any suit or action instituted to acquire any of the real property or any interest therein, the attorneys acting for and on behalf of the county are authorized to make such stipulation, agreement, or admission as in their judgment may be for the best interest of the county.
- (5) In order to protect the health, safety, and welfare of the public, it is necessary that no undue delay be encountered in obtaining access to possession of the real property and interest therein shown in the attached Exhibits, in order to reconstruct the Whiskey Hill Road bridge over the Pudding River; therein, this resolution shall be in force and effect immediately upon its passage by the Board.
- (6) This resolution is adopted by the Marion County Board of Commissioners on this 13th, day of August, 2014, and is entered in the minutes and records of the Board as of this date.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Commissioner

Not Present at meeting

Commissioner

EXHIBIT A

PUDDING RIVER, (WHISKEY HILL ROAD)
BRIDGE REPLACEMENT PROJECT
Owner: Julia S. Blackmon and Michael S. Blackmon

File 005
County Project No. CI-22184
Tax Map 41W36 01700 Marion County
June 25, 2014

Page 1 of 3

Parcel 1: Permanent Right-of-Way Easement for Road Purposes

A parcel of land, as shown on attached Exhibit "B", lying in the Northwest One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Marion County, Oregon, being a portion of the property described in a Warranty Deed to Julia S. Blackmon and Michael S. Blackmon., recorded September 27, 2013 in Reel 3547 Page 285, Marion County Records, said parcel being that portion of said property lying southerly of the following described line and northerly of the existing centerline of Whiskey Hill road, said lines to be lengthened or shortened to terminate as shown on Exhibit "B":

Beginning at a point 30.00 feet left of the Design Whiskey Hill Road Centerline Station 133+00;
Thence Easterly, in a straight line, to a point 52.33 feet left of the Design Centerline Station 133+89; Thence Easterly, in a straight line, to a point 65.61 feet left of the Design Centerline Station 134+69; Thence Easterly, in a straight line, to a point 70.00 feet left of the Design Centerline Station 135+00;
Thence Easterly, in a straight line, to a point 70.00 feet left of the Design Centerline Station 136+50;
Thence Easterly, in a straight line, to a point 66.85 feet left of the Design Centerline Station 136+97.

Parcel 1 to which this description applies contains 8,232 square feet more or less.

The stationing used to describe these parcel is based on the Design Centerline of Whiskey Hill Road, being more particularly described as follows:

Beginning at a point in the Centerline of Whiskey Hill Road, said point being a 3" Brass Cap in Monument Box being the Northeasterly corner of the A. Dimmick DLC #64 as shown on MCSR 34656, Survey for Marion County, Market Road 9, Whiskey Hill Road, beginning stationing of 106+61.93 is derived from the as-built records as shown on CS 11236 recorded in the Marion County Records;

Thence S87°17'34"E 2,466.04 feet along the existing centerline of Whiskey Hill Road, MR 9 to Centerline Station 131+27.97;

Thence N84°42'56"E 302.02 feet to Centerline Station 134+29.99 and the beginning of a 760.00 foot radius curve to the right, having a central angle of 49°45'35", said point being the beginning of the Design Centerline;

Thence along said Design Centerline of Whiskey Hill Road, along the arc of said curve to the right (the long chord of which bears S70°24'16"E 639.49 feet) 660.04 feet to Station 140+90.03, said station ties back to the Existing Centerline;

Thence along the Existing Centerline S 45°31'29"E 247.55 feet to the existing centerline Station 143+37.58;
Thence continuing along the Centerline of the Existing Centerline S45°31'29"E to Centerline Station 156+00.24.

PUDDING RIVER, (WHISKEY HILL ROAD)
BRIDGE REPLACEMENT PROJECT
Owner: Julia S. Blackmon and Michael S. Blackmon
Page 2 of 3

File 005
County Project No. CI-22184
Tax Map 41W36 01700 Marion County
June 25, 2014

Parcel 2: Permanent Right-of-Way Easement for Road Purposes

A parcel of land, as shown on attached Exhibit "B", lying in the Northwest One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Marion County, Oregon, being a portion of the property described in a Warranty Deed to Julia S. Blackmon and Michael S. Blackmon., recorded September 27, 2013 in Reel 3547 Page 285, Marion County Records, said parcel being that portion of said property lying northerly of the following described line and southerly of the existing centerline of Whiskey Hill road, said lines to be lengthened or shortened to terminate as shown on Exhibit "B":

Beginning at a point 30.00 feet right of the Design Whiskey Hill Road Centerline Station 133+42;
Thence Easterly, in a straight line, to a point 6.14 feet left of the Design Centerline Station 138+27.

Parcel 2 to which this description applies contains 11,280 square feet more or less.

The stationing used to describe this parcel is based on the Design Centerline of Whiskey Hill Road described in Parcel 1 above.

Parcel 3: Permanent Easement For Ingress and Egress

A parcel of land, as shown on attached Exhibit "B", lying in the Northwest One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Marion County, Oregon, being a portion of the property described in a Warranty Deed to Julia S. Blackmon and Michael S. Blackmon., recorded September 27, 2013 in Reel 3547 Page 285, Marion County Records, said parcel being described as follows:

Beginning at a point 67.42 feet left of the Design Whiskey Hill Road Centerline Station 135+30;
Thence through the lands of Julia S. Blackmon and Michael S. Blackmon the following five (5) courses and distances:

1. N67°07'32"E 24.17 feet
2. N86°30'21"E 73.83 feet
3. S84°01'27"E 43.22 feet
4. S73°57'05"E 127.93 feet
5. N81°28'26"E 207± feet to a point on the Westerly Boundary of the Pudding River Rod and Gun Club, Inc.;

Thence along said Westerly Boundary South 20 ± feet to a point; Thence through the Said Lands of Blackmon S81°28'26"W 215 ± feet to a point 69.90 feet left the Design Whiskey Hill Road Centerline Station 137+67; Thence Westerly along the Northerly Bounds of said Existing and Design Right of Way to the point or place of beginning

Parcel 3 to which this description applies contains 9,500 square feet more or less.

PUDDING RIVER, (WHISKEY HILL ROAD)
BRIDGE REPLACEMENT PROJECT
Owner: Julia S. Blackmon and Michael S. Blackmon
Page 3 of 3

File 005
County Project No. CI-22184-005
Tax Map 41W36 01700 Marion County
June 25, 2014

Parcel 4: Temporary Construction Easement

A parcel of land, as shown on attached Exhibit "B", lying in the Northwest One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Marion County, Oregon, being a portion of the property described in a Warranty Deed to Julia S. Blackmon and Michael S. Blackmon., recorded September 27, 2013 in Reel 3547 Page 285, Marion County Records, said parcel being that portion of said property lying southerly of the following described line and northerly of the existing centerline of Whiskey Hill road, said lines to be lengthened or shortened to terminate as shown on Exhibit "B":

Beginning at a point 70.00 feet left of the Design Whiskey Hill Road Centerline Station 135+00;
Thence Northeasterly, in a straight line, to a point 100.00 feet left of the Design Centerline Station 135+50;
Thence Easterly, in a straight line, to a point 100.00 feet left of the Design Centerline Station 136+50; Thence
Easterly, in a straight line, to a point 100.00 feet left of the Design Centerline Station 137+50;
Thence Easterly, in a straight line, to a point 110.00 feet left of the Design Centerline Station 138+00;
Thence Southeasterly, in a straight line, to a point 73.08 feet left of the Design Centerline Station 139+12.

Excepting therefrom that portion described above as Parcel 1.
Also excepting therefrom that portion described above as Parcel 3.

Parcel 4 to which this description applies contains 6,942 square feet more or less.

The stationing used to describe this parcel is based on the Design Centerline of Whiskey Hill Road described in Parcel 1 above.

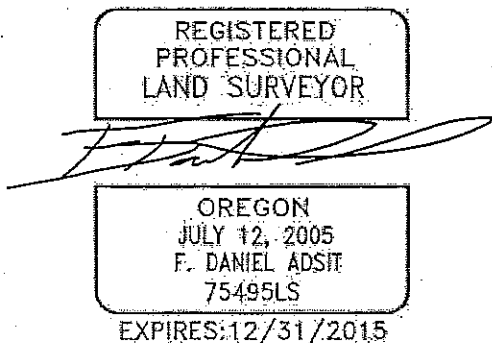


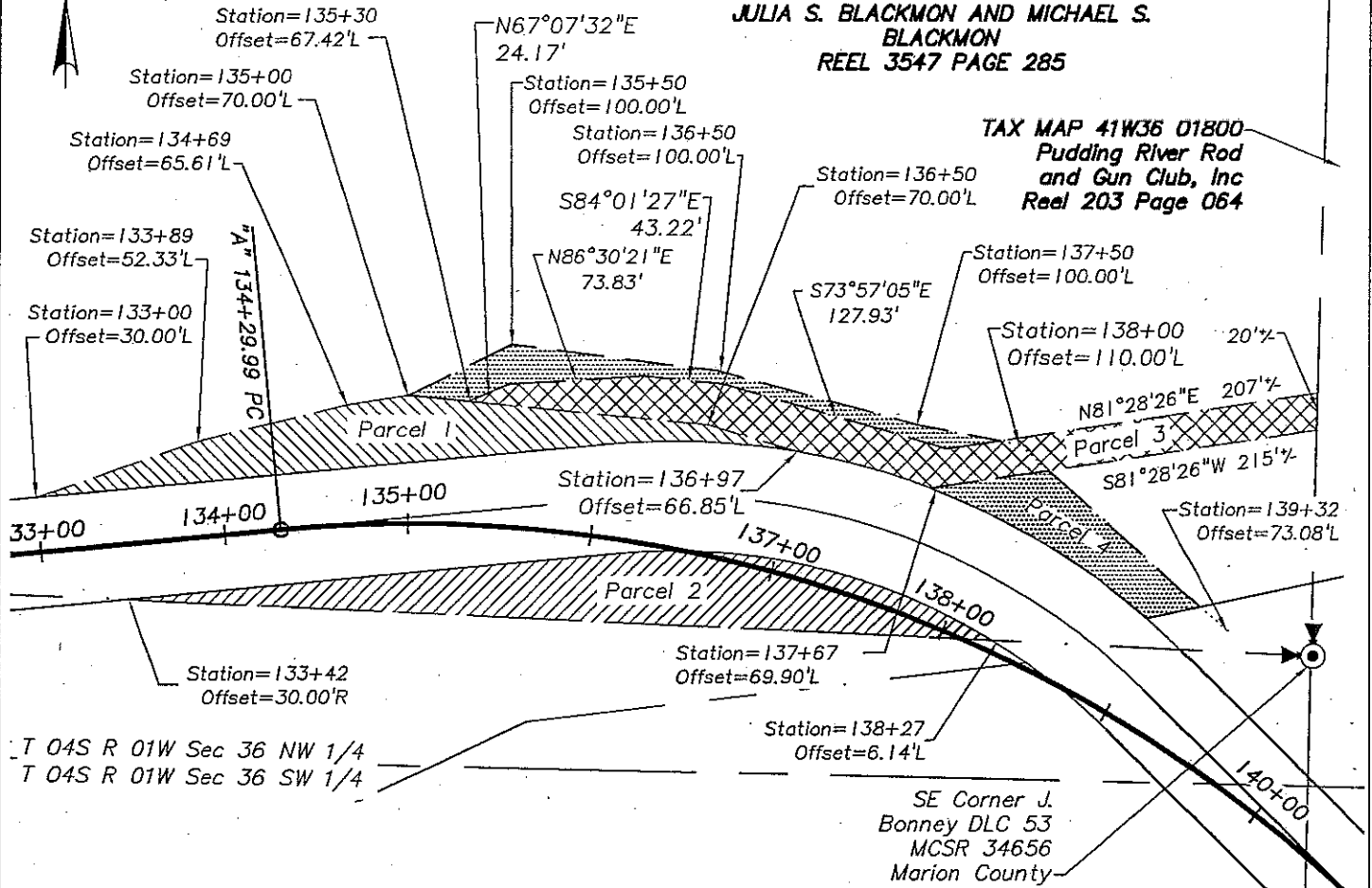
EXHIBIT B

PAGE 1 OF 1

NW 1/4 SEC. 36, T.4 S., R.1 W., W.M.
MARION COUNTY, OREGON

TAX MAP 41W36 01700
JULIA S. BLACKMON AND MICHAEL S.
BLACKMON
REEL 3547 PAGE 285

TAX MAP 41W36 01800
Pudding River Rod
and Gun Club, Inc
Reel 203 Page 064



T 04S R 01W Sec 36 NW 1/4
T 04S R 01W Sec 36 SW 1/4

SE Corner J.
Bonney DLC 53
MCSR 34656
Marion County

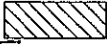



REGISTERED
PROFESSIONAL
LAND SURVEYOR

[Signature]

OREGON
JULY 12, 2005
F. DANIEL ADSIT
75495LS

EXPIRES: 12/31/2015

LEGEND

-  PARCEL 1: PERMANENT RIGHT OF WAY EASEMENT FOR ROAD PURPOSES 8,232 ± SQ.FT.
-  PARCEL 2: PERMANENT RIGHT OF WAY EASEMENT FOR ROAD PURPOSES 11,280 ± SQ.FT.
-  PARCEL 3: PERMANENT EASEMENT FOR INGRESS AND EGRESS 9,500 ± SQ.FT.
-  PARCEL 4: TEMPORARY CONSTRUCTION EASEMENT 6,942 ± SQ.FT.



**DAVID EVANS
AND ASSOCIATES INC.**

530 Center Street N.E., Suite 605
Salem Oregon 97301
Phone: 503.361.8635

PUDDING RIVER (WHISKEY HILL ROAD) BRIDGE MARION COUNTY

SEC 36, TOWNSHIP 4 SOUTH, RANGE 1 WEST, MARION COUNTY, OREGON

JULIA S. BLACKMON AND MICHAEL S. BLACKMON

FILE NO. File 005	DRAWN BY FDA	SCALE 1" = 100'	DATE 6/25/2014
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EXHIBIT A

PUDDING RIVER, (WHISKEY HILL ROAD)
BRIDGE REPLACEMENT PROJECT

April 17, 2014

Owner: Donald W. Carpenter, Trustee for the Anna M. Carpenter,

Living Trust Agreement under Trust Instrument dated September 21, 2001

Page 1 of 2

File 006

County Project No. CI-22184

Tax Map 41W36 00100 Marion County

Permanent Right-of-Way Easement for Road Purposes

A parcel of land, as shown on attached Exhibit "B", lying in the Northwest One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Marion County, Oregon, being a portion of the property described in a Living Trust Agreement under Trust Instrument to Donald W. Carpenter, Trustee for the Anna M. Carpenter, Living Trust Agreement, recorded September 26, 2001 in Reel 1841 Page 169, Marion County Records, said parcel being that portion of said property lying Northerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 30.00 feet right of the Design Whiskey Hill Road Centerline Station 133+00;
Thence Southerly, in a straight line, to a point 50.00 feet right of the Design Centerline Station 133+00;
Thence Easterly, in a straight line, to a point 60.00 feet right of the Design Centerline Station 134+50;
Thence Easterly, in a straight line, to a point on the Marion County / Clackamas County Boundary, said point being referenced by point 80.00 feet right of the Design Centerline Station 136+74;
Thence along said County Boundary, in a straight line, to a point 3.20 feet left of the Design Centerline Station 138+49.

The Parcel of land to which this description applies contains 13,408 square feet more or less.

The stationing used to describe this parcel is based on the Design Centerline of Whiskey Hill Road, being more particularly described as follows:

Beginning at a point in the Centerline of Whiskey Hill Road, said point being a 3" Brass Cap in Monument Box being the Northeasterly corner of the A. Dimmick DLC #64 as shown on MCSR 34656, Survey for Marion County, Market Road 9, Whiskey Hill Road, beginning stationing of 106+61.93 is derived from the as-built records as shown on CS 11236 recorded in the Marion County Records;

Thence S87°17'34"E 2,466.04 feet along the existing centerline of Whiskey Hill Road, MR 9 to Centerline Station 131+27.97;

Thence N84°42'56"E 302.02 feet to Centerline Station 134+29.99 and the beginning of a 760.00 foot radius curve to the right, having a central angle of 49°45'35", said point being the beginning of the Design Centerline;

PUDDING RIVER, (WHISKEY HILL ROAD)
BRIDGE REPLACEMENT PROJECT

County Project No. CI-22184
Tax Map 41W36 00100 Marion County

April 17, 2014

Owner: Donald W. Carpenter, Trustee for the Anna M. Carpenter,
Living Trust Agreement under Trust Instrument dated September 21, 2001

Page 2 of 2

Thence along said Design Centerline of Whiskey Hill Road, along the arc of said curve to the right (the long chord of which bears $S70^{\circ}24'16''E$ 639.49 feet) 660.04 feet to Station 140+90.03, said station ties back to the Existing Centerline;

Thence along the Existing Centerline $S 45^{\circ}31'29''E$ 247.55 feet to the existing centerline Station 143+37.58;

Thence continuing along the Centerline of the Existing Centerline $S45^{\circ}31'29''E$ to Centerline Station 156+00.24.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 12, 2005
F. DANIEL ADSIT
75495LS

EXPIRES: 12/31/2015

EXHIBIT B

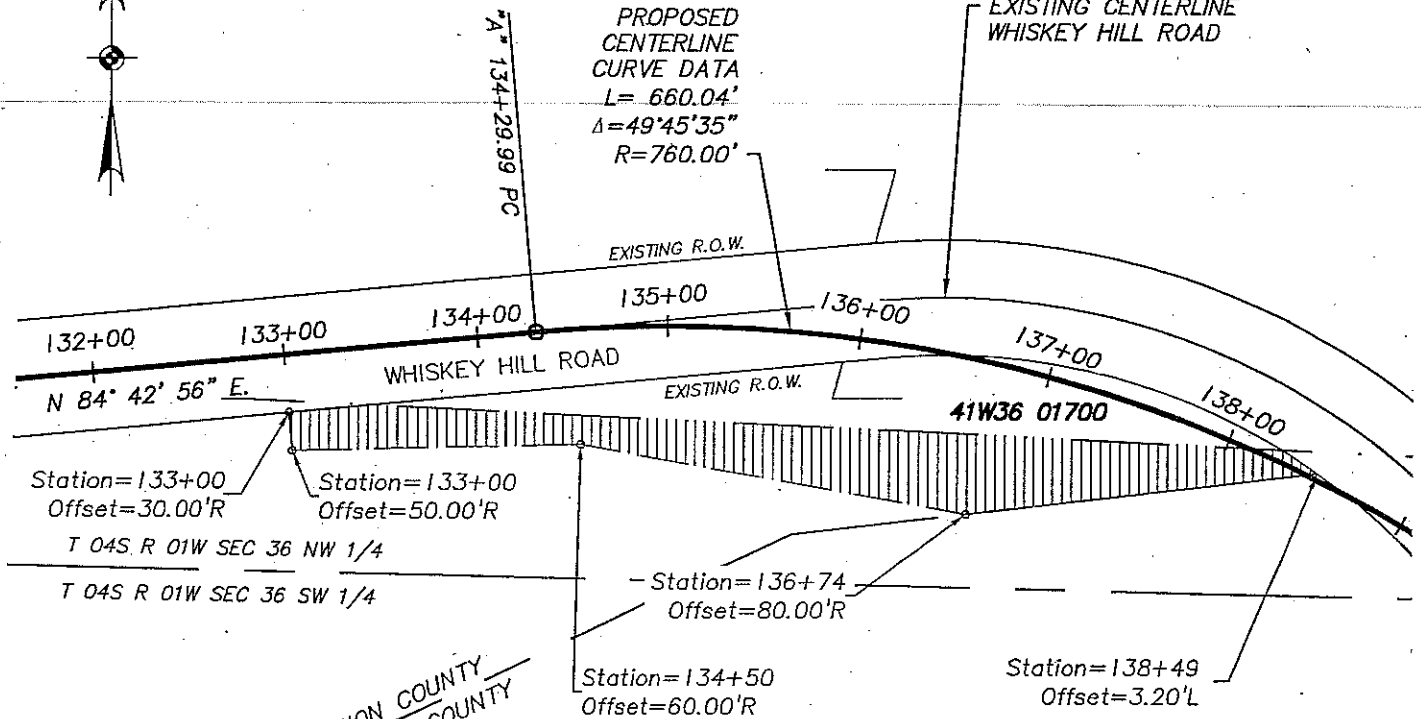
PAGE 1 OF 1

NW 1/4 SEC. 36, T.4 S., R.1 W., W.M.
MARION COUNTY, OREGON



PROPOSED
CENTERLINE
CURVE DATA
L= 660.04'
Δ=49°45'35"
R=760.00'

EXISTING CENTERLINE
WHISKEY HILL ROAD



41W36 01700

MARION COUNTY
CLACKAMAS COUNTY

TAX MAP 41W36 00100
DONALD W. CARPENTER, TRUSTEE FOR THE
ANNA M. CARPENTER, LIVING TRUST
AGREEMENT DATED SEPTEMBER 21, 2001
REEL 1841 PAGE 169

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 2005
F. DANIEL ADSIT
75495LS

EXPIRES:12/31/2015

LEGEND



PERMANENT RIGHT OF WAY EASEMENT FOR ROAD PURPOSES
13,408± SQ.FT.



**DAVID EVANS
AND ASSOCIATES INC.**

530 Center Street N.E., Suite 605
Salem Oregon 97301
Phone: 503.361.8635

**PUDDING RIVER (WHISKEY HILL ROAD) BRIDGE
MARION COUNTY**

SEC 36, TOWNSHIP 4 SOUTH, RANGE 1 WEST, MARION COUNTY, OREGON
DONALD W. CARPENTER, TRUSTEE FOR THE ANNA M. CARPENTER
LIVING TRUST AGREEMENT.

FILE NO. File 006	DRAWN BY FDA	SCALE 1" = 100'	DATE 3/25/2014
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9 COPY

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

September 11, 2014

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with
Clackamas County Service District No. 1 for the
SE Mabel & SE Webster Drainage Improvement Project**

Purpose/Outcomes	This agreement allows for partnering with Clackamas County Service District No. 1 (CCSD1) to complete drainage improvements on SE Mabel Avenue and SE Webster Road.
Dollar Amount and Fiscal Impact	The total project contract cost is \$394,310.39
Funding Source	CCSD1 will provide \$226,067.34 for the storm drainage portion of the project DTD will provide \$168,243.05 for the road reconstruction and paving portion of the project
Safety Impact	This project will improve the stormwater conveyance system and relieve chronic flooding; reconstruct and repave the roadway.
Duration	Effective upon execution and expires upon completion of the project.
Previous Board Action	08/21/14: Approval of a contract with Kodiak Pacific Construction Co, Inc. for the Mabel Avenue Improvement Project
Contact Person	Vince Hall, Civil Engineering – DTD Engineering 503-742-4650

BACKGROUND:

The Department of Transportation and Development (DTD) has a project to reconstruct and pave a portion of SE Mabel Avenue between SE Bilquist Circle and SE Webster Road and Clackamas County Service District No. 1 (CCSD1) has identified a need to improve the stormwater conveyance system for SE Mabel Avenue at SE Webster Road. DTD and CCSD1 have agreed to work cooperatively to complete these projects in unison. This agreement outlines the roles and responsibilities for DTD and CCSD1 and allows for CCSD1 to reimburse DTD for the contract expense of the storm drainage improvements.

Through this agreement, CCSD1 agrees to reimburse DTD for the cost of the drainage improvement work, contracted at \$226,067.34. The stormwater conveyance system plans have been provided by CCSD1 and have been incorporated into the contract documents. DTD will administer the contract and oversee construction, with input from CCSD1 for the stormwater work.

This agreement has been reviewed and approved by County Counsel.

Y2023

RECOMMENDATION:

Staff respectfully recommends approval of the Intergovernmental Agreement with Clackamas County Service District No. 1 to complete drainage improvements on SE Mabel Avenue and SE Webster Road.

Sincerely,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Vince Hall at 503-742-4650

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and
CLACKAMAS COUNTY
FOR
SE MABEL & SE WEBSTER DRAINAGE IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into and between Clackamas County (hereafter called "COUNTY"), an instrumentality of the State of Oregon, acting by and through its Department of Transportation and Development ("DTD"), and Clackamas County Service District No. 1 ("DISTRICT"), a county service district formed pursuant to ORS Chapter 451.

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, DTD desires to improve SE Mabel Ave including placement of asphalt along approximately 2,390 feet of street and adjusting utilities ("Mabel Improvements");

WHEREAS, the DISTRICT desires to have DTD install additional storm drainage improvements in the area as a part of the Mabel Improvements (the "PROJECT");

WHEREAS, DTD and the DISTRICT agree it is in their best interest to coordinate and exercise efficiencies to complete the Mabel Improvements and PROJECT work.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Term.** This Agreement shall be effective upon execution by both parties, and shall expire upon completion and acceptance of the storm drainage improvements that are to be constructed as part of the PROJECT.
2. **Obligation of Department of Transportation and Development.**
 - A. DTD agrees to oversee the administration of PROJECT and manage the construction of the improvements to the stormwater conveyance system, described in more detail in Exhibit A, attached hereto and incorporated by reference.
 - B. DTD agrees to incorporate the DISTRICT's storm drainage design into their construction contract documents and to administer the construction contract.
 - C. DTD agrees to require a one-year warranty for the Storm Drainage Improvements from the Contractor awarded the Bid. DTD agrees to notify the DISTRICT in writing when the one-year warranty period begins and agrees to repair or correct deficiencies in the PROJECT work noted, in writing, by the DISTRICT before releasing the Contractor's warranty.
 - D. Upon final completion of the DISTRICT specific Storm Drainage Improvements, DTD shall submit a reimbursement request to the DISTRICT.
3. **Obligation of the DISTRICT.**
 - A. Within 30 days of the effective date of this Agreement, provide storm water drainage design materials to DTD sufficient to adequately incorporate the Project design into DTD's construction contract documents.
 - B. Upon receipt of the written invoice for reimbursement of the portion of the PROJECT construction cost, DISTRICT agrees to reimburse DTD within sixty (60) days.

waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

IN WITNESS HEREOF, the parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County Board of Commissioners

**Board of Commissioners of Clackamas
County Service District #1**

Chair

Chair

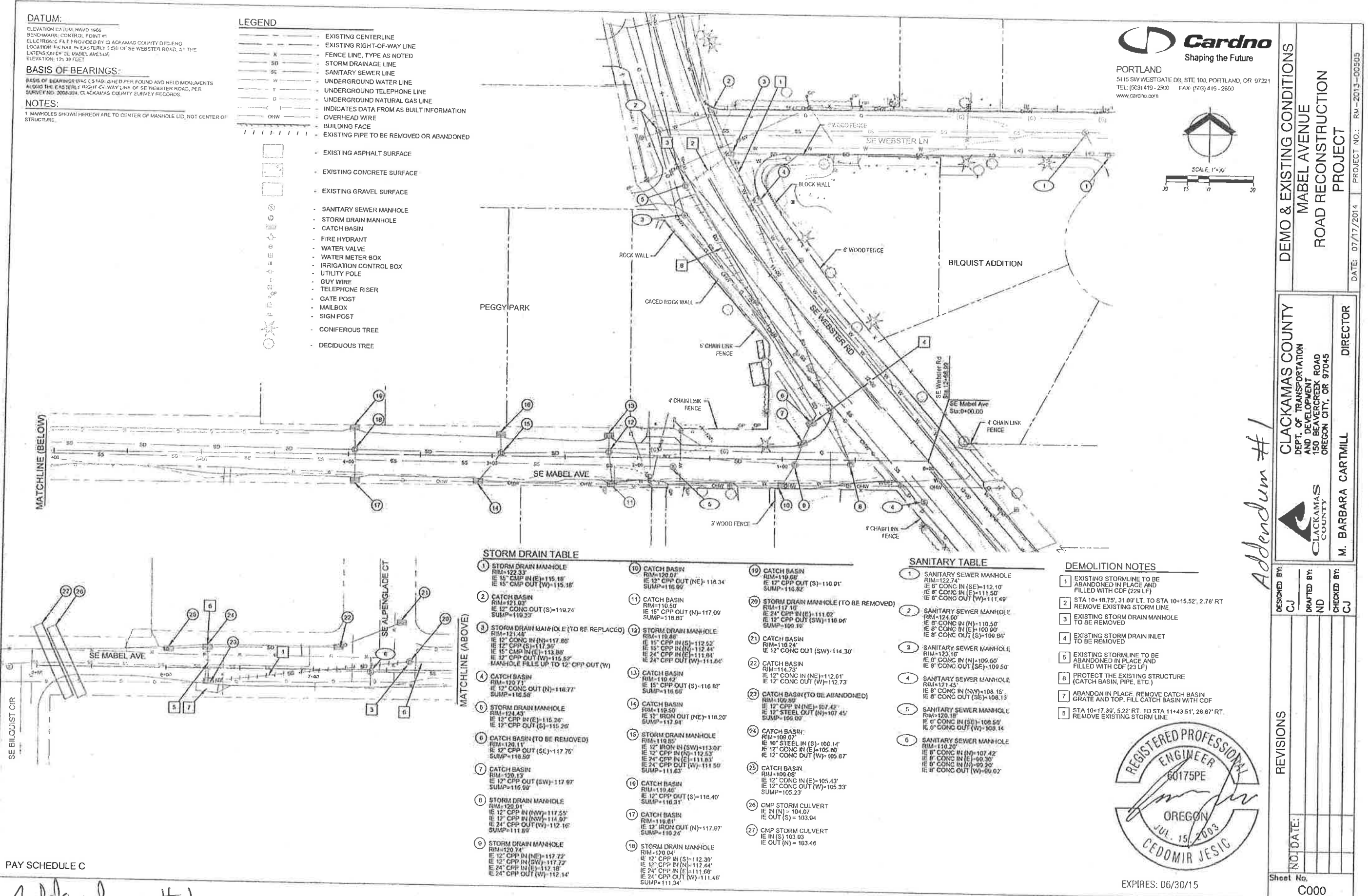
Recording Secretary

Recording Secretary

Date

Date

W:\21407300\CIVIL\CD\0730-CD-EXISTING CONDITIONS.DWG 7/14/2014 12:28 PM



DATUM:
ELEVATION DATUM: NAVD 1988
BENCHMARK: CONTROL POINT #1
LOCATION: 1/4 MI. N. EASTERLY 5/16 OF SE WEBSTER ROAD, AT THE
EXTENSION OF SE MABEL AVENUE
ELEVATION: 120.39 FEET

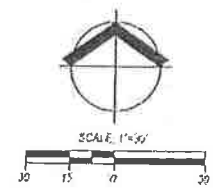
BASIS OF BEARINGS:
BASIS OF BEARINGS WAS ESTABLISHED PER FOUND AND HELD MONUMENTS
ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SE WEBSTER ROAD, PER
SURVEY NO. 2006-024, CLACKAMAS COUNTY SURVEY RECORDS.

NOTES:
1. MANHOLES SHOWN HEREON ARE TO CENTER OF MANHOLE LID, NOT CENTER OF
STRUCTURE.

LEGEND

---	EXISTING CENTERLINE
---	EXISTING RIGHT-OF-WAY LINE
---	FENCE LINE, TYPE AS NOTED
SD	STORM DRAINAGE LINE
SS	SANITARY SEWER LINE
W	UNDERGROUND WATER LINE
T	UNDERGROUND TELEPHONE LINE
G	UNDERGROUND NATURAL GAS LINE
---	INDICATES DATA FROM AS BUILT INFORMATION
OKW	OVERHEAD WIRE
---	BUILDING FACE
---	EXISTING PIPE TO BE REMOVED OR ABANDONED
---	EXISTING ASPHALT SURFACE
---	EXISTING CONCRETE SURFACE
---	EXISTING GRAVEL SURFACE
SM	SANITARY SEWER MANHOLE
SDM	STORM DRAIN MANHOLE
CB	CATCH BASIN
FH	FIRE HYDRANT
WV	WATER VALVE
WMB	WATER METER BOX
ICB	IRRIGATION CONTROL BOX
UP	UTILITY POLE
GW	GUY WIRE
TR	TELEPHONE RISER
GP	GATE POST
MB	MAILBOX
SP	SIGN POST
CT	CONIFEROUS TREE
DT	DECIDUOUS TREE

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www.cardno.com

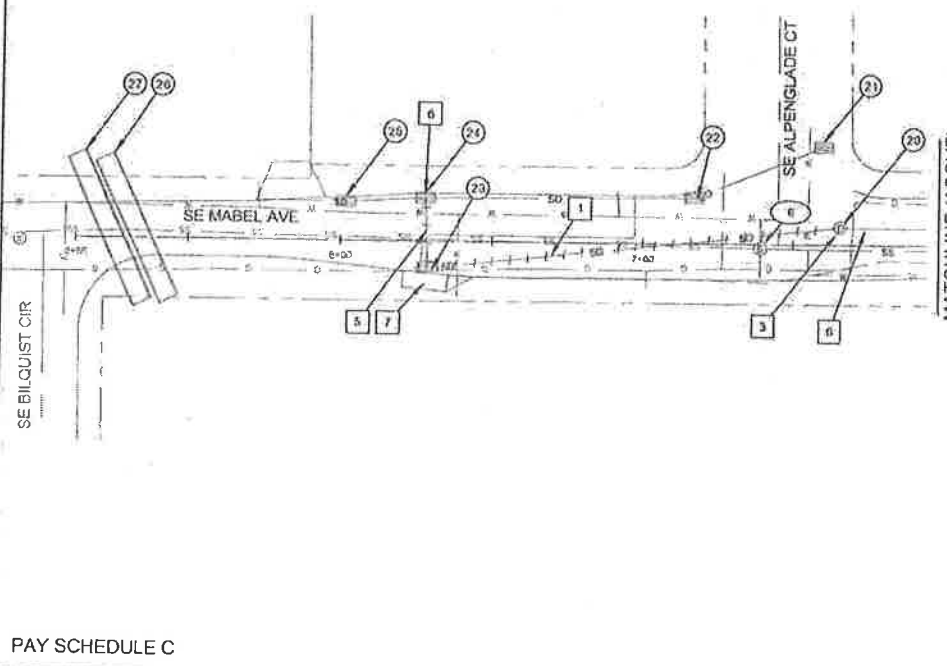


DEMO & EXISTING CONDITIONS
MABEL AVENUE
ROAD RECONSTRUCTION
PROJECT

CLACKAMAS COUNTY
DEPT. OF TRANSPORTATION
AND DEVELOPMENT
150 BEAVERCREK ROAD
OREGON CITY, OR 97045

M. BARBARA CARTMILL
DIRECTOR

Addendum #1



STORM DRAIN TABLE

1. STORM DRAIN MANHOLE RIM=122.33' IE 12" CPP IN (E)=115.18' IE 15" CMP OUT (W)=115.18'	10. CATCH BASIN RIM=120.07' IE 12" CPP OUT (NE)=116.34' SUMP=116.00'	19. CATCH BASIN RIM=110.68' IE 12" CPP OUT (S)=110.01' SUMP=116.82'
2. CATCH BASIN RIM=121.03' IE 12" CONC OUT (S)=119.24' SUMP=110.23'	11. CATCH BASIN RIM=110.50' IE 15" CPP OUT (N)=117.09' SUMP=116.80'	20. STORM DRAIN MANHOLE (TO BE REMOVED) RIM=117.30' IE 24" CPP IN (E)=111.02' IE 12" CPP OUT (SW)=110.06' SUMP=109.10'
3. STORM DRAIN MANHOLE (TO BE REPLACED) RIM=121.46' IE 12" CONC IN (N)=117.80' IE 12" CPP IN (S)=117.30' IE 15" CMP IN (E)=113.80' IE 12" CPP OUT (W)=115.52' MANHOLE FILLS UP TO 12" CPP OUT (W)	12. STORM DRAIN MANHOLE RIM=118.88' IE 15" CPP IN (S)=112.52' IE 15" CPP IN (N)=112.44' IE 24" CPP IN (E)=111.94' IE 24" CPP OUT (W)=111.84'	21. CATCH BASIN RIM=118.24' IE 12" CONC OUT (SW)=114.30'
4. CATCH BASIN RIM=120.77' IE 12" CONC OUT (N)=118.77' SUMP=110.58'	13. CATCH BASIN RIM=110.42' IE 15" CPP OUT (S)=110.82' SUMP=116.60'	22. CATCH BASIN RIM=114.73' IE 12" CONC IN (NE)=112.61' IE 12" CONC OUT (W)=112.73'
5. STORM DRAIN MANHOLE RIM=121.43' IE 12" CPP IN (E)=115.20' IE 12" CPP OUT (S)=115.20'	14. CATCH BASIN RIM=110.50' IE 12" IRON OUT (NE)=118.20' SUMP=117.94'	23. CATCH BASIN (TO BE ABANDONED) RIM=109.90' IE 12" CPP IN (NE)=107.42' IE 12" STEEL OUT (N)=107.45' SUMP=109.00'
6. CATCH BASIN (TO BE REMOVED) RIM=120.11' IE 12" CPP OUT (SE)=117.76' SUMP=118.50'	15. STORM DRAIN MANHOLE RIM=119.85' IE 12" IRON IN (SW)=113.07' IE 12" CPP IN (N)=112.53' IE 24" CPP IN (E)=111.83' IE 24" CPP OUT (W)=111.50' SUMP=111.63'	24. CATCH BASIN RIM=109.67' IE 10" STEEL IN (S)=100.14' IE 12" CONC IN (E)=105.80' IE 12" CONC OUT (W)=105.87'
7. CATCH BASIN RIM=120.13' IE 12" CPP OUT (SW)=117.97' SUMP=116.69'	16. CATCH BASIN RIM=119.46' IE 12" CPP OUT (S)=116.40' SUMP=116.31'	25. CATCH BASIN RIM=109.08' IE 12" CONC IN (E)=105.43' IE 12" CONC OUT (W)=105.33' SUMP=105.23'
8. STORM DRAIN MANHOLE RIM=120.91' IE 12" CPP IN (NW)=117.55' IE 12" CPP IN (SW)=117.77' IE 24" CPP IN (E)=112.18' IE 24" CPP OUT (W)=112.14'	17. CATCH BASIN RIM=118.81' IE 12" IRON OUT (N)=117.07' SUMP=110.24'	26. CMP STORM CULVERT IE IN (N)=103.07' IE OUT (S)=103.94'
9. STORM DRAIN MANHOLE RIM=120.74' IE 12" CPP IN (NE)=117.72' IE 12" CPP IN (SW)=117.77' IE 24" CPP IN (E)=112.18' IE 24" CPP OUT (W)=112.14'	18. STORM DRAIN MANHOLE RIM=120.04' IE 12" CPP IN (S)=112.30' IE 12" CPP IN (N)=112.44' IE 24" CPP IN (E)=111.69' IE 24" CPP OUT (W)=111.46' SUMP=111.34'	27. CMP STORM CULVERT IE IN (S)=103.03' IE OUT (N)=103.46'

SANITARY TABLE

1. SANITARY SEWER MANHOLE RIM=122.74' IE 6" CONC IN (SE)=112.10' IE 8" CONC IN (E)=111.50' IE 8" CONC OUT (W)=111.49'	2. SANITARY SEWER MANHOLE RIM=124.60' IE 6" CONC IN (N)=110.50' IE 8" CONC IN (E)=100.80' IE 8" CONC OUT (S)=100.80'	3. SANITARY SEWER MANHOLE RIM=123.16' IE 6" CONC IN (N)=109.60' IE 6" CONC OUT (SE)=109.50'	4. SANITARY SEWER MANHOLE RIM=121.45' IE 6" CONC IN (NW)=108.15' IE 6" CONC OUT (SE)=108.15'	5. SANITARY SEWER MANHOLE RIM=120.18' IE 6" CONC IN (SE)=108.50' IE 6" CONC OUT (W)=108.14'	6. SANITARY SEWER MANHOLE RIM=110.20' IE 6" CONC IN (N)=107.42' IE 6" CONC IN (E)=69.30' IE 6" CONC IN (W)=99.20' IE 6" CONC OUT (W)=69.62'
---	--	--	---	--	--

DEMOLITION NOTES

- EXISTING STORMLINE TO BE ABANDONED IN PLACE AND FILLED WITH CDF (228 LF)
- STA 10+18.75', 31.89' LT. TO STA 10+15.52', 2.78' RT. REMOVE EXISTING STORM LINE
- EXISTING STORM DRAIN MANHOLE TO BE REMOVED
- EXISTING STORM DRAIN INLET TO BE REMOVED
- EXISTING STORMLINE TO BE ABANDONED IN PLACE AND FILLED WITH CDF (23 LF)
- PROTECT THE EXISTING STRUCTURE (CATCH BASIN, PIPE, ETC.)
- ABANDON IN PLACE. REMOVE CATCH BASIN GRATE AND TOP. FILL CATCH BASIN WITH CDF
- STA 10+17.39', 5.22' RT. TO STA 11+43.51', 26.67' RT. REMOVE EXISTING STORM LINE



PAY SCHEDULE C

Addendum #1

DESIGNED BY:	CJ
DRAFTED BY:	ND
CHECKED BY:	CJ
REVISIONS	
NO. DATE:	
Sheet No.	C000

DATE: 07/17/2014 PROJECT NO.: RM-2013-00505

EXPIRES: 06/30/15

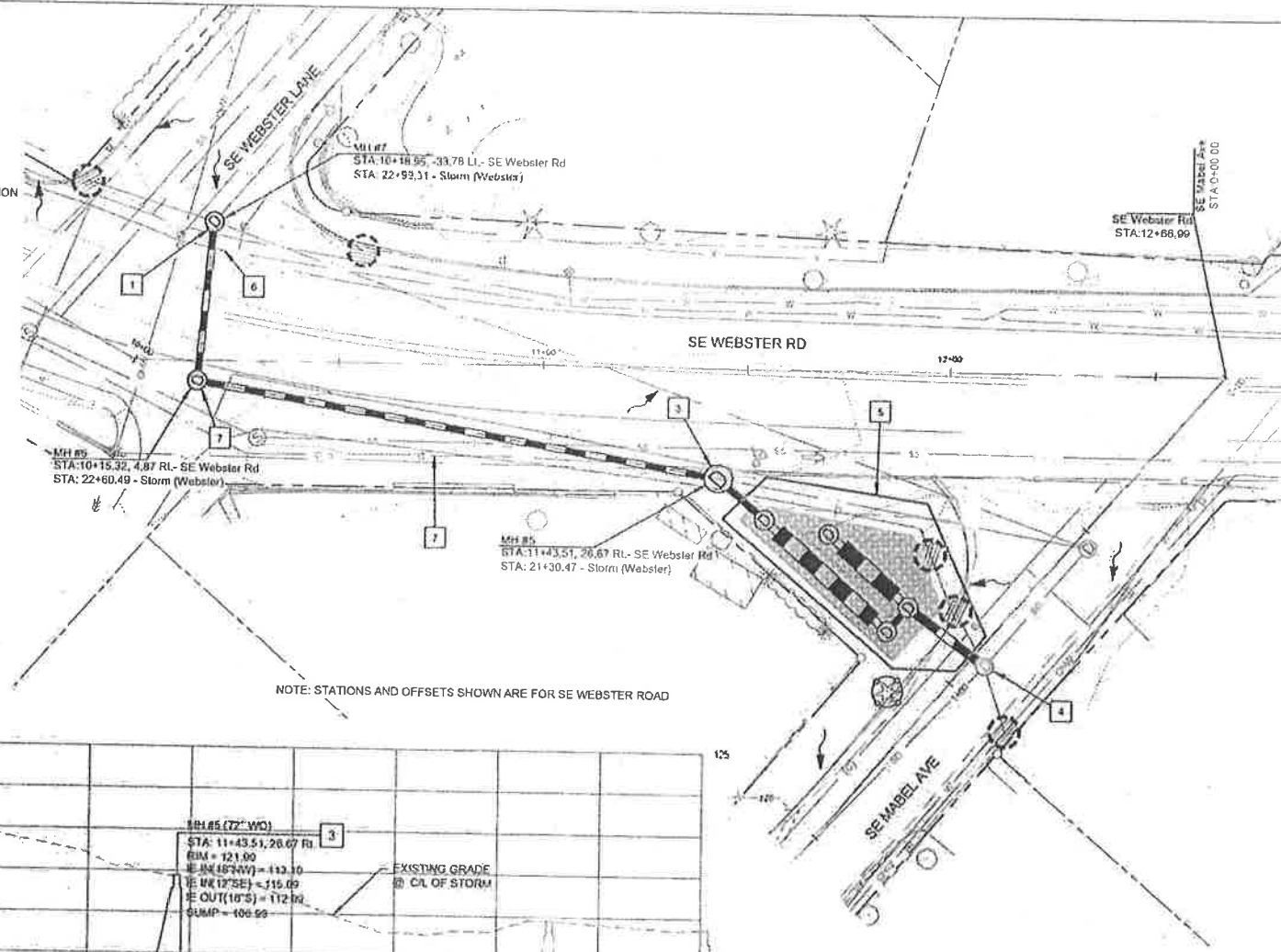
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CONSTRUCTION NOTES

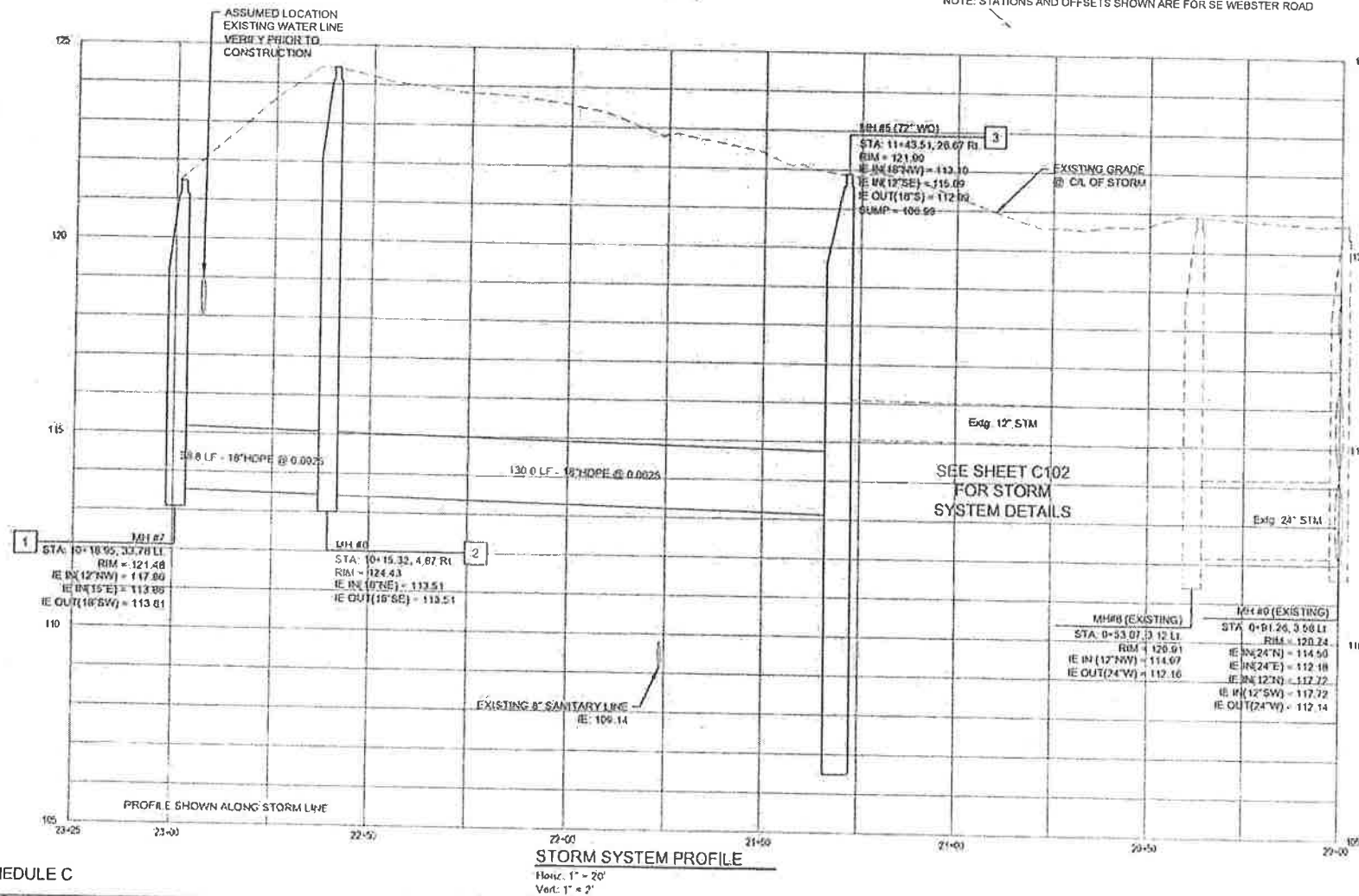
- 1 CONSTRUCT STANDARD 48" MANHOLE (1 EACH)
SEE SHEET C200 FOR DETAILS
CONNECT TO EXISTING STORM LINES
FROM THE NORTH AND EAST
CONNECT TO PROPOSED LINE TO THE WEST
- 2 CONSTRUCT STANDARD 48" MANHOLE (1 EACH)
SEE SHEET C200 FOR DETAILS
- 3 CONSTRUCT 72" W/O MANHOLE (1 EACH)
SEE SHEET C201 FOR DETAILS
- 4 EXISTING STORM MANHOLE
CORE HOLE IN MANHOLE TO CONNECT TO
PROPOSED 24" HDPE TO WEST
- 5 SEE SHEET C102 FOR STORM SYSTEM DETAILS
- 6 EXISTING WATER LINE
VERIFY DEPTH 10 WORKING DAYS
PRIOR TO CONSTRUCTION
WATERLINE SHALLOW PER
CLACKAMAS RIVER WATER
- 7 EXISTING GAS LINE
VERIFY DEPTH 10 WORKING DAYS
PRIOR TO CONSTRUCTION

LEGEND

- - - - - EXISTING CENTERLINE
- - - - - EXISTING RIGHT-OF-WAY LINE
- - - - - FENCE LINE, TYPE AS NOTED
- SD - - - - - STORM DRAINAGE LINE
- S - - - - - SANITARY SEWER LINE
- W - - - - - UNDERGROUND WATER LINE
- T - - - - - UNDERGROUND TELEPHONE LINE
- G - - - - - UNDERGROUND NATURAL GAS LINE
- - - - - INDICATES DATA FROM AS BUILT INFORMATION
- -- OVERHEAD WIRE
- - - - - EXISTING SANITARY SEWER MANHOLE
- - - - - EXISTING/PROPOSED MANHOLE
- - - - - EXISTING CATCH BASIN
- - - - - PROPOSED STORM PIPE
- - - - - INLET PROTECTION
- - - - - PROTECT EXISTING TREE & ROOTS
- - - - - FLOW ARROW



NOTE: STATIONS AND OFFSETS SHOWN ARE FOR SE WEBSTER ROAD

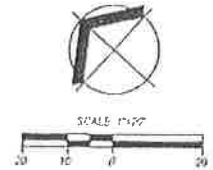


STORM SYSTEM PROFILE
HORIZ. 1" = 20'
VERT. 1" = 2'

PAY SCHEDULE C

Addendum #1

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STORM DRAINAGE PLAN & PROFILE
MABEL AVENUE
ROAD RECONSTRUCTION
PROJECT
DATE: 07/17/2014 PROJECT NO.: RM-2013-00505

CLACKAMAS COUNTY
DEPT. OF TRANSPORTATION
AND DEVELOPMENT
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045
M. BARBARA CARTMILL
DIRECTOR

Addendum #1

DESIGNED BY: CJ	DRAFTED BY: ND	CHECKED BY: CJ
NO. DATE:	REVISIONS:	SHEET NO. C100



EXPIRES: 06/30/15

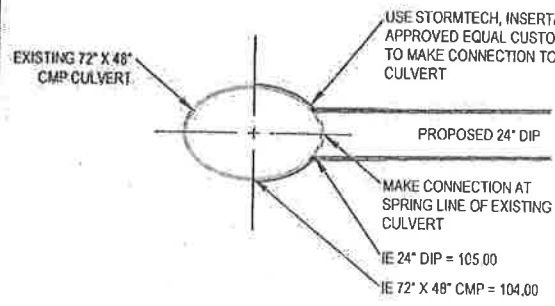
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CONSTRUCTION NOTES

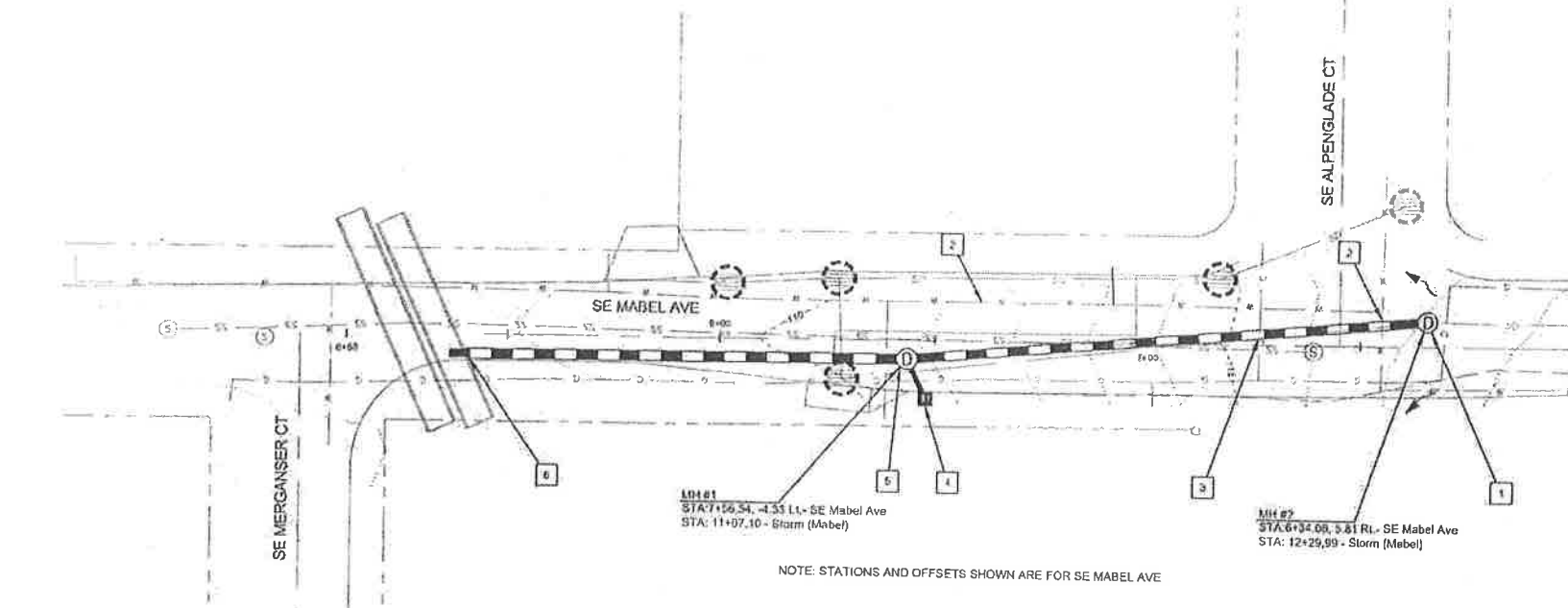
- 1 CONSTRUCT STANDARD 48" MANHOLE RECONNECT EXISTING 24" STORM PIPE SEE SHEET C200 FOR DETAILS
- 2 EXISTING WATER LINE VERIFY DEPTH 10 WORKING DAYS PRIOR TO CONSTRUCTION WATERLINE SHALLOW PER CLACKAMAS RIVER WATER
- 3 EXISTING GAS LINE VERIFY DEPTH 10 WORKING DAYS PRIOR TO CONSTRUCTION
- 4 CONSTRUCT CURB INLET CATCH BASIN INSTALL 10LF OF 12" HDPE PIPE SLOPE = 2% SEE SHEET C200 FOR DETAILS
- 5 CONSTRUCT STANDARD 48" MANHOLE SEE SHEET C200 FOR DETAILS
- 6 STA: 8+63.69 - SE MABEL AVE STA: 10+00.00 - STORM (MABEL) CONNECT TO EXISTING 72" X 48" CULVERT FOR DETAIL SEE THIS SHEET

LEGEND

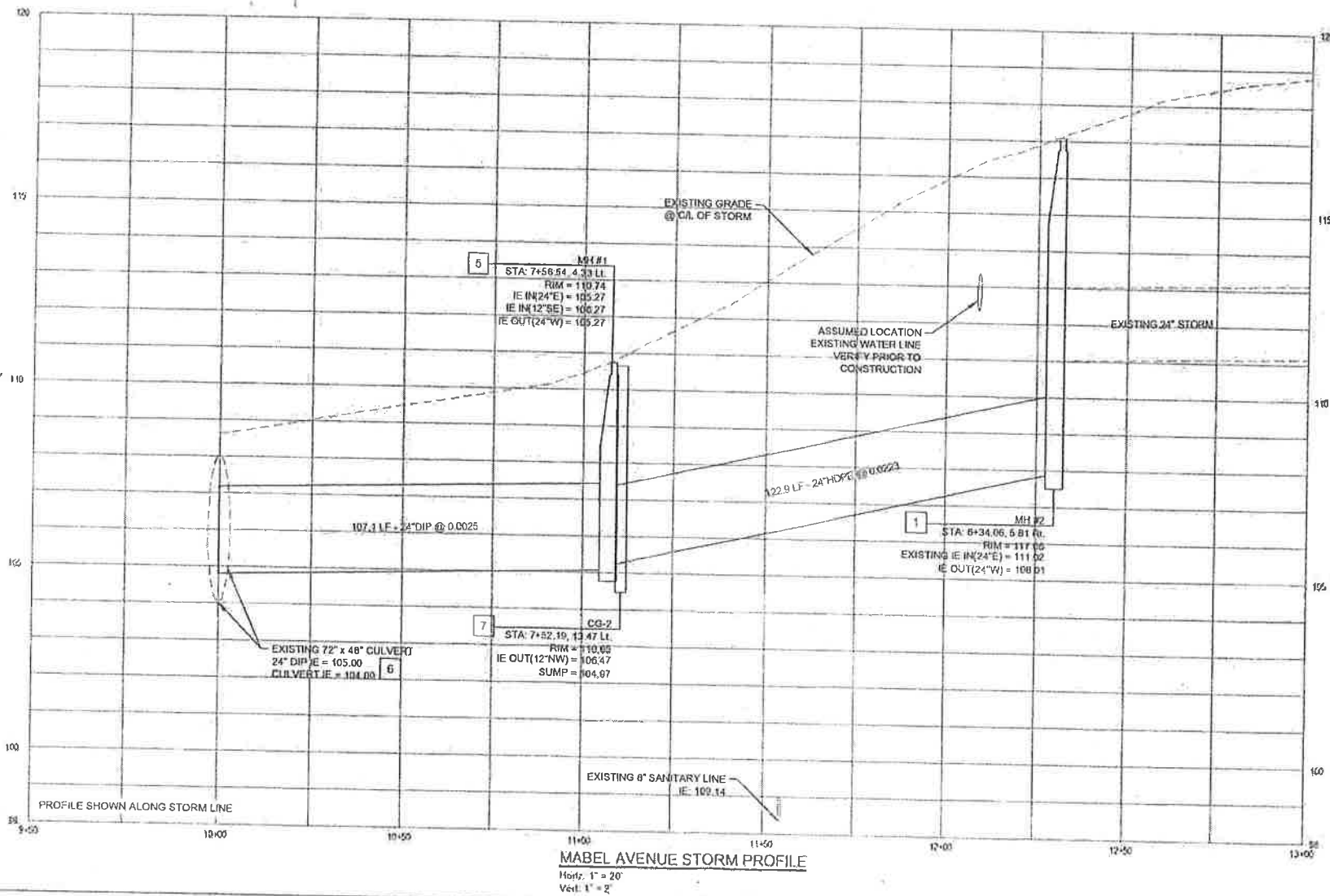
- - - - - EXISTING CENTERLINE
- - - - - EXISTING RIGHT-OF-WAY LINE
- X - - - - FENCE LINE, TYPE AS NOTED
- SD - - - - STORM DRAINAGE LINE
- SS - - - - SANITARY SEWER LINE
- W - - - - UNDERGROUND WATER LINE
- T - - - - UNDERGROUND TELEPHONE LINE
- G - - - - UNDERGROUND NATURAL GAS LINE
- - - - - INDICATES DATA FROM AS BUILT INFORMATION
- OHW - - - - OVERHEAD WIRE
- ⊙ - - - - EXISTING SANITARY SEWER MANHOLE
- ⊙ - - - - EXISTING/PROPOSED MANHOLE
- ⊙ - - - - EXISTING CATCH BASIN
- ⊙ - - - - PROPOSED STORM PIPE
- ⊙ - - - - INLET PROTECTION
- ⊙ - - - - PROTECT EXISTING TREE & ROOTS
- - - - - FLOW ARROW



CONNECTION TO EXISTING CULVERT
SCALE: 1"=4'

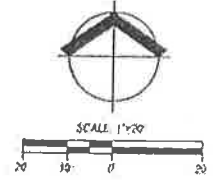


NOTE: STATIONS AND OFFSETS SHOWN ARE FOR SE MABEL AVE



MABEL AVENUE STORM PROFILE
HORIZ. 1" = 20'
VERT. 1" = 2'

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STORM DRAINAGE PLAN & PROFILE
MABEL AVENUE
ROAD RECONSTRUCTION
PROJECT

CLACKAMAS COUNTY
DEPT. OF TRANSPORTATION
AND DEVELOPMENT
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045

M. BARBARA CARTMILL
DIRECTOR

Addendum #1

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NO. DATE:		
REVISIONS		
Sheet No.	C101	



EXPIRES: 06/30/15

PAY SCHEDULE C

Addendum #1

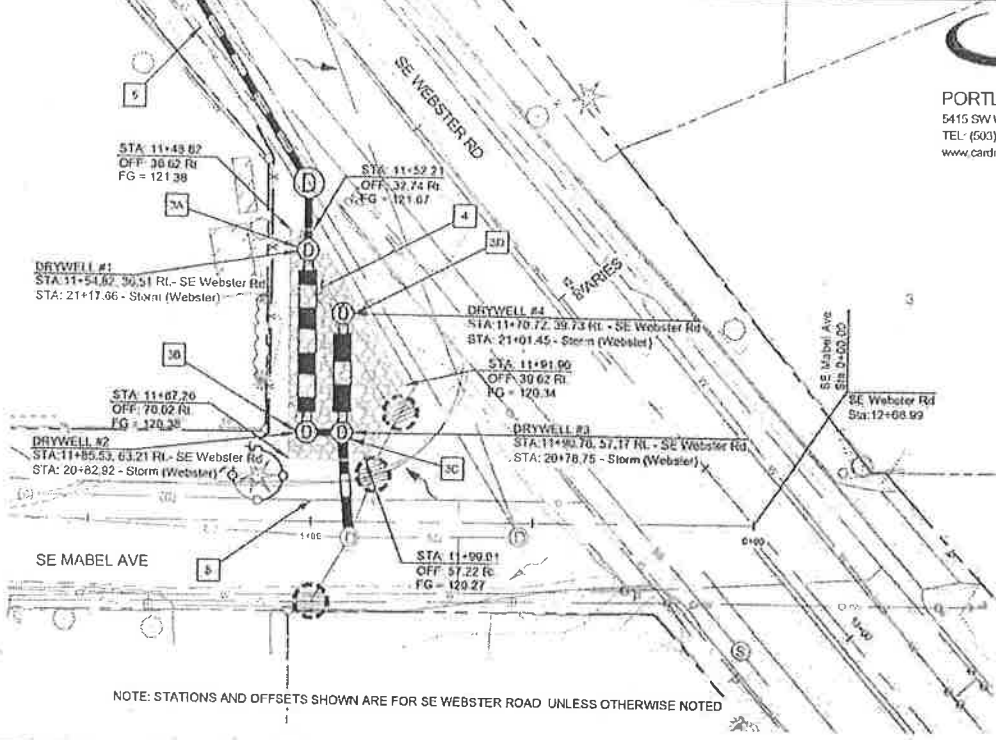
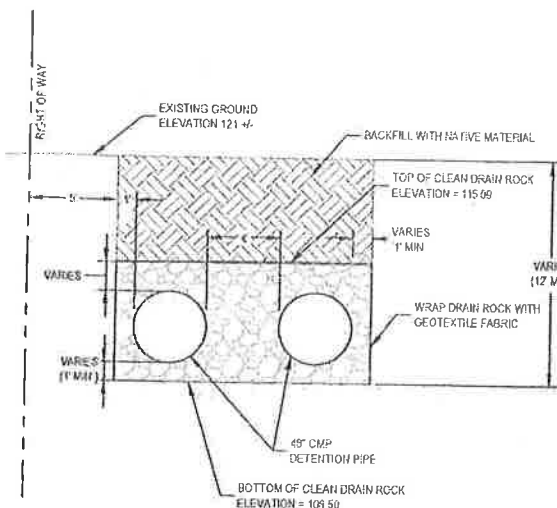
PROJECT NO.: RM-2013-00505
DATE: 07/17/2014

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LEGEND

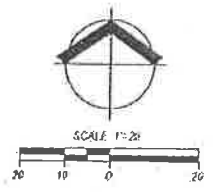
- - - - - EXISTING CENTERLINE
- - - - - EXISTING RIGHT-OF-WAY LINE
- X - - - - - FENCE LINE, TYPE AS NOTED
- SD - - - - - STORM DRAINAGE LINE
- SS - - - - - SANITARY SEWER LINE
- W - - - - - UNDERGROUND WATER LINE
- T - - - - - UNDERGROUND TELEPHONE LINE
- G - - - - - UNDERGROUND NATURAL GAS LINE
- - - - - INDICATES DATA FROM AS BUILT INFORMATION
- OHW - - - - - OVERHEAD WIRE
- (S) - - - - - EXISTING SANITARY SEWER MANHOLE
- (D) - - - - - EXISTING/PROPOSED MANHOLE
- (C) - - - - - EXISTING CATCH BASIN
- (P) - - - - - PROPOSED STORM PIPE
- (IP) - - - - - INLET PROTECTION
- (TR) - - - - - PROTECT EXISTING TREE & ROOTS
- - - - - - FLOW ARROW
- X - - - - - ORANGE SILT FENCE

- CONSTRUCTION NOTES**
- 1 EXISTING STORM MANHOLE
SEE SHEET C100 FOR CONNECTION
 - 2 EXISTING GAS LINE
CONTRACTOR TO VERIFY DEPTH 10 WORKING DAYS
PRIOR TO CONSTRUCTION
 - 3 INSTALL STANDARD DRYWELL (4 EACH)
 - 4 INSTALL 1-1/2" - 3/4" CLEAN DRAIN ROCK
PER DETAIL ON THIS SHEET



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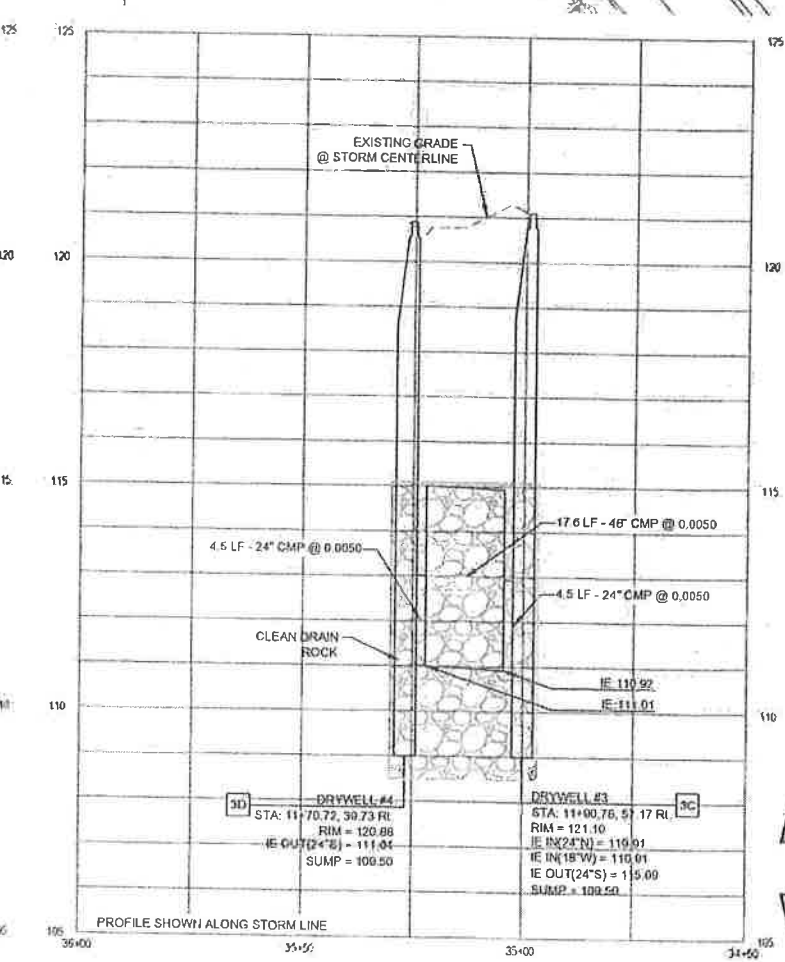
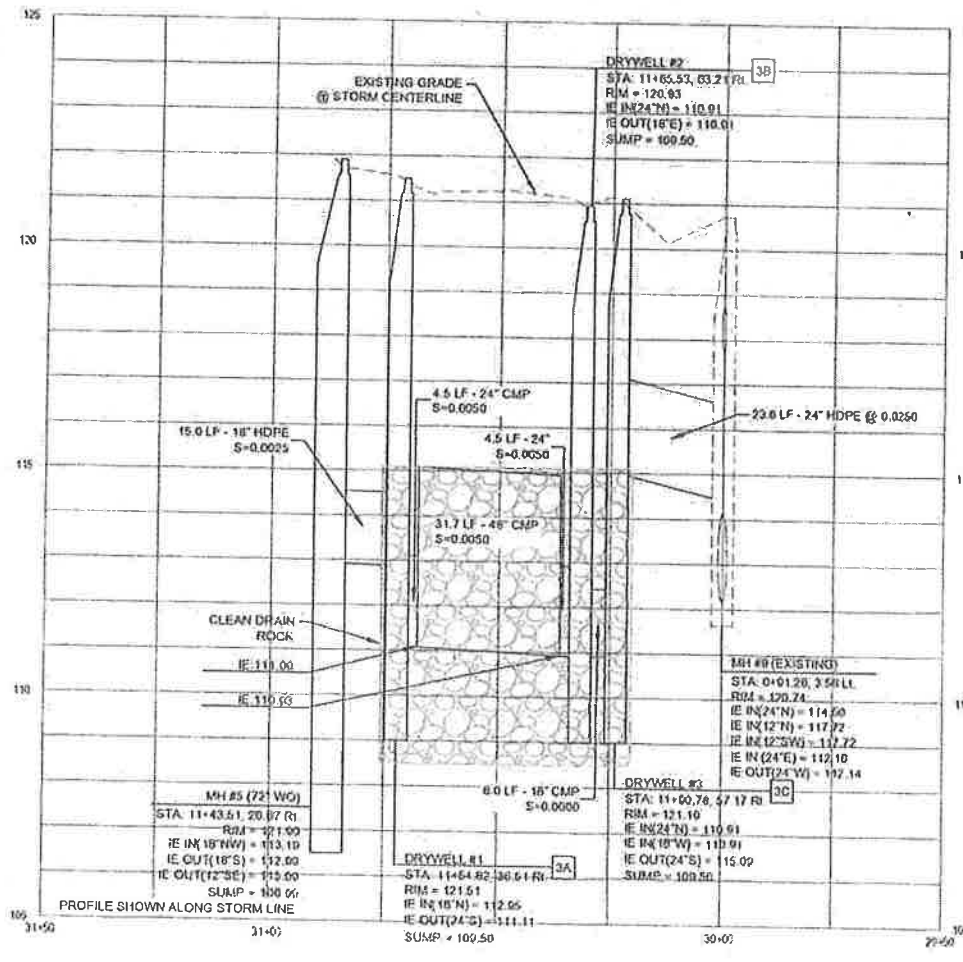
STORM DRAINAGE PLAN & PROFILE
MABEL AVENUE
ROAD RECONSTRUCTION
PROJECT

DATE: 07/17/2014 PROJECT NO.: RM-2013-00505

CLACKAMAS COUNTY
DEPT. OF TRANSPORTATION
AND DEVELOPMENT
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045

M. BARBARA CARTMILL
DIRECTOR

Addendum #1



DESIGNED BY: CJ

DRAFTED BY: ND

CHECKED BY: CJ

REVISIONS

NO.	DATE:	

Sheet No. C102

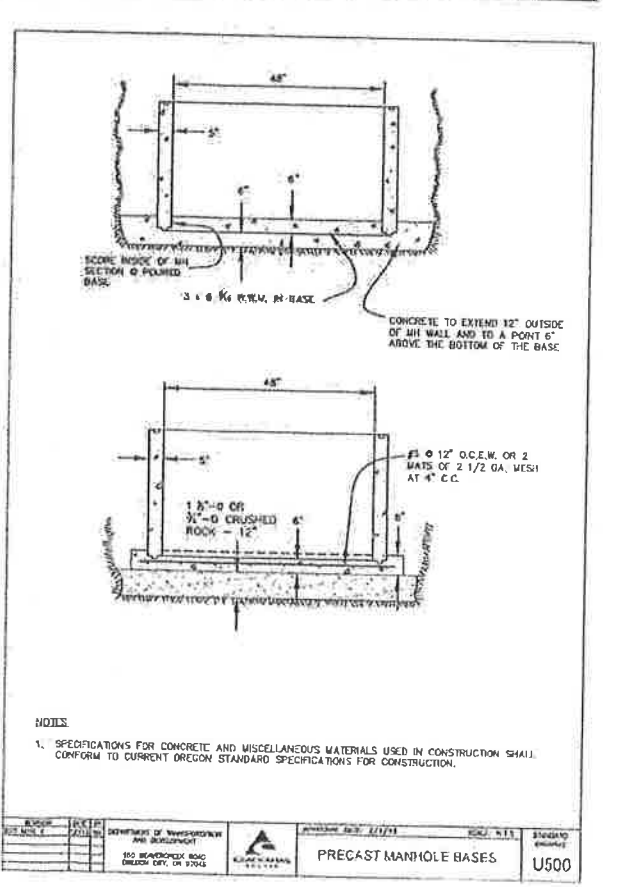
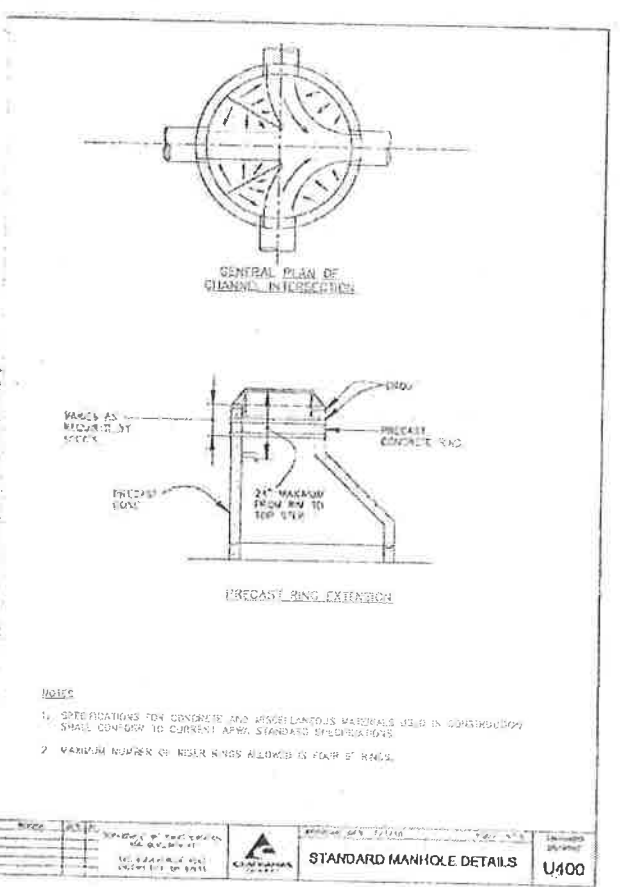
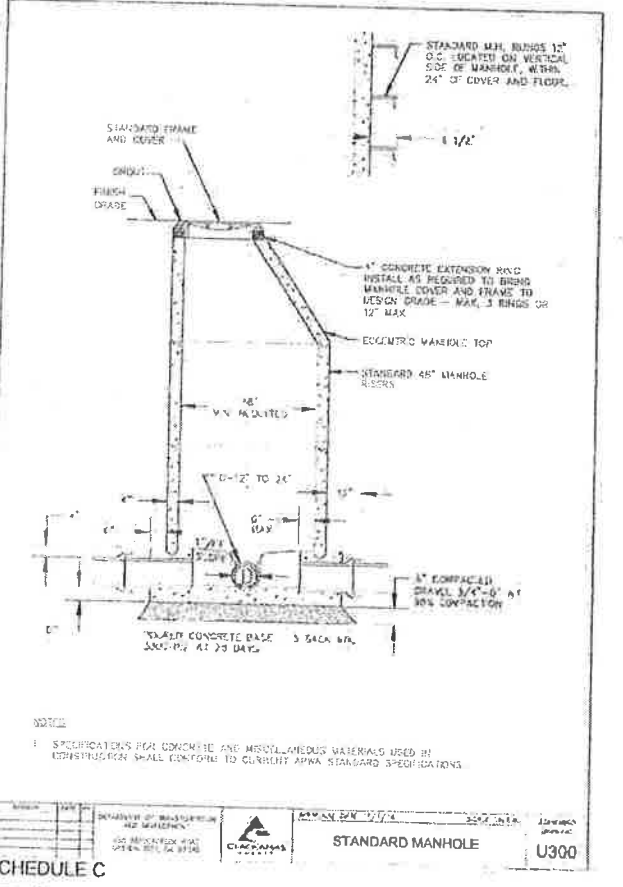
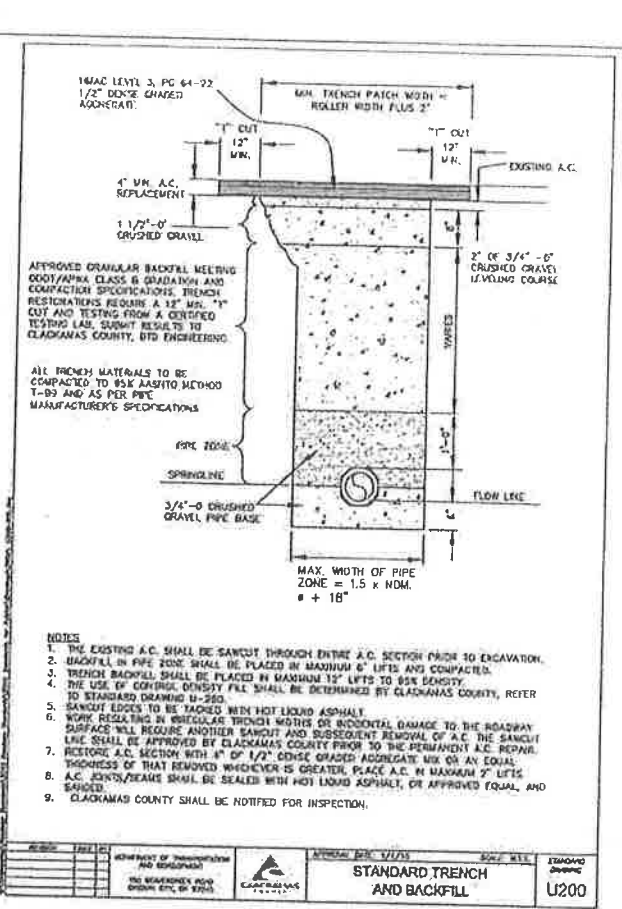
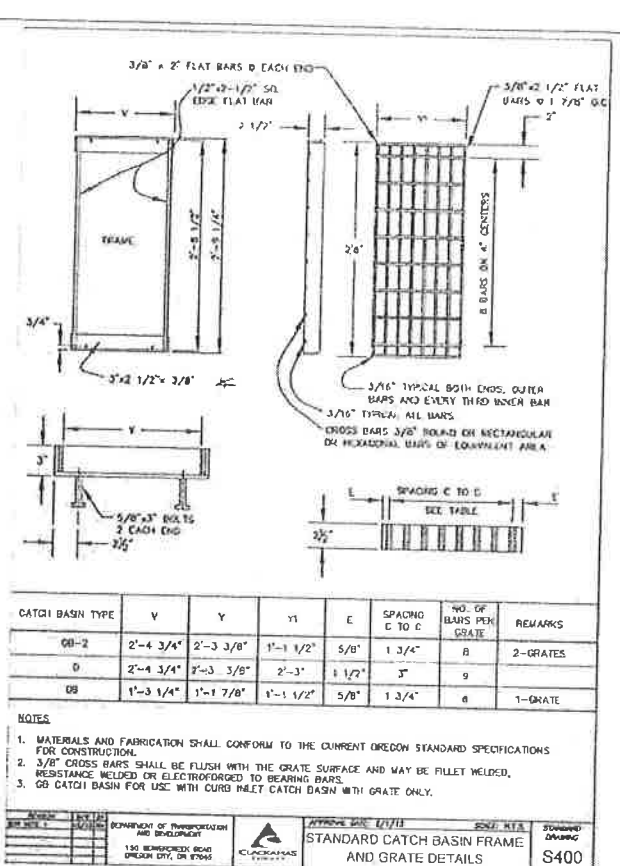
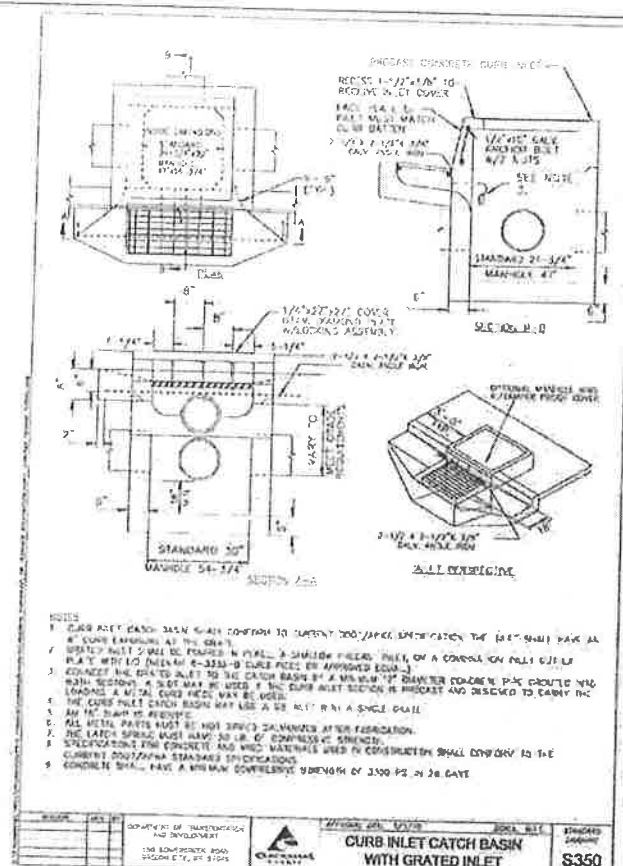


EXPIRES: 06/30/15

PAY SCHEDULE C

Addendum #1

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DETAILS
MABEL AVENUE
ROAD RECONSTRUCTION
PROJECT

DATE: 07/17/2014 PROJECT NO.: RM-2013-00505

CLACKAMAS COUNTY
DEPT. OF TRANSPORTATION
AND DEVELOPMENT
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045

M. BARBARA CARTMILL
DIRECTOR

Addendum #1

NO.	DATE	REVISIONS
DESIGNED BY:	CJ	
DRAFTED BY:	ND	
CHECKED BY:	CJ	



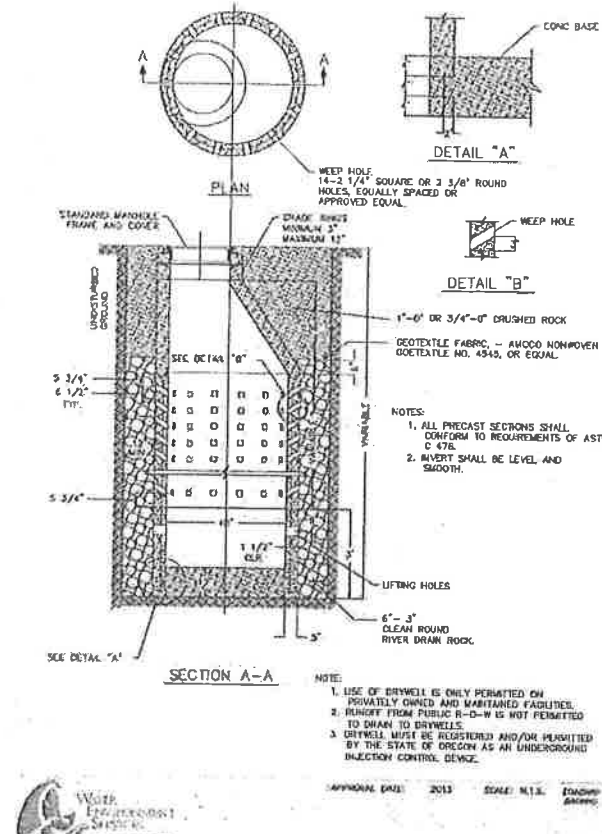
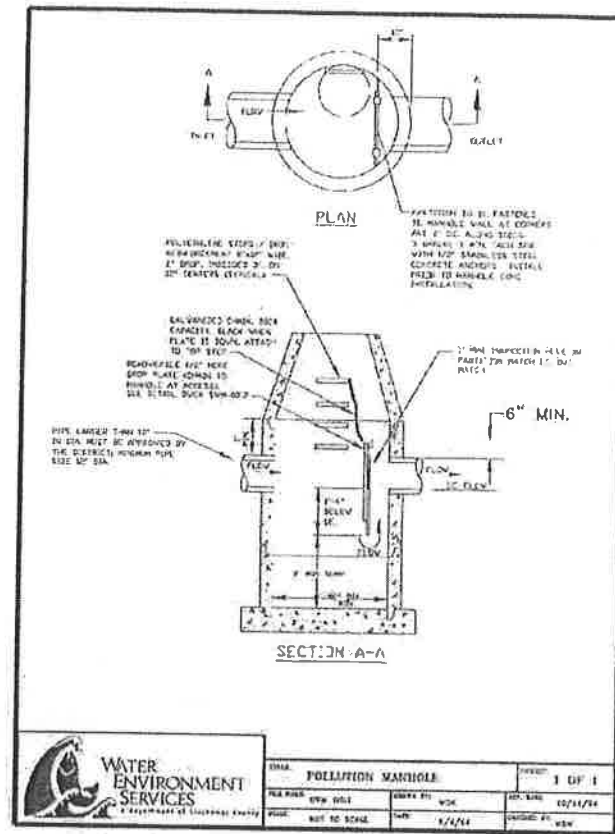
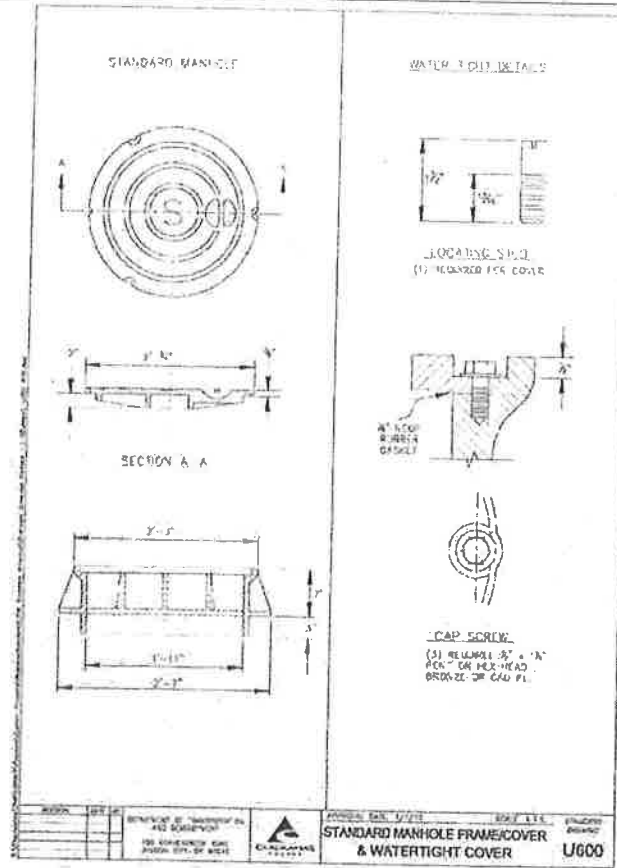
EXPIRES: 06/30/15

Addendum #1

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PAY SCHEDULE C

Addendum #1



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DETAILS

MABEL AVENUE ROAD RECONSTRUCTION PROJECT

DATE: 07/17/2014 PROJECT NO.: RM-2013-00505

CLACKAMAS COUNTY
DEPT. OF TRANSPORTATION AND DEVELOPMENT
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045

M. BARBARA CARTMILL
DIRECTOR

DESIGNED BY:	CJ
DRAFTED BY:	ND
CHECKED BY:	CJ
NO. DATE:	
REVISIONS:	
Sheet No.	C201

Addendum #1

EXPIRES: 06/30/15

BID PROPOSAL

Submitted by: KODIAK Pacific Construction

Address: 10940 SW Clutter Rd.

Date: Aug 6th, 2014 Phone number: (503) 783-4300

Federal Tax I.D. Number or Social Security Number 93-0924857

The undersigned, as a bidder, declares that he has carefully examined the location of the worksites, that he has examined the Standard Specifications and Special Provisions, Plans and Drawings and read the Instructions to Bidders, and hereby proposes to furnish all materials and equipment and do all the work required to complete the project entitled **MABEL AVENUE IMPROVEMENT PROJECT** in accordance with the said Specifications herein for the bid prices set forth in the Schedule of Bid Prices attached hereto and forming a part of this proposal. The bidder agrees to complete the project within the contract term.

This proposal is accompanied by a certified check, cashier's check or bid bond in the amount of ten (10%) percent of the total bid.

The Bidder, by his signature below, certifies that he is qualified to perform the work hereby represents as follows:

(a) That no Commissioner, officer, agent or employee of Clackamas County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its Commissioners, officers, agents, or employees had induced him to enter into this contract and the papers made a part hereof by its terms;

(b) That this bid is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.

(c) That the provisions required by ORS 279C.800 through ORS 279C.870 or 40 U.S.C. 3141 et seq. relating to Prevailing Wage Rates shall be complied with.

(d) In the event the Bidder is awarded the contract and shall fail to complete the work within the time frame specified, including extensions granted, liquidated damages and engineering expenses shall be paid to the County as outlined in the Standard Specifications for each day of delay in the completion of the work.

(e) Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document. Vendors shall comply with ORS279C.510 concerning demolition salvage and landscape maintenance.

(f) Contractor shall commence no work under this contract until all bonding and insurance requirements have been met and a Notice to Proceed has been issued.

(g) I, the undersigned, agree to be bound by the form of agreement and all remaining contract documents, including Instructions to Bidders; Standard Terms and Conditions; Special conditions; Federal Provisions, if applicable; plans and specifications.

(h) I, the undersigned, certify that this bid has been arrived at independently and has been submitted without any collusion designed to limit independent bidding or competition.

(i) Upon receiving notice to proceed from the Project Manager, the Contractor shall meet with the Project Manager for a preconstruction conference at a time mutually agreed upon. At this conference the Contractor shall furnish the Project Manager with a proposed schedule of work.

(j) I, the undersigned, agree to comply with the provisions of ORS 279C.800 through ORS 279C.870 or Davis Bacon Act (40 U.S.C. 3141 et seq.) as applicable.

(k) I, the undersigned, certify that the bidder has not discriminated against minority, women, or emerging small business enterprises, or a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining subcontracts.

(l) Contractor shall commence no work under this contract until the Contractor and every subcontractor has a public works bond filed with the Construction Contractors Board in accordance with ORS 279C.830 and all other bonding and insurance requirements have been met and a Notice to Proceed has been issued.

(m) I, the undersigned, certify that the Bidder holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.

(n) I, the undersigned, certify that the Bidder is covered by liability insurance and other insurance in the amount(s) required by the solicitation.

(o) I, the undersigned, certify that the bidder qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

(p) I, the undersigned, certify that the bidder is legally qualified to contract with Clackamas County.

The Bidder further proposes to accept the following amount as full payment for the work proposed herein to complete the project and agrees that the price represents a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type of work called for in these Contract Documents. The total amount shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.

If the Bidder is awarded a Contract on this proposal, the surety who will provide the Performance Bond will be WESTERN SURETY (ANULUR INS.)

whose address is 500 CENTURY TOWER 1201 SW 12TH AVE, PORTLAND, OR 97205

The name of the surety representative is ANULUR INS. Telephone: (503) 224-2500

- Drug Testing Requirement, as defined in ORS 279C.505
- Resident Bidder, as defined in ORS 279A.120
- Non-Resident Bidder, Resident State: N/A

CONSTRUCTION CONTRACTORS REGISTRATION

No bids for construction contracts shall be received or considered by the Agency unless the bidder is licensed with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530. The undersigned states that the bidder is now registered with the Oregon Construction Contractors Board.

Indicate Registration Number and Expiration Date: 53583 / 5/15

Workers' Comp. Insurance Company: SAIF

Workers' Comp. Policy/Binder Number: 816771

The names of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

<u>SANDY TRAINER</u>	<u>PRESIDENT</u>
Name	Title
<u>SAM MANLEY</u>	<u>VICE PRESIDENT</u>
Name	Title

(If Sole Proprietor or Partnership)

In witness hereto, the undersigned has set his (its) hand this _____ day of _____, 2014

N/A

Name of Firm

Signature of Bidder

(If Corporation)

In witness whereof the undersigned corporation has caused this instrument to be executed by its duly authorized officers this 6 day of AUGUST, 2014.

KODIAK PACIFIC CONSTRUCTION

Name of Corporation

By David David

PRESIDENT / OWNER

Title

Mabel Avenue Project

Addendum #3

Page 1 of 3

Item #	Spec #	Item Description	Unit	Quantity	Unit Price	Total
TEMPORARY FEATURES AND APPURTENANCES & CONSTRUCTION SURVEY WORK FOR PAY SCHEDULE A & B						
0010	0196	EXTRA WORK ALLOWANCE	LS	1	\$ 15,000.00	\$ 15,000.00
0020	0210	MOBILIZATION	LS	1	18,793.51	18,793.51
0030	0225	TEMPORARY PROTECTION AND DIRECTION OF TRAFFIC	LS	1	512.42	512.42
0040	0225	TEMPORARY WORK ZONE TRAFFIC CONTROL PLAN	LS	1	323.17	323.17
0050	0225	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	LS	1	1404.67	1404.67
0060	0225	FLAGGERS	HR	350	60.25	21,087.50
0070	0280	EROSION CONTROL	LS	1	700.00	700.00
0080	0280	INLET PROTECTION	EA	24	49.36	1184.64
0090	0280	SEDIMENT BARRIER	FOOT	30	10.81	324.30
0100	0290	POLLUTION CONTROL	LS	1	700.00	700.00
0110	0305	CONSTRUCTION SURVEY WORK	LS	1	4,500.00	4,500.00
TEMPORARY FEATURES AND APPURTENANCES & SURVEY WORK FOR SCHEDULES A & B SUBTOTAL						64,530.21

Schedule A: Paving Project						
Item #	Spec #	Item Description	Unit	Quantity	Unit Price	Total
ROADWORK FOR SCHEDULE A						
0120	0310	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	550.00	550.00
0130	0310	ASPHALT PAVEMENT SAW CUTTING	FOOT	190	1.83	347.70
DRAINAGE AND SEWERS FOR SCHEDULE A						
0140	0490	MINOR ADJUSTMENT OF MANHOLES	EA	4	158.48	633.92
0150	0490	ADJUSTING BOXES	EA	9	48.25	434.25
BASES FOR SCHEDULE A						
0160	0620	COLD PLANE PAVEMENT REMOVAL, 0-1-1/2 INCHES DEEP	SQYD	1580	4.79	7,568.20
0170	0620	COLD PLANE PAVEMENT REMOVAL, 0-2 INCHES DEEP	SQYD	510	4.95	2,524.50
WEARING SURFACES FOR SCHEDULE A						
0180	0744	LEVEL 2, 1/2 INCH DENSE HMAC	TON	550	82.05	45,127.50
0190	0749	EXTRA FOR ASPHALT APPROACHES	EACH	8	492.58	3,940.64
SCHEDULE A SUBTOTAL						61,126.71

Mabel Avenue Project

Schedule B: Road Reconstruction Project

Addendum #3

Page 2 of 3

Item #	Spec #	Item Description	Unit	Quantity	Unit Price	Total
ROADWORK FOR SCHEDULE B						
0200	0310	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	550.00	550.00
0210	0310	ASPHALT PAVEMENT SAW CUTTING	FOOT	165	1.83	301.95
DRAINAGE AND SEWERS FOR SCHEDULE B						
0220	0490	ADJUSTING INLETS	EA	4	1,485.60	5,942.40
0230	0490	MINOR ADJUSTMENT OF MANHOLES	EA	8	125.80	1,006.40
0240	0490	ADJUSTING BOXES	EA	3	85.05	225.15
BASES FOR SCHEDULE B						
0250	0620	COLD PLANE PAVEMENT REMOVAL, 1-1-1/2 INCHES DEEP	SQYD	115	9.45	1,086.75
0260	0620	COLD PLANE PAVEMENT REMOVAL, 1 INCH DEEP	SQYD	390	3.50	1,365.00
0270	0620	COLD PLANE PAVEMENT REMOVAL, 1-2 INCHES DEEP	SQYD	85	5.63	478.55 (M)
0280	0640	AGGREGATE BASE	TON	10	51.48	514.80
WEARING SURFACES FOR SCHEDULE B						
0290	0744	LEVEL 2, 1/2 INCH DENSE HMAC	TON	325	82.05	26,666.25
0300	0749	EXTRA FOR ASPHALT APPROACHES	EACH	8	488.47	3,907.76
0310	0749	ASPHALT INLET APRON	EACH	8	63.89	511.12
SCHEDULE B SUBTOTAL						42,586.13

Schedule C: STORM DRAINAGE WORK

TEMPORARY FEATURES AND APPURTENANCES FOR PAY SCHEDULE C						
0320	0210	MOBILIZATION	LS	1	13,347.09	13,347.09
0330	0225	TEMPORARY PROTECTION AND DIRECTION OF TRAFFIC	LS	1	472.33	472.33
0340	0225	TEMPORARY WORK ZONE TRAFFIC CONTROL PLAN	LS	1	328.01	328.01
0350	0225	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	LS	1	827.39	827.39
0360	0225	FLAGGERS	HR	260	61.15	15,899.00
0370	0305	CONSTRUCTION SURVEY WORK FOR PAY SCHEDULE C	LS	1	1,325.73	1,325.73

Mabel Avenue Project

Schedule C: STORM DRAINAGE WORK (Continued)

Addendum #3

Page 3 of 3

Item #	Spec #	Item Description	Unit	Quantity	Unit Price	Total
ROADWORK FOR SCHEDULE PAY SCHEDULE C						
0380	0310	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	30,665.27	30,665.27
0390	0310	ASPHALT PAVEMENT SAW CUTTING	FOOT	960	2.77	2,659.20
DRAINAGE AND SEWERS FOR SCHEDULE C						
0400	0360	INFILTRATION SYSTEM, COMPLETE	LS	1	52,416.59	52,416.59
0410	0445	18 INCH STORM SEWER PIPE, HDPE, 10 FT DEPTH	FOOT	184	156.06	28,715.04
0420	0445	24 INCH STORM SEWER PIPE, HDPE, 5 FT DEPTH	FOOT	162	156.57	25,364.34
0430	0445	24 INCH STORM SEWER PIPE, DUCTILE IRON, 5 FT DEPTH	FOOT	93	169.29	15,743.97
0440	0470	CONCRETE STORM SEWER MANHOLES, 48" STD MH	EACH	2	3,413.62	3,413 6,827.24
0450	0470	CONCRETE MANHOLES, 72" POLLUTION CONTROL	EACH	1	13,242.02	13,242.02
0460	0470	CONCRETE MANHOLES, SHALLOW	EACH	1	3,275.52	3,275.52
0470	0490	CONNECTION TO EXISTING MANHOLE	EACH	2	1,300.89	2,601.78
0480	0490	CONNECTION TO EXISTING CULVERT	EACH	1	2,517.45	2,517.45
0490	0490	FILLING ABANDONED CATCH BASIN	EACH	1	387.77	387.77
0500	0490	FILLING ABANDONED STORM DRAIN PIPE	FOOT	515	16.64	8,569.60
0510	0496	UTILITY TRENCH REPAIR	SQFT	120	7.35	882.00
<i>Schedule C Subtotal</i>						226,067.34
Grand Total (Schedule A + Schedule B + Schedule C) (total price for all work on project)					# 394,310.39	

Total Price THREE HUNDRED NINETY FOUR THOUSAND, THREE HUNDRED TEN AND ^(NW) 39 Dollars and
THIRTY NINE CENTS. Cents

Name of Firm KODIAK PACIFIC CONSTRUCTION

Name (Print) SANDY TRAINOR

Signature *Sandra Trainor* Date 8/6/14



10

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement (Contract No. 932856) with Metro for
FY 14-15 'Early Adopter' Food Scrap Collection Activities

Purpose/Outcome	Intergovernmental Agreement No. 932856 provides for Clackamas County to offer technical assistance to new businesses wanting to participate in food scrap collection.
Dollar Amount and Fiscal Impact	The IGA provides \$50,000 to the Department of Transportation and Development.
Funding Source	Metro. Funds originate with Metro revenues collected via the solid waste disposal system, funds used in part to support programs that meet Regional Solid Waste goals, such as food scrap collection.
Safety Impact	None
Duration	Effective at date of last signature, terminating on June 30, 2015.
Previous Board Action/Review	A similar IGA in support of food scrap collection programs for \$40,000 was approved in FY 12-13.
Contact Person	Eben Polk, Supervisor, DTD - Office of Sustainability 742-4470
Contract No.	932856

BACKGROUND:

The expanded collection of food scraps generated in the commercial sector is a priority for capturing more value from waste materials, aligned with Oregon, regional, and local priorities for materials management. Modest capacity exists to increase food scrap collection for higher and more economically valuable uses, currently energy recovery and production of compost.

In Clackamas County, three cities have adopted commercial organics collection service (Canby, Lake Oswego, and West Linn). In its role as the technical assistance provider for waste reduction and solid waste to businesses and workplaces throughout the county, Clackamas County staff worked to voluntarily enroll restaurants and grocery stores in these programs, providing assistance in selecting containers, service levels with collectors, and initial resources to train employees. The assistance, known as 'We Compost!' has been very well received and 47 businesses, plus two more multi-tenant complexes are participating. Examples include Albertsons, Walmart, New Seasons, Thriftway, Burgerville, Round Table Pizza, Providence Hospital, Bon Appetit, and several schools. The staff time to deliver this assistance has been funded with specific short-term regional revenue-sharing from Metro.

Food-waste generating businesses and workplaces in other parts of Clackamas County have expressed interest in participating as early adopters in organics collection. For example, several businesses primarily in Oak Grove, Milwaukie, and North Clackamas have asked for the service or expressed interest.

To meet this interest, Clackamas County staff proposes to offer technical assistance to businesses in these areas while working with solid waste collectors to pilot collection service. In addition staff will assist businesses in the food industry with food donation options offered by local nonprofits, to ensure that edible food reaches people in need and does not go to waste.

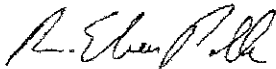
We anticipate information gathered through this effort will inform the development of options for a future commercial food scrap collection service in urban unincorporated Clackamas County. At this time County franchise fees and the primary annual IGA with Metro that supports delivery of waste reduction programs do not include this additional effort. Metro has offered this additional \$50,000 for FY 14-15 that would fund temporary staff time for the work. A proposed scope of work has been developed and is attached as part of the IGA.

This IGA has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approve this IGA and authorize Barb Cartmill, DTD Director to sign on behalf of Clackamas County.

Respectfully submitted,



Eben Polk, Supervisor
Scott Caufield, Division Manager
Transportation and Development

LETTER OF TRANSMITTAL



METRO

PARKS & ENVIRONMENTAL SERVICES DEPARTMENT
600 NORTHEAST GRAND AVENUE, PORTLAND, OREGON 97232-2736
TEL 503-797-1652 FAX 503-797-1795

Date: August 1, 2014

To: Eben Polk

Clackamas County

150 Beaver Creek Road

Oregon City, OR 97045

From: Chad Hilmes

Phone: 503-813-7538

FAX: 503-797-1795

Pages: (including cover)

cc: X

Fax:

Email: Chad.Hilmes@oregonmetro.gov

Re: Metro Contract #932856

Per
your
request

For
Review
and
Approval

For
your
Files

Sign 2 copies
and return all
copies to the
above address.

Note Metro's
insurance
requirements.
Return proof of
insurance to above
address.

Please provide an
updated
certificate of
insurance that
covers the
extended length
of the contract.

Comments:

Good day!

Please sign and return both copies to the address above.

Thank you!

Chad

Intergovernmental Agreement

Metro Contract No. 932856

THIS AGREEMENT, entered into under the provisions of ORS Chapter 190, is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and CLACKAMAS COUNTY hereinafter referred to as "County", whose address is 2051 Kaen Road, Oregon City, OR 97045.

In exchange for the promises and other valuable consideration set forth below, the parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish the responsibilities of the parties in the development and implementation of permanent food scrap collection programs for the business sector within the boundaries of Clackamas County.

2. Term. This Agreement shall be effective on the date of the last signature and shall remain in effect through June 30, 2015 unless earlier terminated in conformance with this Agreement. Costs for this project may be incurred from date of last contract signature.

3. Services Provided and Deliverables. County and Metro shall perform the services described in the attached Scope of Work, which is made part of this Agreement by reference, and otherwise fully comply with the provisions in the attached Scope of Work.

4. Payment. Metro shall pay County FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00) in the manner and at the time designated in the Scope of Work.

5. Insurance. County agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.272. County also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

6. Indemnification. Subject to the provisions of the Oregon Constitution and Oregon Tort Claims Act, including the damage cap provisions, County shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands,

Intergovernmental Agreement

damages, actions, losses, and expenses, including attorney fees, caused by County's performance under this Agreement.

7. Termination. This Agreement may be terminated by either party without cause upon giving 90 days written notice of intent to terminate. This Agreement may be terminated with less than 90 days notice if a party is in default of the terms of this Agreement. In the case of a default, the party alleging the default shall give the other party at least 30 days written notice of the alleged default, with opportunity to cure within the 30-day period. Termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

8. State Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279A, B & C and to the extent those provisions apply, they are incorporated into this Agreement by reference. Specifically, it is a condition of this Contract that all employers working under this Agreement are subject employers that will comply with ORS 656.017.

9. Notices. Legal notice provided under this Agreement shall be delivered personally or by certified mail to the following individuals:

For County:

Eben Polk
Clackamas County
150 Beavercreek Road
Oregon City, OR 97045

For Metro:

Office of Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Informal coordination of this Agreement will be conducted by the following designated Project Managers:

For County:

Eben Polk
Clackamas County
150 Beavercreek Road
Oregon City, OR 97045
(503) 742-4470

For Metro:

Jennifer Erickson
Metro
600 NE Grand Avenue
Portland, OR 97232
(503) 797-1647

County may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Manager by written notice to County.



600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Intergovernmental Agreement

10. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party without prior written approval by the other party.

11. Integration. This writing contains the entire Agreement between the parties, and may only be amended by written instrument, signed by both parties.

12. Severability. If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.

This Agreement is dated as of the last signature date below.

CLACKAMAS COUNTY

METRO

By: _____

By: _____

Print name and title

Print name and title

Date

Date

Scope of Work

- A) Term: Signature through June 30, 2015.
- B) Conditions: Funding provided through this Agreement shall be used solely for the personnel costs associated with development and implementation of permanent food scrap collection programs for the business sector within the boundaries of Clackamas County (this includes the promotion of edible food donation whenever possible). Grant funds may be used to hire additional FTE dedicated 100% to food scraps program development and implementation and may not be used to pay for existing County staff.
- C) County Responsibilities:

County shall implement the following work plan:

Outreach Strategy Goals:

1. Recruit food generators to participate in Clackamas County's *We Compost* Program which includes donating edible food whenever possible.
2. Focus outreach on large food waste generators including full service restaurants, grocery stores, food production facilities and large institutions.
3. Work with the region to develop consistent messaging including the regional transition to food-only commercial organics collection.
4. Expand the *We Compost* program into new territory. Work with Waste Management and Metro to develop route efficiencies and transfer options to enable a focused outreach effort to enroll businesses in Milwaukie, Oak Grove and North Clackamas.

Program Outcomes

The cities of Lake Oswego, West Linn and Canby have created a separate rate for food scrap collection service. Recruitment of businesses in these areas with the first three goals above will continue. The primary allocation of effort, however, is proposed for Milwaukie, Oak Grove, and North Clackamas, working with Waste Management, offering service as businesses request at the existing fee for collection service, per size of container and method of collection. A recent review of route options identified 180 candidate food generators in this area with a conservatively-estimated 85 tons weekly of food scraps. We have preliminary interest from several generators through early scoping conversations (e.g. six in the Clackamas Town Center area, one grocery store in Milwaukie, and three retirement facilities). The service standards for Unincorporated Clackamas County will continue to follow existing Administrative Regulations for Franchisees. Cities are responsible for setting their own rates and service standard requirements. The areas we are proposing to serve through this grant are the urban core of Clackamas County, containing the majority of food waste being generated.

We anticipate that a 10-month effort may add at least 16 new participants.

Scope of Work

Focus area: City of Milwaukie, Oak Grove, and North Clackamas areas (including Clackamas Town Center, Sunnyside Road, N. 82nd Ave, Hwy 224, and McLoughlin Blvd.

Activities

- Finalizing candidates map and transitioning into one or more route maps
- Cold calls
- Develop and send letters to food generators
- Enroll, train, and inspect participants
- Prioritize setting up grocery stores and full service restaurants in the focus area
- Where appropriate, continue support and follow-ups in Canby, West Linn, and Lake Oswego.

Deliverables

- Route map developed with WM in Milwaukie, Oak Grove, North Clackamas area
- List of prospective participants by location, size, and business type
- Letters to food generators
- Monthly progress reports

Program Administration:

Monitoring

Continue to monitor existing accounts generated since 2012 to ensure clean feedstock of compostable material. Support food-only feedstock. Promoting waste prevention and durable materials that alleviate pressure on garbage service without contaminating organics feedstock.

Oregon Food Bank (OFB) partnership

Work with OFB's Food Resource Developer on food generators within the County tied to OFB's national accounts to encourage composting for the food not suitable for donation. Staff will continue to lead with "Donate the Best, Compost the Rest" in outreach efforts.

Continue to support the North Clackamas Roundtable and find opportunities to partner with St. Vincent DePaul in developing a food donation route in the Clackamas Town Center area.

Program Tracking

Staff will continue working with the Business Recycling Working Group (BRWG) to ensure compost accounts are tracked in RAWIS including accounts set up, service levels, use of compostable bags / service ware and other comments related to the account. A spreadsheet has been created to track internal collection containers distributed. Track tonnage for each city and hauler.

Scope of Work

Program Administration in all Phases

- Continue to develop partnerships with local food donation organizations in order to directly connect businesses with nearby pantries.
- Continually assess material quality at established accounts.
- Develop a monitoring protocol to be used by franchisees.
- Translate existing training materials to provide employees with English as a second language the greatest opportunity to contribute to the program's success.
- Research options for non-traditional training opportunities, for employees. Review work done by City of Gresham and Beaverton.
- Write articles and advertisements for local media outlets, i.e. City/County newsletters/websites and neighborhood publications.
- Report monthly to Metro describing program activities and any timeline adjustments.

Canby	65	0	1	6
West Linn	56	0	6	8
Lake Oswego	125	0	13	15
Unincorporated/Happy Valley (work postponed)	225	0	2	2
Milwaukie (work postponed)	170	0	2	2

Reporting

- Provide Metro with quarterly reports that include, but are not limited to:
 - Status of milestones listed in the work plan.
 - Accounting of hours worked by the employee.
 - Names and addresses of currently participating businesses that were: (a) contacted with the offer of technical assistance; and (b) received technical assistance.
 - Names and addresses of businesses recruited to participate in food scraps collection, including those that implemented programs and those that did not.
 - Names and addresses of businesses that began to participate in edible food donation programs after being contacted by County.
- Provide Metro with a midterm progress report no later than January 15, 2015. Report should include but is not limited to status of work to date, status of work plan objectives, adjustments to work plan, hours and budget expended to date.
- Provide Metro with a comprehensive final report no later than July 30, 2015.

Scope of Work

D) Metro Responsibilities.

Metro shall:

1. Provide assistance to the County as needed to develop, execute, monitor and evaluate the services provided through this agreement.

E) Budget and Terms of Payment:

Upon signature of this agreement and receipt of County's invoice, Metro shall pay County TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$25,000.00). After receipt of a satisfactory midterm progress report and County's invoice, Metro shall pay the remaining TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$25,000.00). Metro reserves the right to request all or some of the funds be returned should satisfactory progress not be demonstrated. County's billing invoices shall include the Metro contract number, County name, remittance address, invoice date, invoice number, and invoice amount. County's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. County's billing invoices for goods and services through June 30, 2015 shall be submitted to Metro by July 15, 2015.



21
NANCY S. BUSH
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

September 11, 2014

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Cooperative Agreement with Rhododendron Water Association for the use of
Clackamas County Emergency Notification System

Purpose/Outcomes	The Cooperative Agreement between Clackamas County and Rhododendron Water Association provides the basis for a cooperative working relationship for the activation of the Clackamas County Emergency Notification System (CCENS) at the request of Rhododendron Water Association for the use of sending emergency notifications to their customers.
Dollar Amount and Fiscal Impact	Rhododendron Water Association will reimburse Clackamas County for any CCENS usage charges resulting from requested activations. There is no cost to Clackamas County or Rhododendron Water Association to enter into the agreement.
Funding Source	No funds are required to administer this agreement.
Safety Impact	Approving this agreement will allow Rhododendron Water Association to send emergency notifications to their customers in an expedient manner.
Duration	The agreement is effective from the date of signing by all parties with automatic annual renewals.
Previous Board Action	The Board of County Commissioners approved an Intergovernmental agreement with the Boring Water District and the City of West Linn for the use of CCENS on March 22, 2012, agenda item D.1.
Contact Person	Nancy Bush, Director – Emergency Management - 655-8665
Contract No.	N/A

BACKGROUND:

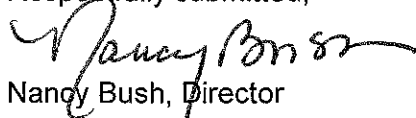
Clackamas County Emergency Management and Clackamas County 9-1-1 employ CCENS, a "reverse 9-1-1" style system, to direct life safety related emergency notifications to citizens in Clackamas County.

The Cooperative Agreement with Rhododendron Water Association provides a cooperative working relationship for the activations of CCENS for emergency notifications as requested by Rhododendron Water Association. County Counsel has approved this agreement as to form.

RECOMMENDATION:

Staff recommends the Board approve this agreement and authorizes Nancy Bush, the Emergency Management Director to sign on behalf of Clackamas County.

Respectfully submitted,



Nancy Bush, Director

**COOPERATIVE AGREEMENT
BETWEEN
CLACKAMAS COUNTY AND RHODODENDRON WATER
ASSOCIATION**

Purpose

- A. This Agreement is entered into between Clackamas County (County), through its Emergency Management (CEM) Department and the Communications Department (CCOM) and Rhododendron Water Association for the cooperation of units of local government under the authority of ORS Chapter 190.

- B. This Agreement provides the basis for a cooperative working relationship for the activation of the Twenty First Century Communications Community Notification System at the request of Rhododendron Water Association for the use of emergency notifications to their customers. The project consists of: (1) pre-loading the Rhododendron Water Association Customer database into the Twenty First Communications server on a quarterly basis; (2) the development of pre-recording messages as determined by Rhododendron Water Association on an as needed basis; (3) activating the public notification system as requested by Rhododendron Water Association for life-safety situations; (4) providing activation reports and summaries as requested by Rhododendron Water Association; and (5) reimbursement by Rhododendron Water Association of usage charges as a result of the activation to Clackamas County Emergency Management.

Scope of Cooperation

- A. Rhododendron Water Association agrees to:
 - 1. Coordinate customer contact database quarterly updates with Emergency Management liaison.
 - 2. Assign a liaison to work with Emergency Management.
 - 3. Provide text for requested pre-recorded messages.
 - 4. Reimburse Clackamas County for any usage charges resulting from activations requested by Rhododendron Water Association.

- B. County agrees to:
 - 1. Provide for the administration, coordination and evaluation of the Project.
 - 2. Upload customer contact databases and recorded messages in a timely manner.

COOPERATIVE AGREEMENT

3. Provide reasonable and necessary staff for administration and activations. If Emergency Management personnel are not available to activate the public notification system, C-COM personnel will perform the activation.
 4. Provide activation reports and summaries during and after activations in a timely manner.
 5. Provide an invoice to Rhododendron Water Association of actual usage charges within 60 days of the activation.
- C. County and Rhododendron Water Association agree to jointly review all issues, design developments, specifications, and documents for the Project.

Compensation

- A. County will only be compensated for the usage charges resulting from activations requested by Rhododendron Water Association. The activation rate at the time of the signing of this agreement is \$0.22 per minute. The rate is subject to change based upon charges from Twenty-first Century Communications.
- B. There will be no other terms of compensation.

Liaison Responsibility

Liaison from County for the Project will be:

Jamie Hays
Clackamas County Emergency Management
2200 Kaen Rd.
Oregon City, OR 97045
503-655-8378 jhays@clackamas.us

Liaison from Rhododendron Water Association will be:

Steven Graeper
Rhododendron Water Association
PO Box 163
Rhododendron, OR 97049
503-622-5560 rhododendron.water@gmail.com

Indemnification and Insurance

Rhododendron Water Association agrees to indemnify, defend, and hold harmless the County, and its officers, agents and employees, against all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to the County's sole negligence, arising from performance of this agreement.

COOPERATIVE AGREEMENT

Rhododendron Water Association shall obtain, at its own 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 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees. This coverage must be able to be applied to, and used for, the indemnity provision provided under this agreement. Alternatively, Rhododendron Water Association may maintain self-insurance as provided by Oregon law in lieu of the commercial liability insurance in order to ensure their ability to comply with the indemnity provisions of this agreement.

Other Terms

- A. Compliance with Laws. County and Rhododendron Water Association agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. No Assignment. This agreement may not be subcontracted, assigned or transferred by either party without the express written consent of the other party.
- C. Entire Agreement; Amendment. This agreement constitutes the entire agreement between the parties, and may be modified only in writing signed by both parties. This agreement may be amended at any time with the written agreement of both parties.

Term of Agreement

- A. This agreement becomes effective when it is signed by both parties and automatically renews annually.

Termination

- A. This agreement may be terminated by either party upon 30 days written notice.
- B. This agreement may be terminated at any time for nonperformance of any material term of this agreement.

COOPERATIVE AGREEMENT

CLACKAMAS COUNTY

By: _____
Name: Nancy Bush
Title: Director,
Clackamas County Emergency Management

Date: _____

Attest: Recording Secretary

Date

Approved as to form

Rhododendron Water Association

By: _____
Name: Steven Graeper
Title: President

Date: Aug 21, 2014

Attest:

Date

Approved as to form



NANCY S. BUSH
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

September 11, 2014

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Canby Utility for the use of
Clackamas County Emergency Notification System

Purpose/Outcomes	The Intergovernmental Agreement between Clackamas County and Canby Utility provides the basis for a cooperative working relationship for the activation of the Clackamas County Emergency Notification System (CCENS) at the request of Canby Utility for the use of sending emergency notifications to its customers.
Dollar Amount and Fiscal Impact	Canby Utility will reimburse Clackamas County for any CCENS usage charges resulting from requested activations. There is no cost to Clackamas County or Canby Utility to enter into the agreement.
Funding Source	No funds are required to administer this agreement.
Safety Impact	Approving this agreement will allow Canby Utility to send emergency notifications to their customers in an expedient manner.
Duration	The agreement is effective from the date of signing by all parties with automatic annual renewals.
Previous Board Action	The Board of County Commissioners approved an Intergovernmental agreement with the Boring Water District and the City of West Linn for the use of CCENS on March 22, 2012, agenda item D.1.
Contact Person	Nancy Bush, Director – Emergency Management - 655-8665
Contract No.	N/A

BACKGROUND:

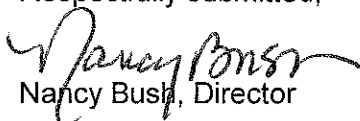
Clackamas County Emergency Management and Clackamas County 9-1-1 employ CCENS, a "reverse 9-1-1" style system, to direct life safety related emergency notifications to citizens in Clackamas County.

The Intergovernmental Agreement with Canby Utility provides a cooperative working relationship for the activations of CCENS for emergency notifications as requested by Canby Utility. County Counsel has approved this agreement as to form.

RECOMMENDATION:

Staff recommends the Board approve this agreement and authorizes Nancy Bush, the Emergency Management Director to sign on behalf of Clackamas County.

Respectfully submitted,


Nancy Bush, Director

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**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY AND CANBY UTILITY**

Purpose

- A. This Agreement is entered into between Clackamas County (County), by and through its Clackamas County Department of Emergency Management (CCEM) and Canby Utility for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship for the activation of the Twenty First Century Communications Community Notification System ("System") at the request of Canby Utility for the use of emergency notifications to their customers. The project consists of (1) pre-loading the Canby Utility Customer database into the Twenty First Communications server on a quarterly basis, (2) the development of pre-recorded messages as determined by Canby Utility on an as needed basis, (3) activating the public notification system as requested by Canby Utility for life-safety situations, (4) providing activation reports and summaries as requested by Canby Utility, and (5) reimbursement by Canby Utility of usage charges as a result of the activation to Clackamas County Emergency Management.

Scope of Cooperation

- A. Canby Utility agrees to:
 - 1. Coordinate customer contact database quarterly updates with Emergency Management liaison.
 - 2. Assign a liaison to work with Emergency Management.
 - 3. Provide text for requested pre-recorded messages that Canby Utility requests.
 - 4. Reimburse Emergency Management for any usage charges resulting from activations requested by Canby Utility.
- B. County agrees to:
 - 1. Provide for the administration, coordination and evaluation of the System.
 - 2. Upload customer contact databases and recorded messages in a timely manner.
 - 3. Provide reasonable and necessary staff for administration and activation of the System. If Emergency Management personnel are

INTERGOVERNMENTAL AGREEMENT

not available to activate the public notification system, C-COM personnel will be able to accommodate the request. County will notify Canby Utility as soon as possible regarding any activation problems or delays.

4. Provide activation reports and summaries during and after activations in a timely manner.
 5. Provide an invoice to Canby Utility of actual usage charges within 60 days of the activation.
- C. County and Canby Utility agree to jointly review all issues, design developments, specifications, and documents for the System.

Compensation

- A. County will be compensated for the usage charges resulting from activations requested by Canby Utility. The activation rate at the time of the signing of this agreement is \$0.22 per minute. The rate is subject to change based upon charges from Twenty-first Century Communications.
- B. There will be no other terms of compensation.

Liaison Responsibility

Liaison from County for the Project will be:

Jamie Hays
Clackamas County Emergency Management
2200 Kaen Rd.
Oregon City, OR 97045
503-655-8378 jhays@clackamas.us

Liaison from Canby Utility will be:

Dee Anne Wunder
Canby Utility
PO Box 1070
Canby, OR 97013
Phone: 503-266-1156 email: dwunder@canbyutility.org

Indemnification and Insurance

Canby Utility agrees to indemnify, defend, and hold harmless the County, and its officers, agents and employees, against all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to the County's sole negligence, arising from performance of this agreement.

INTERGOVERNMENTAL AGREEMENT

Canby Utility shall obtain, at its own 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 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees. This coverage must be able to be applied to, and used for, the indemnity provision provided under this agreement. Alternatively, Canby Utility may maintain self-insurance as provided by Oregon law in lieu of the commercial liability insurance in order to ensure their ability to comply with the indemnity provisions of this agreement.

Other Terms

- A. Compliance with Laws. County and Canby Utility agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. No Assignment. This agreement may not be subcontracted, assigned or transferred by either party without the express written consent of the other party.
- C. Entire Agreement; Amendment. This agreement constitutes the entire agreement between the parties, and may be modified only in writing signed by both parties. This agreement may be amended at any time with the written agreement of both parties.

Term of Agreement

- A. This agreement becomes effective when it is signed by both parties and automatically renews annually.

Termination

- A. This agreement may be terminated by either party upon 30 days written notice.
- B. This agreement may be terminated at any time for nonperformance of any material term of this agreement.

INTERGOVERNMENTAL AGREEMENT

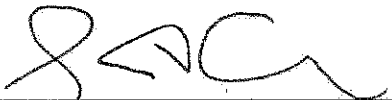
CLACKAMAS COUNTY

By: _____
Name: Nancy Bush
Title: Director,
Clackamas County Emergency Management

Date: _____


Attest: Recording Secretary

Date



Approved as to form


Canby Utility

By: 
Name: Mott Michel
Title: General Manager

Date: 8/18/2014


Attest:

8/18/14
Date



Approved as to form

13

Approval of Previous Business Meeting Minutes:

July 31, 2014

(minutes attached)

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, July 31, 2014 - 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner John Ludlow, Chair
Commissioner Jim Bernard
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Tootie Smith

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

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

1. Les Poole, Clackamas County, misc. issues including Clackamas River, Multifamily housing, problems with Metro, etc.
 2. Thelma Haggemiller, Oak Grove – proposed Park district, and tax increases.
- ~Board Discussion~

II. PRESENTATION

1. Presentation Recognizing the 2014 NACo Achievement Awards
Tracy Moreland, Public and Government Affairs presented the staff report and showed a video highlighting the recipients of the 2014 NACo Achievement Awards.

III. PUBLIC HEARING

1. Second Reading of Ordinance No. 03-2014 Amending Title 5, Animals and Appendix B Fines, of the Clackamas County Code and Approval of **Resolution No. 2014-79** Amending Appendix A, Fees of the Clackamas County Code

Diedre Landon, Department of Transportation and Development and Diana Hallmark, Dog Services presented the staff report and PowerPoint presentation.

Chair Ludlow opened the public hearing and stated there are some people signed up to speak.

1. Kim Tinker, Sandy – supports the ordinance, but suggested longer time for continuous barking.
2. Debbie Lyman, Sandy – stated the 15 minutes continuous barking is unreasonable.
3. Chris Mack, Milwaukie – supports the ordinance.
4. Tim Curles, Eagle Creek - stated the 15 minutes continuous barking is unreasonable.
5. Leslie Russell, Oregon City – supports the ordinance.

Chair Ludlow closed the Public Hearing and opened Board discussion.

~Board Discussion~

Chair Ludlow asked for a motion to read the ordinance by title only.

MOTION:

Commissioner Savas: I move we read Ordinance 03-2014 by title only.

Commissioner Bernard: Second.

~Board Discussion~

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

Clerk calls the poll:

Commissioner Bernard: Aye.
Commissioner Smith: Aye.
Commissioner Schrader: Aye.
Commissioner Savas: Aye.
Chair Ludlow: Aye - the motion passes 5-0.
He asked the Clerk to read the Ordinance by title, he then asked for a motion.

MOTION:

Commissioner Bernard: I move adopt Ordinance No. 03-2014 Amending Title 5, Animals and Appendix B Fines, of the Clackamas County Code Amending the Continuous Barking time from 15 minutes to 30 minutes.

Commissioner Smith: Second.

Clerk calls the poll:

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion passes 5-0.

Chair Ludlow asked for a motion for the Resolution for the change in fees.

MOTION:

Commissioner Bernard: I move approve the Resolution Amending Appendix A, Fees of the Clackamas County Code.

Chair Ludlow: Second.

~Board Discussion~ Board will come back after one year to see how it is working.

Clerk calls the poll:

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Chair Ludlow: Aye - the motion passes 5-0.

The Board recognized Diana Hallmark who is retiring after 32 years of service.

IV. DISCUSSION ITEMS

~NO DISCUSSION ITEMS SCHEDULED

V. CONSENT AGENDA

Chair Ludlow asked the Clerk to read the consent agenda by title – he then asked for a motion.

MOTION:

Commissioner Schrader: Move approval of the consent agenda.

Commissioner Bernard: Second.

Clerk calls the poll.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Chair Ludlow: Aye – it passes 5-0.

A. Health, Housing & Human Services

1. Approval of an Amendment to an Intergovernmental Agreement with the City of Gladstone for Street Improvements in Northwest Gladstone – *Housing & Community Development*

2. Approval of an Intergovernmental Subrecipient Agreement with City of Lake Oswego/Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
3. Approval of Grant Agreement No. 146000 with the Oregon Health Authority for the Oregon Council of Clinical Innovators – *Behavioral Health*
4. Approval of an Interagency Agreement with Clackamas County Health Centers, Behavioral Health Clinic to Provide Outpatient Mental Health services and Substance Abuse Services – *Behavioral Health*
5. Approval of an Intra agency Agreement with Clackamas County Health Centers, Behavioral Health Clinics to Provide Outpatient Mental Health Services – *Behavioral Health*

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Board Order No. **2014-80** Delegating the Authority of ORS 169.170 to the Clackamas County Sheriff to Provide Inmate Work Crews for Public Works - *CCSO*
3. Resolution No. **2014-81** Appointing Pro Tempore Judge for the Clackamas County Justice Court - *JC*

C. County Counsel

1. Approval of a Quitclaim Deed to the Oregon Department of Transportation as part of the Sunrise Corridor Transportation Project

VI. COUNTY ADMINISTRATOR UPDATE

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

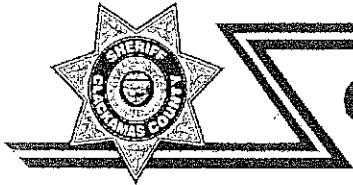
VII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 11:37 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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

www.clackamas.us/bcc/business.html



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to enter into an
Intergovernmental Agreement with
Oregon Department of Human Services for Funding to Conduct a Specialist Interview Training

Purpose/Outcome	Clackamas County Sheriff's Office, in partnership with other local agencies, will offer a comprehensive specialist interview course.
Dollar Amount and Fiscal Impact	The total billable amount under this agreement is \$63,000.00.
Funding Source	Children's Justice Act (CJA) Grant via the Oregon Department of Human Services.
Safety Impact	This training is developed to provide interviewers with a better understanding of offender behavior in order to design an interview strategy that will help identify victims. It provides a more accurate understanding of the risks posed by a particular offender.
Duration	Five days; totaling 40 hours of training.
Previous Board Action/Review	None
Contact Person	Julie Collinson, Conference Coordinator – Office (503) 557-5827
Contract No.	None

BACKGROUND:

Clackamas County Sheriff's Office, in partnership with the Oregon Department of Justice, United States Attorney's Office and Multnomah County, will provide a five-day, 40-hour specialist interview course that is designed to enhance the skills and knowledge base of professionals who interview child sex offenders in the course of law enforcement investigations, child protection evaluation and risk assessments and/or management of offenders. The course provides the skills needed to competently and thoroughly interview suspects, obtain admissions, and most importantly, identify and rescue previously unknown and unidentified victims of child sexual abuse and exploitation.

This agreement has been reviewed by County Counsel.

RECOMMENDATION:

Staff recommends the Board approve and sign this cooperative intergovernmental agreement.

Respectfully submitted,

Matt Ellington,
Undersheriff



Agreement Number 146283

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and,

**Clackamas County Sheriff's Office
2223 Kean Rd.
Oregon City, OR 97045
Contact Name: Julie Collinson
Telephone: 503-557-5827
E-mail address: jcollinson@co.clackamas.or.us**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to the DHS'

**Child Welfare
500 Summer Street NE
Salem, OR 97301
Agreement Administrator: Stacey Ayers or delegate
Telephone: 503-945-6696
Facsimile: 503-378-3800
E-mail address: stacey.ayers@state.or.us**

1. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on **July 14, 2014**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **December 30, 2014**.

Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. Agreement Documents.

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Required Federal Terms and Conditions

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, A, B, and C.

c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

3. Consideration.

a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$63,000.00**. DHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. **Vendor or Sub-Recipient Determination.**

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

County is a sub-recipient; **OR** County is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.643.

5. **County Data and Certification.**

a. **County Information.** County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): Clackamas County

Street address: 2051 Kaen Rd.

City, state, zip code: Oregon City, OR, 97045

Email address: nartmann@clackamas.us

Telephone: (503) 785-5012 Facsimile: (503) 785-5027

Federal Employer Identification Number: 93-6002286

Proof of Insurance: Workers' Compensation Insurance Company -- self-administered

Policy #: Self-insured Expiration Date: On-going

The above information must be provided prior to Agreement approval. County shall provide proof of Insurance upon request by DHS or DHS designee.

b. **Certification.** The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

(1) Under penalty of perjury the undersigned is authorized to act on behalf of County and that County is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification,

“Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in this Section 5., County Data and Certification , is County’s true, accurate and correct information;
 - (3) To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
 - (4) County and County’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
 - (5) County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at
<https://www.sam.gov/portal/public/SAM/>; and
 - (6) County is not subject to backup withholding because:
 - (a) County is exempt from backup withholding;
 - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County’s signature on this Agreement, County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures.

Clackamas County Sheriff's Office

By:

MEJA (ELLINGTON) Sheriff UNDERSTAFF 8/26/14
Authorized Signature Title Date

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

By:

Authorized Signature Title Date

Approved for Legal Sufficiency:

Not Required per OAR 137-045-0030(1)(a)

Assistant Attorney General Date

Office of Contracts and Procurement:

Contract Specialist Date

Kimberley A. Ybarra 8-25-14
Approved as to Form by
Kimberley A. Ybarra
Senior Assistant County Counsel

Approved by
John Ludlow, Chair
Clackamas County
Board of Commissioners

EXHIBIT A

Part 1 Statement of Work

1. Purpose:

Clackamas County Sherriff Office, in partnership with the Oregon Department of Justice, United States Attorney's Office, and Multnomah County, would like to provide a five day, 40 hour specialist interview course that is designed to enhance the skills and knowledge base of professionals who interview child sex offenders in the course of law enforcement investigations, child protection evaluation, and risk assessments and/or management of offenders. This is an intensive training in behavioral analysis and interviewing child sex offenders presented by Dr. Joe Sullivan, a forensic psychologist from Ireland who is widely regarded as an expert in that field.

Sex offenses against children are chronically under-reported and, typically, the burden of disclosure is on the child victim. While we cannot identify every child who has been victimized, we can help identify victims once we have identified an offender. Working with an offender to disclose hands-on offenses starts at the time of arrest and continues through conviction, treatment, and supervision.

The Bourke and Hernandez (2009) study begins to show the number of victims who are currently going unnoticed. The study reviewed a sample of 155 offenders convicted of child pornography possession, receipt or distribution (but not manufacturing), who were participating in the U.S. Bureau of Prisons Sex Offender Treatment Program. Initially, 26% (40) of the sample admitted to hands-on offenses and disclosed a total of 75 victims. At the end of the study, 85% (131) of the sample admitted to hands-on offenses and disclosed 1,777 victims. That's an average of 13.56 victims per offender, the overwhelming majority of which were previously unreported. This study highlights the prevalence of hands-on sexual offenses among child pornography offenders, and rather dramatically demonstrates how many child sexual offenses go unreported, and how many victims are therefore never identified. Law enforcement officers who work these types of cases will state that there are many interrogation/interviewing technique courses available designed to help obtain a confession and becoming a skilled interrogator. This course has a different objective. It moves beyond confession and conviction and focuses on understanding offender behavior in order to design an interview strategy that will help identify victims and have a more accurate understanding of the risks posed by a particular offender. The course provides as an excellent opportunity to equip investigators, probation officers, Oregon Non-sworn (DHS, medical, nursing, law, protective services) and prosecutors with the skills they need to competently and thoroughly interview suspects, obtain admissions, and most importantly, identify and rescue previously unknown and unidentified victims of child sexual abuse and exploitation.

2. **Services to be provided by County shall include:**

- a. An Interview Course titled "Using behavior analysis insights into perpetrators of sexual crimes against children to inform the creation and implementation of effective interview strategies." The anticipated attendance will be between 100 and 135 attendees. Attendees will be selected using the following Criteria:
 - (1) Marketing
 - (a) Distribute class information to all MDT Coordinators by July 20, 2014.
 - (b) Distribute class information through DPSST listserv by July 20, 2014.
 - (c) Distribute class information through Child Abuse Summit distribution list (Oregon only) by July 20, 2014.
 - (d) Distribute class information through NCMEC, OAACD (on agenda for second week of July), DOJ, ICAC by July 20, 2014.
 - (e) Open registration for Oregon participants by July 20, 2014.
 - (f) Open registration for 15 full-price participants (out-of-state) by July 20, 2014.
 - (2) Restrictions
 - (a) Reserve 25% of registrations for Oregon Non-sworn (DHS, medical, nursing, law, protective services) and/or agencies (to include law enforcement in addition to other disciplines) outside the tri-county area (Oregon only) until August 15, 2014. If these spaces are not used by August 15, 2014, they will be open to all of Oregon and available on a first-come, first-serve basis.
 - (b) 5 scholarships to be reserved for Oregon counties outside the tri-county area (\$632 each to cover lodging and registration). Per diem, transportation and over-time to be covered by agency. Scholarships will be funded by registration fees. \$3,160 will be available to support these scholarships.
- b. By the end of the course each participant will be able to:
 - (1) Understand the prevalence of child sexual abuse and the degree to which criminal records reflect a perpetrators pattern of sexual offending.
 - (2) Recognize the myths and facts about child sexual abuse.
 - (3) Understand the role which behavior analysis can play in facilitating a better understanding of offender behavior.
 - (4) Identify common characteristics of offending behavior.
 - (5) Plan for more effective offender interviews & meetings.
 - (6) Use behavioral analysis tools to create accurate risk assessments.

- (7) Understand how offender motivations and justifications create a “spiral of abuse.”
- (8) Better decide what the important questions to ask each offender are.
- (9) Recognize grooming & manipulation more readily.
- (10) Understand the key features and issues related to women who sexually offend.
- (11) Distinguish the importance of identifying offenders who travel to facilitate the sexual exploitation of children.
- (12) Identify the prevalence and key features of offenders who engage in group-based child sexual exploitation.
- (13) Comprehend the risk factors related to sex offenders who view/download images of child sexual abuse.
- (14) Use advanced techniques and practical skills to encourage engagement in the interview.
- (15) Apply theoretical technique to plan effective interviews.
- (16) Better analyze sexual offending against children.
- (17) Profile a subject.
- (18) Understand and apply the Sullivan behavior analysis tool (S-BAT).
- (19) Utilize the Projected Personalities Matrix (PPM).
- (20) Design a layered interview approach.

2. Deliverables:

County shall provide a survey with results to The Children’s Justice Act Task Force via DHS at the completion of the course.

The survey questions shall focus on whether participants increased their skills, and whether they believe they have the ability to use, in their current positions, the tools and information they learned during the course.

The survey shall be delivered to the DHS Contract Administrator on page one of this Agreement.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment Provisions.

- a. As Consideration for the services provided by the County during the period specified Section 1. "Effective Date and Duration," of this Agreement, DHS will pay to the County, a maximum not-to-exceed amount as specified in Section 3. "Consideration," Subsection a. of this Agreement.
- b. County shall send all invoices to DHS' Contract Administrator, or to any other address as DHS may indicate in writing to County. County's claims to DHS for overdue payments on invoices are subject to ORS 293.462
- c. Payment will be made by DHS to the County monthly, on or after the first of each month following the month in which the services were performed, subject to receipt and approval by DHS of County invoices.

2. Travel and Other Expenses.

All travel and related expenses are included in the maximum not-to-exceed amount specified in Section 3. "Consideration."

EXHIBIT A

Part 3 Special Terms and Conditions

1. Confidentiality of Client Information.

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

2. Amendments.

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County under this Agreement.
 - (2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
 - a. County represents and warrants as follows:
 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable

law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. DHS represents and warrants as follows:

- (1) Organization and Authority. DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DHS is a party or by which DHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DHS of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, enforceable in accordance with its terms subject to the laws of bankruptcy,

insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. **Funds Available and Authorized Clause.**

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. **Compliance with Law.** Nothing in this Agreement shall require County or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.

8. Ownership of Intellectual Property.

- a. Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use; reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
- c.** If state or federal law requires that DHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that the DHS or the United States own the intellectual property, then County shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, DHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. County Default. County shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

10. DHS Default. DHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. DHS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by County to measure performance by DHS is untrue in any material respect when made.

11. Termination.

- a. **County Termination.** County may terminate this Agreement:
 - (1) For its convenience, upon at least 30 days advance written notice to DHS;
 - (2) Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
 - (3) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or

- (4) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. DHS Termination. DHS may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;
- (6) Immediately upon written notice to County, if DHS determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

12. Effect of Termination

a. Entire Agreement.

- (1) Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
- (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.

- b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

13. Limitation of Liabilities. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. Insurance. County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

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

16. Information Privacy/Security/Access. If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants County or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR

407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

17. **Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
 - a. County shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
 - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, County shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
21. **No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

DHS: Office of Contracts & Procurement
250 Winter St NE, Room 306
Salem, OR 97301
Telephone: (503) 945-5818
Facsimile: (503) 378-4324

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.

29. **Construction.** *[Reserved]*

30. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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

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

31. **Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in

part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

32. **Stop-Work Order.** DHS may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
 - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C

Subcontractor Insurance Requirements

General Requirements. County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance as specified in this Exhibit C and meeting all the requirements under this Exhibit C before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DHS. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with whom the county directly enters into a contract. It does not include a subcontractor with whom the contractor enters into a contract.

1. **Workers' Compensation.** Insurance must be 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.
2. **Professional Liability.** Required by DHS Not required by DHS.
3. **Commercial General Liability.** Required by DHS Not required by DHS.
4. **Automobile Liability.** Required by DHS Not required by DHS.

EXHIBIT D

Required Federal Terms and Conditions

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

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

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

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

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
7. **Audits.**
- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.
8. **Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors

declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

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

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

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

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 14. To DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

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

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

CONFIDENTIAL
Contractor Tax Identification Information
For Accounting Purposes Only

July 21, 2014

Clackamas County Sheriff's Office

Re: Document #: 146283

The State of Oregon requires contractors to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN). This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws. The State of Oregon may report this information to the Internal Revenue Service (IRS). Contractors must keep this information current at all times. Contractors are required to notify the State of Oregon contract administrator within 10 business days if this information changes. The State of Oregon reserves the right to ask contractors to update this information at any time during the document term.

Business Name (tax filing): Clackamas County _____

Billing Address: 2051 Kaen Rd. _____

City: Oregon City _____ **State:** OR _____ **Zip:** 97045 _____

Phone: 503-785-5012 _____

FEIN: 93-6002286 _____ **or**

SSN: _____ - _____ - _____

Please return this completed form to:

Lyndell Troxell
Department of Human Services
Office of Contracts and Procurement
250 Winter St NE
Salem, OR 97301
lyndell.b.troxell@state.or.us
Phone: (503) 945-6175
Fax: (503) 373-7365

John A. Kitzhaber, MD, Governor

250 Winter St NE, Room 306
Salem, OR 97301
Voice: (503) 945-5818
FAX: (503) 373-7365

DOCUMENT RETURN STATEMENT

July 21, 2014

Re: Document #: 146283, hereinafter referred to as "Document."

Please complete the following statement and return it along with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information form (if applicable).

Important: If you have any questions or find errors in the above referenced Document, please contact the contract specialist, Kristan Langley at (503) 945-6156.

MATT ELLIOTT
I, Craig Roberts, Sheriff
(Name) (Title)

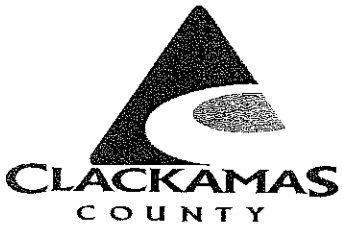
received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and Clackamas County Sheriff's Office, by e-mail from Lyndell Troxell on July 21, 2014.

On 8/26/14, I signed the electronically transmitted Document without
(Date)

change. I am returning the completed signature page and Contractor Data and Certification page and/or Contractor Tax Identification Information form (if applicable) with this Document Return Statement.

ACJ
(Authorizing Signature)

8/26/14
(Date)



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BOB VROMAN
COUNTY ASSESSOR

DEPARTMENT OF ASSESSMENT AND TAXATION

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

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Cancelling Delinquent Manufactured Structure Personal Property Taxes

Purpose/Outcomes	The attached Board Order authorizes the Tax Collector to write off delinquent manufactured structure personal property accounts deemed uncollectible.
Dollar Amount and Fiscal Impact	The total uncollectible taxes for delinquent accounts equals \$9,138.71.
Funding Source	The adjustment is to the unsegregated tax account shared by all taxing districts providing services in Clackamas County.
Safety Impact	None
Duration	Effective for the 2014-2015 tax roll.
Previous Board Action	No previous Board Action on these accounts.
Contact Person	Bob Vroman, Clackamas County Assessor and Tax Collector

BACKGROUND:

This request is made in accordance with provisions of ORS 311.790 that provides when the tax collector deems that taxes on personal property delinquent for any reason are wholly uncollectible, the tax collector may request the taxes be cancelled. None of these manufactured structures are currently within the county; the majority has either been moved illegally or has been destroyed. All efforts to trace the legal owners have proven unsuccessful and there are no assets to attach. The amount deemed uncollectible remains relatively low due to persistent efforts to collect manufactured structure personal property taxes and existing statutory provisions canceling taxes on manufactured structures with a real market value less than \$16,000. The cancellation of these taxes allows the tax collector to more accurately report the balances that represent the unsegregated tax roll.

County Counsel, Kathleen Rastetter, has reviewed and approved this request as to form.

RECOMMENDATION:

Staff recommends the Board approve this request and authorizes Bob Vroman, County Assessor and Tax Collector, to cancel these taxes.

Respectfully submitted,

Bob Vroman, County Assessor

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

In the Matter of the Cancellation of
Manufactured Structure Personal
Property Taxes

}

ORDER NO.

This matter coming regularly before the Board of County Commissioners, and it appearing that the Manufactured Structure Personal Property taxes for the years as shown on the list attached and made a part of this Order, are delinquent and unpaid, and

Whereas, it further appearing to the Board that pursuant to ORS 311.790 a request for the cancellation of said taxes on the grounds that they are wholly uncollectible has been made by the Tax Collector and County Counsel of Clackamas County, and the Board being fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Manufactured Structure Personal Property taxes for the years as shown on the attached list be one and the same hereby are canceled and that the Tax Collector be authorized and directed to make the proper showing on his records.

DATED this 11th day of September, 2014

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

**2014 TAX WRITE OFF
MANUFACTURED STRUCTURE ACCOUNTS**

2013-14

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01417176	JOHNSON, JOCELYN R	D, E	6.00
01199385	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01165697	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01181107	FEWOX GARY & NORA SHARP	D, E	6.00
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	6.00
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	6.00
01213298	WELTSCH MICHAEL A	D, E	6.00
01346056	GHIGGIA MICHELLE	D, E	6.00
01207447	MILLER JULIE MARIE	D, E	6.00
01206199	DOWNEY MARK A	D, E	4.49
01219256	BERGE LARRY R & SHARLEEN J	D, E	6.00
01180028	CRANE KEVIN MARTIN	D, E	6.00
Total 2013-12			70.49

2012-13

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01152451	NICHOLSON ROGER LYNN	D, E	3.65
01199385	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01165697	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01181107	FEWOX GARY & NORA SHARP	D, E	6.00
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	6.00
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	6.00
01213298	WELTSCH MICHAEL A	D, E	6.00
01346056	GHIGGIA MICHELLE	D, E	6.00
01207447	MILLER JULIE MARIE	D, E	6.00
01206199	DOWNEY MARK A	D, E	4.35
01219256	BERGE LARRY R & SHARLEEN J	D, E	6.00
01180028	CRANE KEVIN MARTIN	D, E	6.00
Total 2010-11			68.00

2011-12

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01199385	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01165697	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01181107	FEWOX GARY & NORA SHARP	D, E	6.00
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	6.00
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	6.00
01213298	WELTSCH MICHAEL A	D, E	6.00
01346056	GHIGGIA MICHELLE	D, E	6.00
01207447	MILLER JULIE MARIE	D, E	6.00
01206199	DOWNEY MARK A	D, E	4.87
01219256	BERGE LARRY R & SHARLEEN J	D, E	6.00
01180028	CRANE KEVIN MARTIN	D, E	6.00
Total 2009-10			64.87

**2014 TAX WRITE OFF
MANUFACTURED STRUCTURE ACCOUNTS**

2010-11

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01199385	RAY VERNON KEITH & RUTH ANN	D, E	6.00
01181107	FEWOX GARY & NORA SHARP	D, E	6.00
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	6.00
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	6.00
01213298	WELTSCH MICHAEL A	D, E	6.00
01346056	GHIGGIA MICHELLE	D, E	6.00
01207447	MILLER JULIE MARIE	D, E	6.00
01206199	DOWNEY MARK A	D, E	5.32
01219256	BERGE LARRY R & SHARLEEN J	D, E	6.00
	Total 2008-09		<u>53.32</u>

2009-10

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01199385	RAY VERNON KEITH & RUTH ANN	D, E	65.55
01181107	FEWOX GARY & NORA SHARP	D, E	28.41
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	59.96
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	216.68
01213298	WELTSCH MICHAEL A	D, E	258.61
01207447	MILLER JULIE MARIE	D, E	208.82
01206199	DOWNEY MARK A	D, E	40.34
01219256	BERGE LARRY R & SHARLEEN J	D, E	278.68
	Total 2007-08		<u>1,157.05</u>

2008-09

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01199385	RAY VERNON KEITH & RUTH ANN	D, E	56.66
01181107	FEWOX GARY & NORA SHARP	D, E	24.57
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	52.55
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	198.85
01207447	MILLER JULIE MARIE	D, E	209.47
01206199	DOWNEY MARK A	D, E	47.12
01219256	BERGE LARRY R & SHARLEEN J	D, E	279.83
	Total 2006-07		<u>869.05</u>

2007-06

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01181107	FEWOX GARY & NORA SHARP	D, E	24.51
01141008	PHELPS CLYDE CLAYTON & TULLA MAE	D, E	99.48
01219256	BERGE LARRY R & SHARLEEN J	D, E	239.26
01171626	ROBERTS GEORGE JAMES & DOTTIE MARIE	D, E	156.34
01207447	MILLER JULIE MARIE	D, E	165.91
01206199	DOWNEY MARK A	D, E	47.88
01417176	JOHNSON, JOCELYN R	D, E	517.27
	Total 2005-06		<u>1,250.65</u>

**2014 TAX WRITE OFF
MANUFACTURED STRUCTURE ACCOUNTS**

2006-07

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01181107	FEWOX GARY & NORA SHARP	D, E	28.58
01219256	BERGE LARRY R & SHARLEEN J	D, E	234.03
01207447	MILLER JULIE MARIE	D, E	164.21
01417176	JOHNSON, JOCELYN R	D, E	502.91
Total 2004-05			929.73

2005-06

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01181107	FEWOX GARY & NORA SHARP	D, E	32.50
01219256	BERGE LARRY R & SHARLEEN J	D, E	240.05
01207447	MILLER JULIE MARIE	D, E	177.95
01417176	JOHNSON, JOCELYN R	D, E	492.34
Total 2003-04			942.84

2004-05

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01181107	FEWOX GARY & NORA SHARP	D, E	31.62
01219256	BERGE LARRY R & SHARLEEN J	D, E	224.57
01207447	MILLER JULIE MARIE	D, E	184.64
01417176	JOHNSON, JOCELYN R	D, E	506.66
Total 2002-03			947.49

2003-04

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01181107	FEWOX GARY & NORA SHARP	D, E	39.25
01219256	BERGE LARRY R & SHARLEEN J	D, E	240.60
01417176	JOHNSON, JOCELYN R	D, E	542.44
Total 2001-02			822.29

2002-03

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01219256	BERGE LARRY R & SHARLEEN J	D, E	257.00
01417176	JOHNSON, JOCELYN R	D, E	540.39
Total 2000-01			797.39

2001-02

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01417176	JOHNSON, JOCELYN R	D, E	659.64
Total 1999-00			659.64

2000-01

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
01417176	JOHNSON, JOCELYN R	D, E	505.90
Total 1998-99			505.90

**2014 TAX WRITE OFF
MANUFACTURED STRUCTURE ACCOUNTS**

WRITE OFF SUMMARY

Tax Year	Delinquent Tax Years
2013-14	70.49
2012-13	68.00
2011-12	64.87
2010-11	53.32
2009-10	1,157.05
2008-09	869.05
2007-08	1,250.65
2006-07	929.73
2005-06	942.84
2004-05	947.49
2003-04	822.29
2002-03	797.39
2001-02	659.64
2000-01	505.90
TOTAL	9,138.71

**MANUFACTURE STRUCTURES
REASONS TAXES ARE CONSIDERED UNCOLLECTIBLE**

- A. Taxes prepaid, but underestimated. Owners billed at last known address, but collection attempts unsuccessful.
- B. Manufactured Structure illegally moved to unknown location. Inquiries directed to all available sources of information but proved fruitless.
- C. Manufactured Structure illegally moved out of County and ownership transferred one or more times since. Clackamas County can put issue in LOIS to prevent this if we know it left our county.
- D. Manufactured Structure or houseboat destroyed by fire, vandalism, etc. Unit has no value. Taxes accrued after unit was destroyed and Assessor had no notification of destruction.
- E. Titleholder owns no real property that can be liened.
- F. Tax correction after the fact. Manufactured Structure moved out of County prior to enactment of tax correction.
- G. No positive identification. Unit has temporary x-number in ascend and no vehicle identification number, making it impossible to determine legal ownership.
- H. Taxes were originally a lien on the real property; lien was missed and property has changed hands one or more times since.
- I. Manufactured Structure moved out of County without Permit and Release. Taxes were a lien, but not owed. New owners billed at last known address, but collection attempts unsuccessful.



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BOB VROMAN
COUNTY ASSESSOR

DEPARTMENT OF ASSESSMENT AND TAXATION

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Cancelling Delinquent Personal Property Tax Accounts

Purpose/Outcomes	The attached Board Order authorizes the Tax Collector to write off delinquent personal property accounts deemed uncollectible.
Dollar Amount and Fiscal Impact	The total uncollectible taxes for delinquent accounts equals \$113,699.05.
Funding Source	The adjustment is to the unsegregated tax account shared by all taxing districts providing services in Clackamas County.
Safety Impact	None
Duration	Effective for the 2014-2015 tax roll.
Previous Board Action	No previous Board Action on these accounts.
Contact Person	Bob Vroman, Clackamas County Assessor and Tax Collector

BACKGROUND:

This request is made in accordance with provisions of ORS 311.790 that provides when the tax collector deems that taxes on personal property delinquent for any reason are wholly uncollectible, the tax collector may request the taxes be cancelled. These uncollectible accounts are no longer in business with no assets remaining. Many filed bankruptcy which stays collection processes and no assets remain when the bankruptcy is dismissed or discharged. Others are corporations that have been dissolved and there is no corporate officer responsibility for tax payment and there is no real property against which a lien could be placed. The cancellation of these accounts allows the tax collector to more accurately report the balances that represent the unsegregated tax account.

County Counsel, Kathleen Rastetter, has reviewed and approved this request as to form.

RECOMMENDATION:

Staff recommends the Board approve this request and authorizes Bob Vroman, County Assessor and Tax Collector, to cancel these taxes.

Respectfully submitted,


Bob Vroman, County Assessor

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

In the Matter of the Cancellation of
Personal Property Taxes



ORDER NO.

This matter coming regularly before the Board of County Commissioners, and it appearing that the Personal Property taxes for the years as shown on the list attached and made a part of this Order, are delinquent and unpaid, and

Whereas, it further appearing to the Board that pursuant to ORS 311.790 a request for the cancellation of said taxes on the grounds that they are wholly uncollectible has been made by the Tax Collector and County Counsel of Clackamas County, and the Board being fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Personal Property taxes for the years as shown on the attached list be one and the same hereby are canceled and that the Tax Collector be authorized and directed to make the proper showing on his records.

DATED this 11th day of September, 2014.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

**2014 TAX WRITE OFF
PERSONAL PROPERTY ACCOUNTS**

2013-14

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2252668	SC DESIGN NORTHWEST LLC	1, 4	587.09
	Total 2013-14		<u>587.09</u>

2012-13

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2252668	SC DESIGN NORTHWEST LLC	1, 4	533.95
	Total 2012-13		<u>533.95</u>

2011-12

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2252668	SC DESIGN NORTHWEST LLC	1, 4	823.19
P2057176	CANBY LANES INC	4, 5	544.71
	Total 2011-12		<u>1,367.90</u>

2010-11

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2057176	CANBY LANES INC	4, 5	545.47
P2125979	METRO TRACTOR INC	4, 8	490.65
P2239805	ALL TRIM PLUS LLC	2, 4	737.79
P2244856	COLD STONE CREAMERY	4, 10	1,082.53
	Total 2010-11		<u>2,856.44</u>

2009-10

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2057176	CANBY LANES INC	4, 5	550.14
P2128008	WJP SERVICES INC	4, 9	679.29
P2183935	FINLAY FINE JEWELRY CORP	1, 4	58.69
P2222288	RAIN COUNTRY CONSTRUCTION INC	4, 10	10,195.46
P2225370	MLKII ENTERPRISES INC	4, 10	842.64
P2228618	WIRE EDM SPECIALTIES INC	1, 4	2,683.85
P2230920	APA ENTERPRISES CORP	4, 10	2,956.15
P2235577	GREATER NORTHWEST MORTGAGE	1, 4	1,155.92
P2239556	COLUMBIA REALTY	4, 10	341.72
P2242378	AWA INC, DBA DR JOHNS PUB	4, 10	575.91
P2244561	PREMIER HYUNDAI	4, 9	4,307.81
P2244610	SLIM AND TONE WESTWOOD	4, 9	15.08
P2244634	KEITH R NORTON DDS PC	4, 8	1,526.74
P2244856	COLD STONE CREAMERY	4, 10	1,223.55
P2245034	THE GALLERY RESTAURANT & LOUNGE LLC	4, 9	647.67
P2246187	SMOKY HEARTH PIZZA CO	4, 10	1,379.79
P2248527	WAKESIDE LLC	4, 10	1,708.51
P2248773	PACIFIC LAND CLEARING CO INC	4, 10	431.72
P2248801	BNC MORTGAGE	4, 10	3,119.16

**2014 TAX WRITE OFF
PERSONAL PROPERTY ACCOUNTS**

2009-10 (continued)

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2250483	TX2 INC DBA HARTWELLS	4, 9	1,717.09
P2250924	SALMON RIVER INN LLC	3, 4	470.23
P2251155	ANVIL METALWORKS INC	4, 9	726.48
P2252021	SILVER BULLET INC	4, 9	9,615.12
P2252043	ABOVE STANDARD CONSTRUCTION	1, 4	741.91
P2252346	OREGON CITY GRILLE	8, 10	735.89
Total 2009-10			48,406.52

2008-09

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2057176	CANBY LANES INC	4, 5	531.61
P2128008	WJP SERVICES INC	4, 9	673.39
P2222288	RAIN COUNTRY CONSTRUCTION INC	4, 10	25,045.10
P2227041	CHILIS GRILL & BAR #44	4, 8	1,156.84
P2228618	WIRE EDM SPECIALTIES INC	1, 4	2,737.09
P2229159	CHILIS OF LAKE OSWEGO	4, 8	1,060.15
P2230920	APA ENTERPRISES CORP	4, 10	2,723.13
P2235577	GREATER NORTHWEST MORTGAGE	1, 4	839.38
P2242378	AWA INC, DBA DR JOHNS PUB	4, 10	431.44
P2243280	THE HAYS GROUP INC	1, 4	13.59
P2244634	KEITH R NORTON DDS PC	4, 8	1,355.01
P2244856	COLD STONE CREAMERY	1, 4	1,360.81
P2245034	THE GALLERY RESTAURANT & LOUNGE LLC	4, 10	469.31
P2246187	SMOKY HEARTH PIZZA CO	4, 10	920.57
P2248801	BNC MORTGAGE	4, 10	3,229.47
P2249061	LAKEWAY COMMODITIES INC	4, 9	453.88
P2250278	HDN CONSTRUCTION	4, 8	715.86
P2250483	TX2 INC DBA HARTWELLS	4, 9	1,269.17
P2251155	ANVIL METALWORKS INC	4, 9	524.60
P2252009	WILSONSTONE LLC	1, 4	1,372.12
Total 2008-09			46,882.52

2007-08

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2128008	WJP SERVICES INC	4, 9	651.07
P2227041	CHILIS GRILL & BAR #44	4, 8	391.20
P2228618	WIRE EDM SPECIALTIES INC	1, 4	3,005.59
P2229159	CHILIS OF LAKE OSWEGO	4, 8	403.21
P2230920	APA ENTERPRISES CORP	4, 10	2,040.45
P2242378	AWA INC, DBA DR JOHNS PUB	4, 10	296.80
P2244634	KEITH R NORTON DDS PC	4, 8	829.03
P2244856	COLD STONE CREAMERY	1, 4	997.82
P2248801	BNC MORTGAGE	4, 10	2,282.37
Total 2007-08			10,897.54

**2014 TAX WRITE OFF
PERSONAL PROPERTY ACCOUNTS**

2006-07

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2128008	WJP SERVICES INC	4, 9	633.85
		Total 2006-07	<u>633.85</u>

2005-06

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2128008	WJP SERVICES INC	4, 9	674.72
		Total 2005-06	<u>674.72</u>

2004-05

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
P2128008	WJP SERVICES INC	4, 9	481.68
		Total 2004-05	<u>481.68</u>

1998-99

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
U1676617	FONE AMERICA INC	9, 10	58.12
			<u>58.12</u>

1997-98

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
U1676617	FONE AMERICA INC	9, 10	61.36
			<u>61.36</u>

1996-97

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
U1676617	FONE AMERICA INC	9, 10	62.03
			<u>62.03</u>

1995-96

<u>Account Number</u>	<u>Name of Account</u>	<u>Reasons</u>	<u>Total Due</u>
U1676617	FONE AMERICA INC	9, 10	66.62
U1676608	FONE AMERICA INC	9, 10	128.71
			<u>195.33</u>

**2014 TAX WRITE OFF
PERSONAL PROPERTY ACCOUNTS**

WRITE OFF SUMMARY

	Delinquent Tax Years
2013-14	587.09
2012-13	533.95
2011-12	1,367.90
2010-11	2,856.44
2009-10	48,406.52
2008-09	46,882.52
2007-08	10,897.54
2006-07	633.85
2005-06	674.72
2004-05	481.68
1998-99	58.12
1997-98	61.36
1996-97	62.03
1995-96	195.33
Total:	113,699.05

**PERSONAL PROPERTY
REASONS TAXES ARE CONSIDERED UNCOLLECTIBLE**

1. Bankruptcy filed which stays aggressive collections. No assets remaining when bankruptcy is dismissed or discharged, or trustee objects to claim.
2. Property in county at filing time, but moved before tax statements were mailed. Property gone and no real property against which lien can be placed.
3. The real property on which lien is placed is foreclosed on by a bank. The bank pays the real property tax, but will not pay personal property tax since it has no interest in the personal property.
4. Multiple tax statements returned marked "No Forwarding Address", etc. Check with Corporation Division, State of Oregon, reveals corporation dissolved, property gone, nothing to seize.
5. Field inspection by sheriff's deputy or tax department in the process of collection shows nothing at location. Company has moved and left no forwarding address, nothing on site to seize.
6. Small business administration seizes and sells before we are notified.
7. IRS or FIC seizures.
8. No longer in business. Cannot locate an individual on which to have warrant served, or county has warrant served and docketed but individual has left area and cannot be located.
9. Business owner does not own any real property to secure a lien, and personal property cannot be found to seize and sell.
10. Corporation is dissolved, either voluntarily or involuntarily, property cannot be located, and there is no corporate officer responsibility for tax payment.



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Karen Brisbin
Justice Of The Peace

CLACKAMAS COUNTY JUSTICE COURT

11750 SE 82ND AVE SUITE D | HAPPY VALLEY, OR 97086

August 29, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

A Resolution Appointing Justices of the Peace Pro Tempore for the
Clackamas County Justice of the Peace District

Purpose/Outcome	Approval of the Resolution Appointing Justices of the Peace Pro Tempore will appoint pro tempore judges to ensure that the Justice Court can continue to hold court during those periods of time when Justice of the Peace Brisbin is temporarily absent or otherwise unable to hold court.
Dollar Amount and Fiscal Impact	Pro Tempore judges are paid at an hourly rate of \$45.35, plus .56 cents per mile for travel to and from the court building.
Funding Source	Justice Court budget.
Safety Impact	None.
Duration	Per ORS 51.260 the term may not be for a period exceeding one year.
Previous Board Action/Review	Annual appointment per ORS 51.260.
Contact Person	Karen Brisbin, Justice of the Peace.

BACKGROUND: When Justice of the Peace Brisbin is temporarily absent or otherwise unable to hold court, justices of the peace pro tempore ensure that the Justice Court can continue to hold court. Pro tempore judges adjudicate violation or civil cases set for first appearance/arraignment or contested hearing/trial. The two individuals recommended for appointment are Clackamas County attorneys in good standing with the Oregon State Bar and meets the eligibility requirements set by Oregon Revised Statutes.

The Resolution has been reviewed and approved by County Counsel.

RECOMMENDATION: Staff recommends approval of this Resolution appointing two Clackamas County attorneys to serve as justices of the peace pro tempore during the next year.

Respectfully submitted,

Karen Brisbin
Justice of the Peace

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

A RESOLUTION APPOINTING A
JUSTICE OF THE PEACE PRO
TEMPORE FOR THE CLACKAMAS
COUNTY JUSTICE OF THE PEACE
DISTRICT



Resolution No.

WHEREAS, The Clackamas County Justice of the Peace District (the Justice Court) was created by the Board of County Commissioners (BCC) in February 2009, and Justice of the Peace Karen Brisbin was subsequently appointed by the Governor and has been elected to serve a six (6) year term; and

WHEREAS, Pursuant to ORS 51.260(2), the BCC may appoint justices of the peace pro tempore to ensure that the Justice Court can continue to hold court during those periods of time when Judge Brisbin is temporarily absent or otherwise unable to hold court; and

WHEREAS, Roxanne R. Scott and Wm. Bruce Shepley are eligible to serve as justice of the peace pro tempore being citizens of the United States, residents of Oregon for at least three years, and have maintained a residence or principal office in Clackamas County for at least one year immediately prior to appointment; and

WHEREAS, The BCC, upon the recommendation of Judge Brisbin, finds it is in the public interest to appoint Roxanne R. Scott and Wm. Bruce Shepley, to serve as justices of the peace pro tempore in Clackamas County;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Board of County Commissioners appoints Roxanne R. Scott and Wm. Bruce Shepley to serve as justices of the peace pro tempore for the Clackamas County Justice of the Peace District. Roxanne R. Scott and Wm. Bruce Shepley shall have the authority to preside over court proceedings as is necessary during times when Judge Brisbin is temporarily absent or otherwise unable to hold court.

IT IS FUTHER RESOLVED that the appointment of Roxanne R. Scott and Wm. Bruce Shepley shall be for a term not to exceed one year from the date this resolution. The appointment, however, is subject to termination in the sole discretion of the BCC at any time prior to the expiration of the term.

ADOPTED this ____ day of _____, 2014.

CLACKAMAS COUNTY BOARD OF COMMISIONERS

Chair

Recording Secretary



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ELLEN CRAWFORD
DIRECTOR

JUVENILE DEPARTMENT

September 11, 2014

JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement
Between Multnomah County and Clackamas County for
Assessment and Evaluation Beds

Purpose/Outcomes	This IGA is between Multnomah and Clackamas County to purchase assessment and evaluation beds from Multnomah County.
Dollar Amount and Fiscal Impact	The maximum contract value is \$43,785
Funding Source	General Fund
Safety Impact	These beds provide stabilization for high risk youth that have failed previous placements or are exhibiting at risk behaviors in the community. This resource increases community safety by removing youth from the community and providing assessment and evaluation that will aid in seeking more appropriate resources and services for the youth.
Duration	Effective July 1, 2014 through June 30, 2015
Previous Board Action	
Contact Person	Ellen Crawford, Director – Juvenile Department – 503-655-8342 ext 3171
Contract No.	

BACKGROUND:

Attached is an Intergovernmental Agreement between Clackamas and Multnomah County for the purchase of beds for at risk youth in their Assessment and Evaluation Program. This program provides a staff secure environment with intensive services for mental health, behavioral and alcohol and drug evaluations. This program will meet the unmet needs of youth with emotional and behavioral problems, with the goal of stabilizing behavior for a transition to longer term services. These funds were made available through the FY 14-15 Budget Committee.

County Counsel has reviewed and approved this Amendment as of July 16, 2014

RECOMMENDATION:

Staff recommends the Board approval of the Intergovernmental Agreement for the purchase of beds in Multnomah County's Assessment and Evaluation Program.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ellen Crawford".

Ellen Crawford, Director
Juvenile Department

For more information on this issue or copies of attachments, please contact Crystal Wright at 503-655-8342 ext 7112.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY
AND
MULTNOMAH COUNTY

This Agreement is entered into between Clackamas County, a political subdivision of the State of Oregon, on behalf of its Juvenile Department hereinafter referred to as COUNTY and Multnomah County, on behalf of its Juvenile Services Division of the Department of Community Justice, hereinafter referred to as MULTNOMAH.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform;

WHEREAS COUNTY desires MULTNOMAH'S services on the project entitled "A&E beds", in accordance with the SCOPE OF WORK attached hereto as Exhibit "A";

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I - SCOPE OF WORK

MULTNOMAH agrees to perform for COUNTY the services described in Exhibit A hereto, which incorporated herein by reference.

ARTICLE II - AGREEMENT PERIOD

The effective date of this Agreement is September 15, 2014, or upon final signature, whichever is later. The expiration date is June 30, 2015.

ARTICLE III - CONSIDERATION

COUNTY agrees to pay MULTNOMAH for services performed under this Agreement in the fixed amount of \$137.53 per bed day, up to a maximum of \$43,785. COUNTY certifies that sufficient funds are available and authorized to finance the costs of this Agreement.

Payment shall be made according to the following schedule:

MULTNOMAH will submit an invoice for the previous month's services within 30 days of the end of the month. Invoice shall include a roster of youth including intake and exit dates.

Invoices for work shall be submitted to COUNTY:

Crystal Wright
Administrative Services Manager
Clackamas County Juvenile Dept
2121 Kaen Road
Oregon City OR 97045
503-655-8342 ext 7112
FAX: 503-655-8448

Payment shall be sent to MULTNOMAH:

Attn: Business Services
Multnomah County Department of Community Justice
501 SE Hawthorne Blvd., Suite 250
Portland OR 97214
Phone: 503-988-3701

ARTICLE IV - NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered to the following addressee:

If to COUNTY:

Ellen Crawford
Department Director
Clackamas County Juvenile Dept.
2121 Kaen Rd.
Oregon City, OR. 97045

If to MULTNOMAH:

Christina McMahon
Division Director
Multnomah County Juvenile Services Division
Department of Community Justice
1401 NE 68th Ave
Portland, OR 97213

ARTICLE V - PERFORMANCE / REPORTING REQUIREMENT

MULTNOMAH is responsible for the performance of work and will provide progress reports of findings, if any, as stated in Exhibit A, SCOPE OF WORK. MULTNOMAH shall maintain fiscal records pertinent to this Agreement for at least three (3) years following completion of work under this Agreement. MULTNOMAH shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, MULTNOMAH shall maintain all other records pertinent to this Agreement in such a manner as to clearly document MULTNOMAH performance hereunder.

ARTICLE VI - CONFIDENTIALITY

Subject to the limitations and conditions of the Oregon Public Records law, MULTNOMAH agrees to keep confidential any COUNTY proprietary information that COUNTY designates as such and supplies to MULTNOMAH during the course of research performed under this Agreement. Such information

will not be included in any published material without prior approval by COUNTY. MULTNOMAH agrees to provide any proposed publication to COUNTY thirty (30) days prior to submission, to review for the inclusion of COUNTY-owned confidential information, and to determine whether patentable inventions or discoveries are disclosed therein.

MULTNOMAH understands that COUNTY client information collected under this Agreement is confidential and the use or disclosure of such information, when not directly connected with the administration of MULTNOMAH's responsibilities with respect to research performed under this Agreement, is prohibited unless consent is obtained from COUNTY's client and, in the case of a minor, that of a responsible parent/guardian.

ARTICLE VIII – GENERAL CONDITIONS

Insurance. The parties understand that each is self-insured with respect to tort liability and each subject to the Oregon Tort Claims Act, ORS 30.260 - 30.300. Each party agrees to accept that coverage as adequate insurance of the other party with respect to personal injury and property damage.

Indemnification. MULTNOMAH agrees to hold and save harmless COUNTY, its officers, commissioners, employees and agents from and against any third-party liability which may arise under this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act (ORS 30.260 through ORS 30.300) to the extent of liabilities arising out of the acts of MULTNOMAH, its officers or agents. MULTNOMAH shall not be required to indemnify or defend COUNTY for any liability arising out of the acts or negligence of employees or agents of COUNTY. COUNTY agrees to defend and hold harmless MULTNOMAH, its officers, commissioners, employees and agents from and against any third-party liability which may arise under this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act (ORS 30.260 through ORS 30.300) to the extent of liabilities arising out of the acts of COUNTY, its officers or agents.

ARTICLE IX - COMPLIANCE WITH LAWS

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. Any suit for enforcement shall occur, if in the State courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

ARTICLE X - ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due during this Agreement, without the prior written approval of the other party.

ARTICLE XIII – TERMINATION

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Payment to MULTNOMAH shall be prorated to and include the day of termination

ARTICLE XV -- DEBT LIMITATION

This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated there for. Any provisions herein that would conflict with law are deemed inoperative to that extent.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

MULTNOMAH COUNTY

By Deborah Kaboray / Jane de Scott Taylor

Date: 8/22/14

CLACKAMAS COUNTY

By _____
Chair, John Ludlow

Date: _____

Recording Secretary Date

Exhibit "A"
Scope of Work
Assessment and Evaluation Program

The Program Description:

The Assessment and Evaluation program will be a voluntary program for male and female youth, ages 13-17, who require a staff secured, out of home placement for assessment/evaluation, stabilization and transition planning. The average length of stay is estimated to be 45 days, but youth may be enrolled for up to 90 days based on individual needs. Participants will receive a comprehensive Global Appraisal of Individual Needs (GAIN) tool, as well as a service plan that will be developed by the Mental Health Consultant, parent (guardian) and the youth. The service plan will reflect how the program will address the youth's issues, describe anticipated outcomes, and will be reviewed and approved by the youth and the parent/guardian. Additional assessments (alcohol and drug, psychological, psychiatric, psychosexual) may be provided as indicated. Services will also include individual and group counseling in a culturally responsive environment, skill building, family counseling and parent training.

Programming services included:

Individual and family counseling
Daily goal setting and review
Aggression Replacement Training skill development
Emotional regulation skills
Thinking errors and pro-social thinking
Basic life skills
Year round on-site school provided by Multnomah Education Service District
Case management and collaboration with Juvenile Counselors
Recreational and cultural activities
Community service
Outings and field trips
Parent training
Psychological and psychiatric consultation
Medical and medication management
Mentorship
Women's Health (girls only)
Trauma Group

Eligibility:

Male and female youth 13 to 17 year of age
Client is under the supervision of Clackamas County Juvenile Department
Client is unable to be appropriately serviced in the community-based program
Client is medically, cognitively, and psychiatrically able to participate

Referral:

The Juvenile Counselors will make referrals to the program through the Treatment Expeditor, to be identified by Multnomah County Department of Community Justice.

Screening:

The Treatment Expeditor will screen youth who are referred.

**Youth who represent imminent risk to self or others may be considered inappropriate

Information required at the screening:

Social history

Legal history

Family history

Educational history

Psychiatric and/or psychological concerns

Suicidal history

Probation case plan

Pending court dates

Medication history

Other pertinent information that may provide a better understanding of the client's needs.

Curriculum

6 service hours are required per week

Cognitive Group – Evidence-based curriculum that targets criminal thinking errors.

Mindfulness skills – Evidence-based curriculum that teaches emotional regulation skills.

Aggression Replacement Therapy (ART) – Evidence-based curriculum which uses role playing to teach youth different pro-social skills.

Life Skills – Teaches basic life skills (hygiene, cooking, STD prevention, etc.)

Goal Setting and Day Review – Youth will identify one goal in each of the three areas: behavior, accomplish and skill practice. At the end of the day they will review their goals and rate themselves on how they did.

Alcohol and Other Drugs (AOD) Education – Teaches the effects of AOD on the mind and body

Truthought – Teaches problem solving and decision making.

Program Summary:

The program will be designed to serve youth who have a history of failing community programs, not in school, run histories, or family issues which keeps youth from returning home. The program will be staffed with two (2) licensed mental health professionals and one (1) Multnomah Juvenile Counselor in addition to nine (9) Custody Services Specialists. The program will incorporate trauma-informed practices and will provide individual case management, parenting skills training (as needed), on-site schooling, on-site psychiatric services, comprehensive mental health and AOD evaluations, and behavioral skills training as youth prepare to transition into a treatment program or into the community. The program will provide a staff secure placement for youth exhibiting a myriad of behavioral and treatment issues and will quickly assess their needs. Additionally, the

program will enhance the current service array for Latino youth by providing family therapy and transition planning through bilingual staff with 7 day per week coverage. Community agencies will be included in the service delivery as appropriate to be responsive in meeting the individual needs of each youth.



Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment
J. Michael Read
Interim Director

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Happy Valley for the Cedar Way Stream Stabilization Project

Purpose/Outcomes	Stabilization of a tributary of Mt Scott Creek near SE Cedar Way
Dollar Amount and Fiscal Impact	CCSD#1 will fund the project up to \$50,000.00.
Funding Source	CCSD#1 FY2014-15 budget - no County General Funds are involved.
Safety Impact	None.
Duration	Effective September 11, 2014 and terminates on June 30, 2018
Previous Board Action	None.
Contact Person	J.Michael Read, Interim Director – Water Environment Services – 503-742-4560
Contract No.	N/A

BACKGROUND:

Clackamas County Service District No. 1(CCSD#1) identified the need for a stream stabilization project on a property owned by the City of Happy Valley on SE Cedar Way. The existing stream, an unnamed tributary to Mt Scott Creek, has been impacted by changes to hydrology associated with development. To protect the channel from further degradation, contractors will stabilize it by installing boulder weirs. Staff has secured the necessary permits from Department of State Lands and U.S. Army Corps of Engineers to perform the work.

As the surface water provider to Happy Valley, CCSD#1 staff regularly partners closely with City staff on projects to improve watershed health. On this project, City staff has facilitated City permitting, participated in meetings, reviewed plans and will provide an informational sign at the project site.

This issue was identified through CCSD#1's regular, periodic monitoring program. Funds were budgeted for construction in the approved FY2014-15 budget. Construction bids were sought in accordance with Local Contracting Review Board Rules in July 2014 and staff received two

bids. Henderson was identified as the apparent low bidder at \$37,738. Staff anticipates project costs including construction and three years of maintenance will be approximately \$50,000.

Work will occur on property owned by the City of Happy Valley. The Happy Valley City Council approved adoption of the IGA on August 19, 2014.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Happy Valley for the Cedar Way Stream Stabilization Project and authorize the WES Interim Director to sign the IGA.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "M. Read", with a long horizontal flourish extending to the right.

Michael Read
Interim Director

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and
THE CITY OF HAPPY VALLEY
CEDAR WAY STREAM STABILIZATION PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into and between the City of Happy Valley (hereafter called "CITY"), an instrumentality of the State of Oregon, and Clackamas County Service District No. 1 ("DISTRICT"), a county service district formed pursuant to ORS Chapter 451.

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, both parties are engaged in efforts to improve watershed health;

WHEREAS, the unnamed tributary to Mt Scott Creek along SE Cedar Way is in a degraded condition and at risk of further degradation; and

WHEREAS, both parties wish to stabilize the stream to prevent damage to adjacent properties or infrastructure, following plans developed by Waterways Consulting for the Cedar Way Stream Stabilization Project.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Term.** This Agreement shall be effective upon execution, and shall expire on June 30, 2018 upon completion of construction, planting and a 3-year maintenance period for plantings.
2. **Obligation of the City of Happy Valley.**
 - A. CITY agrees to allow DISTRICT and its contractors to construct the stream stabilization project (the "PROJECT"), described in more detail in Exhibit B, on land CITY owns between SE Cedar Way and SE William Otty Road, known as tax lot 12E35BCO5300, further described in Exhibit A (the "Property").
3. **Obligation of the DISTRICT.**
 - A. DISTRICT agrees to manage the construction of the PROJECT on the Property.
 - B. DISTRICT agrees to manage the maintenance of plantings on the PROJECT through June 30, 2018.
 - C. DISTRICT agrees to fund the PROJECT an amount not to exceed Fifty Thousand and 00/100 Dollars (**\$50,000**). Notwithstanding anything else to the contrary herein, no adjustment shall be made which obligates the DISTRICT to fund the PROJECT in excess of \$50,000.00 without prior written approval by DISTRICT.
4. **Work Plan and Scheduling of Work.**
 - A. DISTRICT will manage the PROJECT and intends to complete construction and planting of the PROJECT by June 30, 2015. CITY acknowledges that said schedule is dependent on many conditions and may be subject to change. DISTRICT will provide prompt notice to CITY of any anticipated delays in the schedule.
 - B. Nothing herein shall prevent the parties from meeting to mutually to discuss the PROJECT. Each party shall use best efforts to coordinate with the other to minimize conflicts.

C. As the project manager, only DISTRICT shall approve change orders or extend unit prices that affect PROJECT following the execution of the construction contract.

5. **Early Termination of Agreement**

A. The DISTRICT and CITY, by mutual written agreement, may terminate this Agreement at any time.

B. Either the DISTRICT or CITY may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination.

6. **Indemnification.** Each Party agrees to indemnify, save harmless and defend the other, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of the Party or the Party's officers, owners, employees, agents, or its subcontractors or anyone over which the Party has a right to control.

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

8. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

9. **Integration.** This Agreement contains the entire agreement between the DISTRICT and CITY and supersedes all prior written or oral discussions or agreements.

10. **Amendments.** The DISTRICT and CITY may amend this Agreement at any time only by written amendment executed by the DISTRICT and CITY.

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

12. **Third Party Beneficiary.** Each Party intends that this Agreement does not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the AGENCY or DISTRICT.

[Signature Page Follows]

IN WITNESS HEREOF, the parties have executed this Agreement by the date set forth opposite their names below.

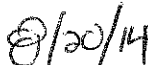
City of Happy Valley

Clackamas County Service District No. 1



Jason Tuck, City Manager

J. Michael Read, Interim Director



Date

Date

Exhibit A Legal description and map

Tax lot 12E35BCO5300, also known as Tract A of Scott Creek Estates, a subdivision of parcel 2 and a portion of parcel 1 of partition plat 1996-063 located in the northwest $\frac{1}{4}$ section 35, Township 1 South, Range 2 East of the Willamette Meridian, City of Happy Valley, Clackamas County, Oregon, planned unit development no. PUD 03-95.

Exhibit B-Project plans and specifications

12E35
05500, 5300

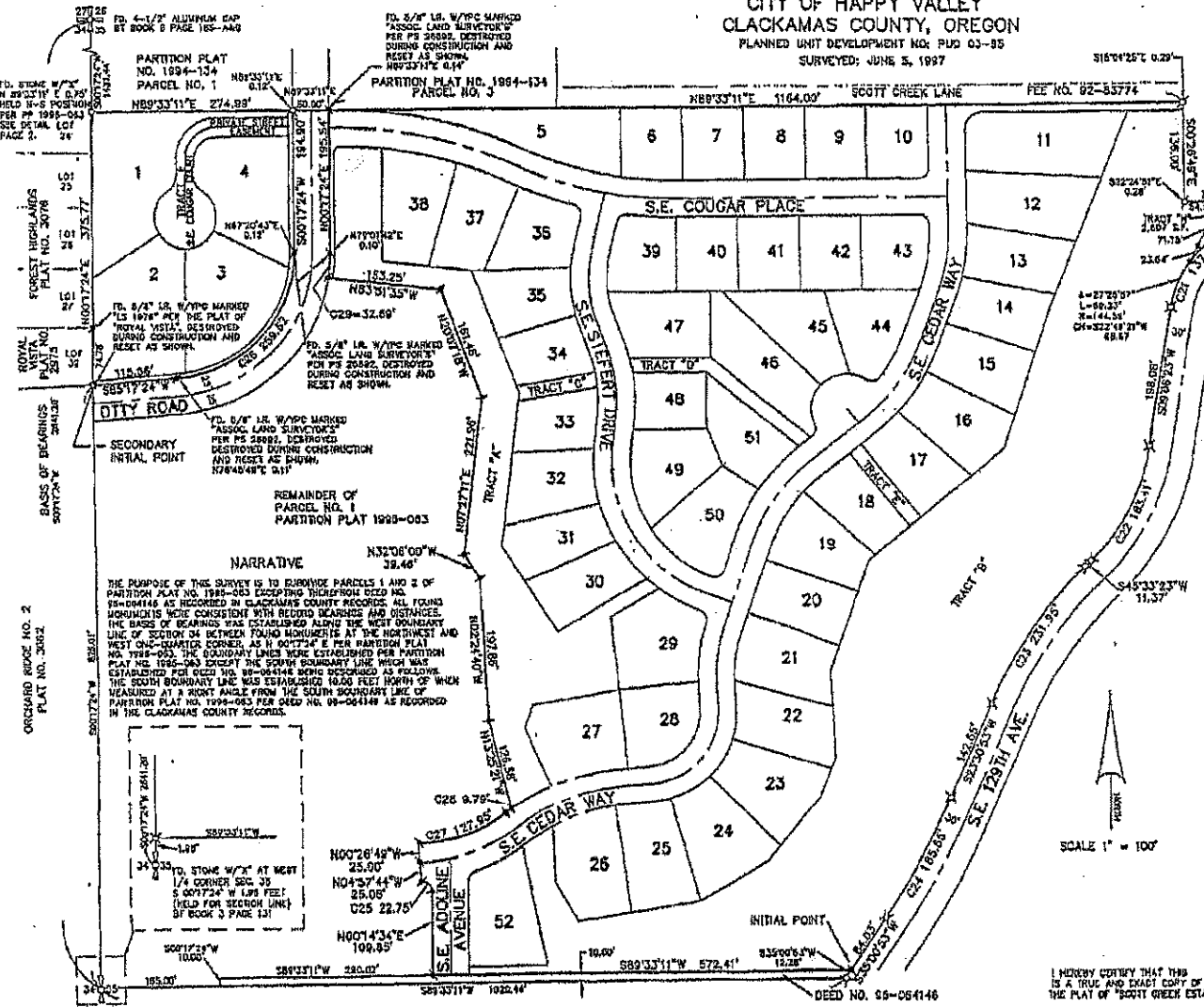
BOOK 112 PAGE 26

PAGE INDEX
 PAGE 1: OVERALL BOUNDARY, NOTES AND PLAT RESTRICTIONS, LEGEND.
 PAGE 2: LOTS 1-7, 32-40 AND 47-49, TRACTS A, C, D, AND F, LEGEND.
 PAGE 3: LOTS 8-17, 41-48 AND 51, TRACTS B, D, AND E, LEGEND.
 PAGE 4: LOTS 18-31, 50 AND 52, TRACTS A AND B, LEGEND.
 PAGE 5: BOUNDARY, ROAD CENTERLINE, LOT AND TRACT CURVE TABLES.
 PAGE 6: APPROVALS, SURVEYOR'S CERTIFICATE, DECLARATION AND ACKNOWLEDGMENTS

SCOTT CREEK ESTATES
 BEING A SUBDIVISION OF PARCEL 2 AND A
 PORTION OF PARCEL 1 OF PARTITION PLAT 1896-063
 LOCATED IN THE NORTHWEST 1/4 SECTION 35,
 TOWNSHIP 1 SOUTH, RANGE 2 EAST,
 OF THE WILLAMETTE MERIDIAN,
 CITY OF HAPPY VALLEY
 CLACKAMAS COUNTY, OREGON
 PLANNED UNIT DEVELOPMENT NO: PUD 03-85
 SURVEYED: JUNE 5, 1987

LEGEND:

- FS - DENOTES FOUND
- LR - DENOTES IRON ROD
- W/YPC - DENOTES WITH YELLOW PLASTIC CAP
- SF - DENOTES SQUARE FEET
- X - DENOTES SET 5/8" x 30" IRON ROD WITH 1-1/2" ALUMINUM CAP MARKED "W/D DESIGN, INC." IN MONUMENT BOD. SET ON MAY 28, 1983.
- - DENOTES SET 5/8" x 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W/D DESIGN, INC." SET ON APRIL 21, 1988.
- - DENOTES SET 5/8" x 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W/D DESIGN, INC." SET ON APRIL 14, 1988.
- - DENOTES FOUND MONUMENT AS NOTED.
- II - DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "CAL LAND SURVEYING, INC." PER PARTITION PLAT 1980-063.
- - DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ASSOC. LAND SURVEYORS" PER PS 28892.
- - DENOTES SET BRASS SCREW WITH 3/4" BRASS WASHER MARKED "W/D DESIGN, INC." SET ON JULY 27, 1988.



FEE NO.
68-17985
5224477W
0.30
138.25'
N89°33'11"E
N89°33'11"E
1.609' E
71.70'
21.64'

- NOTES AND PLAT RESTRICTIONS:**
- 1.) THERE IS NO KNOWN GEODETIC CONTROL MONUMENT WITH ONE-HALF" SIZE OF THE BOUNDARY OF THIS PLAT.
 - 2.) A 6 FOOT WIDE PUBLIC UTILITY EASEMENT SHALL EXIST ALONG THE FRONTAGE OF ALL LOTS AND TRACTS ADJUTING PUBLIC STREETS EXCEPT FOR CITY ROAD.
 - 3.) A 28 FOOT WIDE SLOPE, DRAINAGE AND PUBLIC UTILITY EASEMENT SHALL EXIST ALONG THE FRONTAGE OF ALL LOTS AND TRACTS ADJUTING CITY ROAD.
 - 4.) SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED AS DOCUMENT NO. 68-17985 IN CLACKAMAS COUNTY DEED RECORDS.
 - 5.) TRACT "A" IS FOR THE PURPOSE OF NATURAL DRAINAGE WAYS AND SHALL HAVE A STORM SEWER EASEMENT OVER ITS ENTIRETY AND SHALL BE OWNED AND MAINTAINED BY THE CITY OF HAPPY VALLEY.
 - 6.) TRACT "B" IS FOR THE PURPOSE OF NATURAL DRAINAGE WAYS AND SHALL HAVE A SANITARY SEWER EASEMENT OVER ITS ENTIRETY AND SHALL BE OWNED AND MAINTAINED BY THE CITY OF HAPPY VALLEY.
 - 7.) TRACTS "C", "D" AND "E" ARE FOR THE PURPOSE OF PEDESTRIAN CROSSWALKS AND SHALL BE OWNED AND MAINTAINED BY THE CITY OF HAPPY VALLEY.
 - 8.) SUBJECT TO CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 RULES AND REGULATIONS AND STORM WATER FLOW MAINTENANCE AGREEMENT UNDER DOCUMENT NO. 68-08414 AS RECORDED IN CLACKAMAS COUNTY DEED RECORDS.
 - 9.) TRACT "F" IS A PRIVATE STREET WITH A PUBLIC UTILITY EASEMENT OVER ITS ENTIRETY AND SHALL BE OWNED AND MAINTAINED BY LOTS 1 THRU 4 AND SHALL BE SUBJECT TO AN OVERSIGHT AND MAINTENANCE AGREEMENT RECORDED IN DOCUMENT NO. 68-08414 AS RECORDED IN CLACKAMAS COUNTY DEED RECORDS.
 - 10.) TRACT "G" SHALL HAVE A PUBLIC SANITARY SEWER ACCESS EASEMENT OVER ITS ENTIRETY.
 - 11.) TRACT "H" IS A 1.00 FOOT WIDE ACCESS CONTROL STRIP GRANTED TO CLACKAMAS COUNTY BY THE RECORDING OF THIS PLAT. THIS STRIP SHALL BE AUTOMATICALLY DEDICATED FOR PUBLIC ROAD PURPOSES UPON RECORDING OF A SUBSEQUENT PARTITION PLAT OR ACCEPTANCE OF A ROAD DEDICATION EXTENDING THE PUBLIC ROAD ON THE ADJACENT PROPERTY WHICH WILL ACCESS THROUGH THIS TRACT.
 - 12.) THERE SHALL BE NO VEHICULAR ACCESS TO SCOTT CREEK LANE FROM LOTS 5 THRU 10.
 - 13.) TRACT "I" IS ADDITIONAL RIGHT-OF-WAY FOR THE REALIGNMENT OF S.E. 12TH AVENUE AND SHALL BE DEDICATED TO CLACKAMAS COUNTY.

NARRATIVE
 THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE PARCELS 1 AND 2 OF PARTITION PLAT NO. 1896-063 EXCEPTING THEREFROM DEED NO. 68-08414 AS RECORDED IN CLACKAMAS COUNTY RECORDS. ALL FOUND MONUMENTS WERE COMPARED WITH REDUCED DRAWINGS AND DISTANCES. THE BASIS OF BEARINGS WAS ESTABLISHED ALONG THE WEST BOUNDARY LINE OF SECTION 34 BETWEEN FOUND MONUMENTS AT THE NORTHWEST AND WEST ONE-QUARTER CORNER, AS N 80°17'24" E PER PARTITION PLAT NO. 1896-063. THE BOUNDARY LINES WERE ESTABLISHED PER PARTITION PLAT NO. 1896-063 EXCEPT THE SOUTH BOUNDARY LINE WHICH WAS ESTABLISHED PER DEED NO. 68-08414 AS RECORDED IN CLACKAMAS COUNTY DEED RECORDS AS FOLLOWS: THE SOUTH BOUNDARY LINE WAS ESTABLISHED 10.00 FEET NORTH OF WHICH MEASURED AT A RIGHT ANGLE FROM THE SOUTH BOUNDARY LINE OF PARTITION PLAT NO. 1896-063 PER DEED NO. 68-08414 AS RECORDED IN THE CLACKAMAS COUNTY RECORDS.

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
 OREGON
 6511 W
 WERRY GOODMAN
 1988
 RENEWAL DATE 7-01-89

PLAT PREPARED BY:
 WRG DESIGN, INC.
 10450 SW HUMBUS AVE.
 PORTLAND, OR 97223
 PH: 603-9833
 JOB NO. 510005
 (PAGE 1 OF 6)

3444

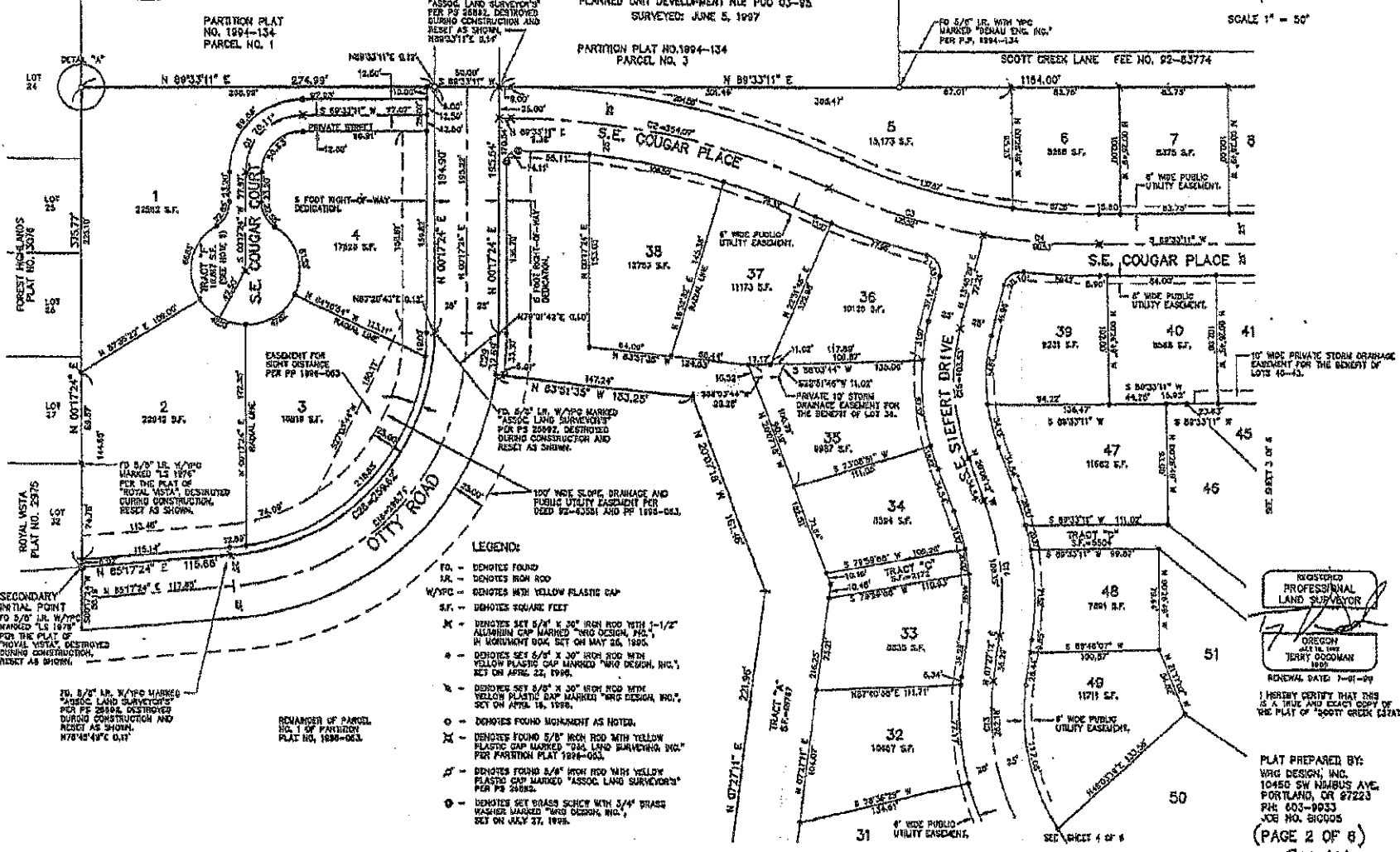
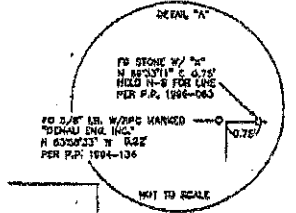
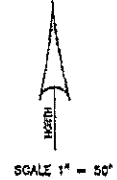
P 20

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE PLAT OF "SCOTT CREEK ESTATES".

DEED NO. 68-084146

SCOTT CREEK ESTATES
 BEING A SUBDIVISION OF PARCEL 2 AND A
 PORTION OF PARCEL 1 OF PARTITION PLAT 1998-063
 LOCATED IN THE NORTHWEST 1/4 SECTION 35,
 TOWNSHIP 1 SOUTH, RANGE 2 EAST,
 OF THE WILLAMETTE MERIDIAN,
 CITY OF HAPPY VALLEY
 CLACKAMAS COUNTY, OREGON

PLANNED UNIT DEVELOPMENT NO. PUD 03-95
 SURVEYED: JUNE 5, 1997



- LEGEND:**
- FO. - DENOTES FOUND
 - IA. - DENOTES IRON ROD
 - W/P/C - DENOTES WITH YELLOW PLASTIC CAP
 - S.F. - DENOTES SQUARE FEET
 - X - DENOTES SET 5/8" X 30" IRON ROD WITH 1-1/2" ALUMINUM CAP MARKED "WRG DESIGN, INC." IN MONUMENT BOX, SET ON MAY 26, 1995.
 - - DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "WRG DESIGN, INC." SET ON APRIL 23, 1995.
 - ∩ - DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "WRG DESIGN, INC." SET ON APRIL 18, 1995.
 - - DENOTES FOUND MONUMENT AS NOTED.
 - ⊗ - DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ASSOC. LAND SURVEYORS" PER PARTITION PLAT 1998-063.
 - ⊙ - DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ASSOC. LAND SURVEYORS" PER P.D. 20882.
 - ⊚ - DENOTES SET BRASS SCREW WITH 3/4" BRASS WASHER MARKED "WRG DESIGN, INC." SET ON JULY 27, 1995.

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
 OREGON
 JERRY GOODMAN
 1997

RENEWAL DATE: 7-01-99
 I HEREBY CERTIFY THAT THIS PLAN WAS EXACTLY COPYED BY THE PLAT OF "SCOTT CREEK ESTATES".

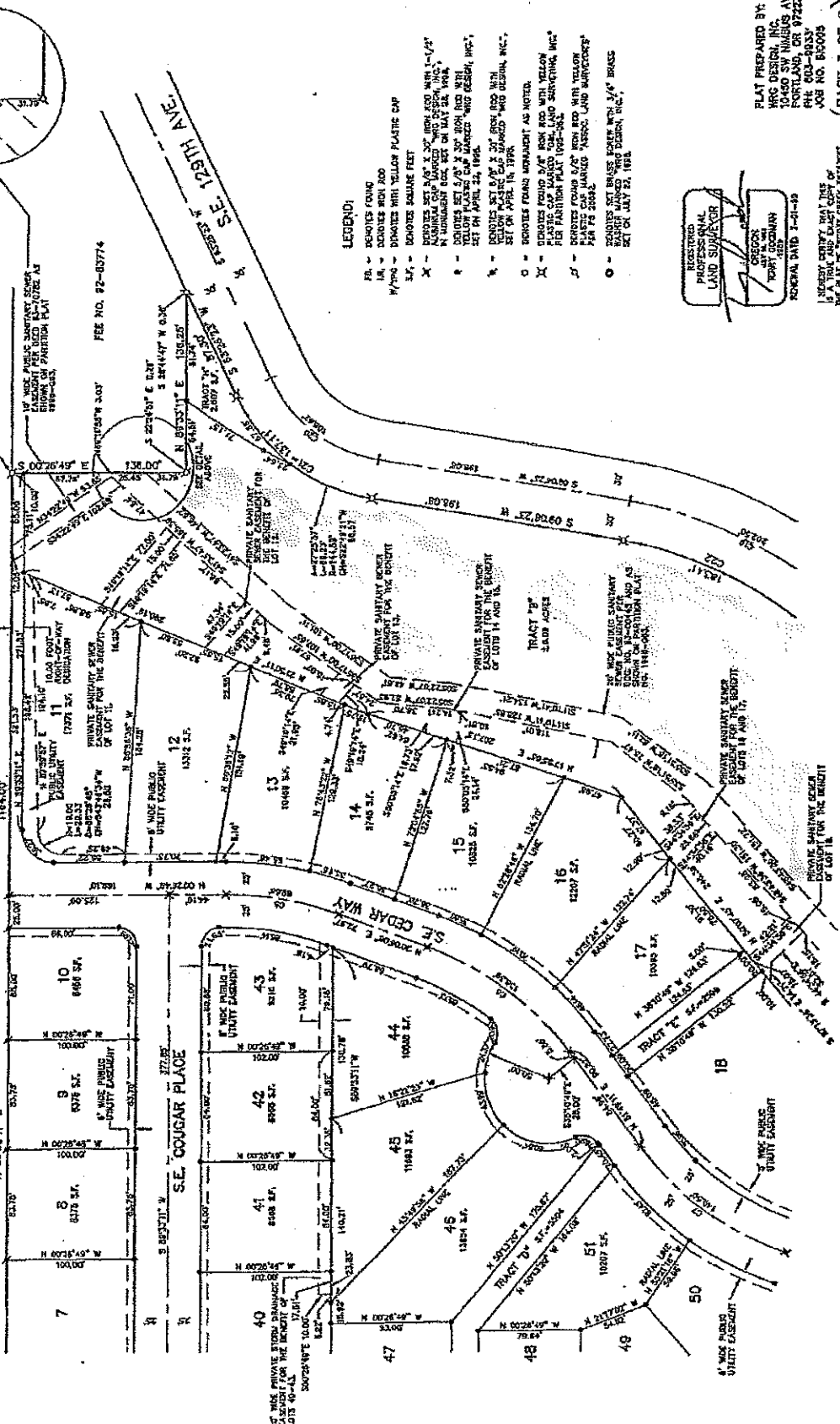
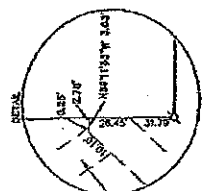
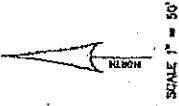
PLAT PREPARED BY:
 WRG DESIGN, INC.
 10485 SW NEABUS AVE.
 PORTLAND, OR 97223
 PH: 503-9933
 JOB NO. 810005
 (PAGE 2 OF 6)

3444

SCOTT CREEK ESTATES

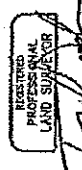
BEING A SUBDIVISION OF PARCEL 2 AND A PORTION OF PARCEL 1 OF PARTITION PLAT 1996-063 LOCATED IN THE NORTHWEST 1/4 SECTION 35, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON

PLANNED UNIT DEVELOPMENT NO. PUD 03-85 SURVEYED JUNE 5, 1997
SCOTT CREEK LAKE FEE NO. 82-03774 184.00' N 89°33'11" E



LEGEND:

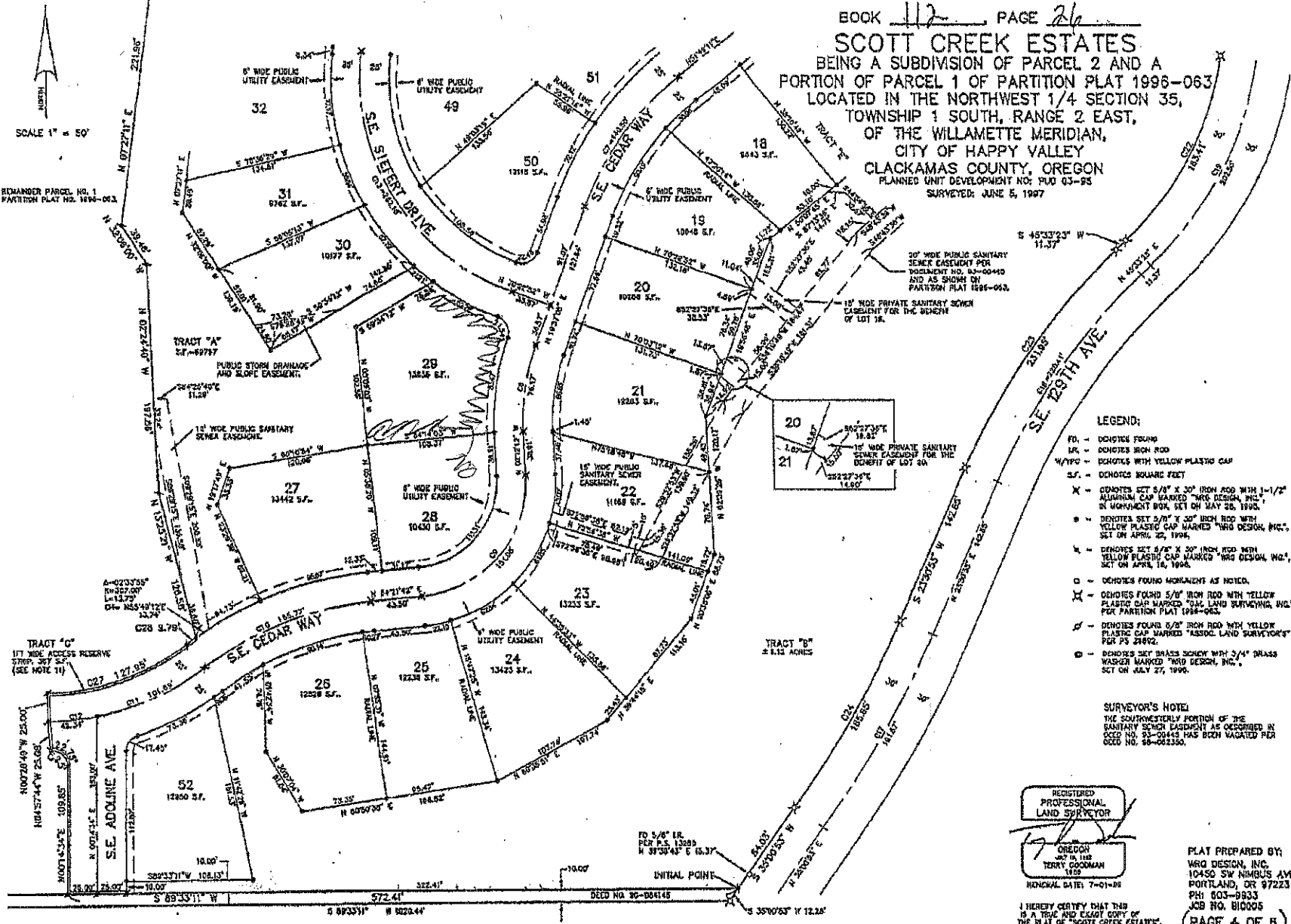
- FR - REMOTE FOUNDING
- 1A - REMOTE WITH ROD
- 1/2" - REMOTE WITH YELLOW PLASTIC CAP
- 1" - REMOTE SQUARE FEET
- 2" - REMOTE SET BACK X 30' FROM ROD WITH 1-1/2" NAIL IN GROUND
- 3" - REMOTE SET 3/4" X 30' FROM ROD WITH YELLOW PLASTIC CAP MARKED WITH OCEANA, INC. SET ON APRIL 24, 1994.
- 4" - REMOTE SET 3/4" X 30' FROM ROD WITH SET ON APRIL 24, 1994.
- 5" - REMOTE FOUND AS NOTED.
- 6" - REMOTE FOUND WITH YELLOW PLASTIC CAP MARKED WITH OCEANA, INC. SET ON APRIL 24, 1994.
- 7" - REMOTE FOUND 6" X 30' FROM ROD WITH YELLOW PLASTIC CAP MARKED WITH OCEANA, INC. SET ON APRIL 24, 1994.
- 8" - REMOTE FOUND 6" X 30' FROM ROD WITH YELLOW PLASTIC CAP MARKED WITH OCEANA, INC. SET ON APRIL 24, 1994.
- 9" - REMOTE FOUND WITH 3/4" BRASS SET ON JULY 23, 1988.



PLAT PREPARED BY:
WRS DESIGN, INC.
12450 SW NINEBUS AVE.
PORTLAND, OR 97223
JOB NO. 842009
(PAGE 3 OF 6)
24444

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE PLAT OF SCOTT CREEK ESTATES,

SCOTT CREEK ESTATES
 BEING A SUBDIVISION OF PARCEL 2 AND A
 PORTION OF PARCEL 1 OF PARTITION PLAT 1996-063,
 LOCATED IN THE NORTHWEST 1/4 SECTION 35,
 TOWNSHIP 1 SOUTH, RANGE 2 EAST,
 OF THE WILLAMETTE MERIDIAN,
 CITY OF HAPPY VALLEY,
 CLACKAMAS COUNTY, OREGON
 PLANNED UNIT DEVELOPMENT NO. PUD 03-95
 SURVEYED: JUNE 5, 1997



LEGEND:

- FD - DENOTES FOUND
- IR - DENOTES IRON ROD
- W/YPC - DENOTES WITH YELLOW PLASTIC CAP
- S.F. - DENOTES SQUARE FEET
- X - DENOTES SET 5/8" X 30" IRON ROD WITH 1-1/2" ALUMINUM CAP MARKED "W/D DESIGN, INC." IN MONUMENT BOX, SET ON MAY 28, 1996.
- - DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W/D DESIGN, INC.", SET ON APRIL 22, 1996.
- - DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W/D DESIGN, INC.", SET ON APRIL 16, 1996.
- - DENOTES FOUND MONUMENT AS NOTED.
- X - DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "SAL LAND SURVEYING, INC." PER PARTITION PLAT 1988-062.
- - DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ASSOC. LAND SURVEYORS" PER P.S. 2482.
- - DENOTES SET BRASS WASHER WITH 3/4" BRASS WASHER MARKED "W/D DESIGN, INC.", SET ON JULY 27, 1996.

SURVEYOR'S NOTE:

THE SOUTHWESTERLY PORTION OF THE SANITARY SEWER EASEMENT AS DESCRIBED IN OREGON NO. 93-09445 HAS BEEN VACATED PER OREGON NO. 96-062350.



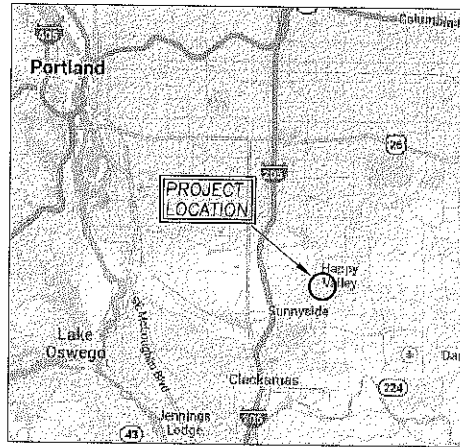
PLAY PREPARED BY:
 W/D DESIGN, INC.
 10450 SW AMBUS AVE.
 PORTLAND, OR 97223
 PH: 803-9333
 JOB NO. B10005
 (PAGE 4 OF 5)

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE PLAT OF "SCOTT CREEK ESTATES."

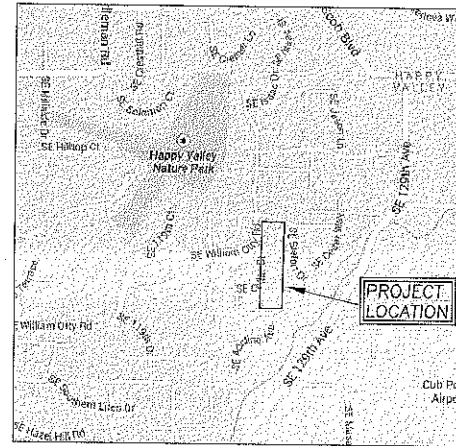
3444

CEDAR WAY CREEK STABILIZATION PROJECT

100% DESIGN SUBMITTAL



VICINITY MAP
N.T.S. (GOOGLE)



REGIONAL MAP
N.T.S. (GOOGLE)

SHEET INDEX

- C1 COVER SHEET
- C2 EXISTING CONDITIONS, ACCESS AND STAGING PLAN
- C3 NORTH SITE PLAN AND PROFILE
- C4 SOUTH SITE PLAN AND PROFILE
- C5 SECTIONS AND DETAILS
- C6 EROSION CONTROL AND RE-VEGETATION PLAN AND DETAILS

GENERAL NOTES

1. TOPOGRAPHIC MAPPING WAS PERFORMED BY: WATERWAYS CONSULTING, INC. JANUARY 14-15, 2014.
2. ELEVATION DATUM: AN ASSUMED ELEVATION OF 450.00' WAS ESTABLISHED AT SURVEY CONTROL POINT #1 (3"x24" IRON ROD) SHOWN ON SHEET C2.
3. BASIS OF BEARINGS: BASIS OF BEARINGS BETWEEN POINTS #1 AND #2 IS N2°18'55.64"E, AS SHOWN ON SH. C2.
4. AERIAL PHOTO SOURCE: PROVIDED BY CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES
5. CONTOUR INTERVAL IS ONE FOOT. ELEVATIONS AND DISTANCES SHOWN ARE IN DECIMAL FEET.
6. THIS IS NOT A BOUNDARY SURVEY. PROPERTY LINES ARE NOT SHOWN HEREON.

ABBREVIATIONS

AVG.	AVERAGE
CC	CONCRETE
CY	CUBIC YARDS
Ø	DIAMETER
EX	EXISTING
E.G.	EXISTING GROUND
ELEV.	ELEVATION
ESA	ENVIRONMENTALLY SENSITIVE AREA
ESW	ENGINEERED STREAMBED MATERIAL
D	DRAINAGE INLET
FG	FINISHED GRADE
FT	FEET
INV	INVERT
N	NEW
N.T.S.	NOT TO SCALE
O.C.	ON CENTER
R.C.P.	RELATIVE CONTRACTION
RSP	ROCK SLOPE PROTECTION
SQ.FT.	SQUARE FOOT
SPK	SPIKE
T	TREE
TYP.	TYPICAL
T.B.D.	TO BE DETERMINED
UNK	UNKNOWN
WSE	WATER SURFACE ELEVATION
YR	YEAR

PROJECT DESCRIPTION

THESE DRAWINGS PROVIDE 100% DESIGN LEVEL DETAILS FOR STABILIZING A SECTION OF CHANNEL ON A TRIBUTARY OF MT. SCOTT CREEK NEAR SE CEDAR WAY IN HAPPY VALLEY, OREGON.

WORK SHALL CONSIST OF INSTALLING GRADE CONTROL WEIRS AND PERFORMING SELECTIVE CHANNEL GRADING TO INCREASE CAPACITY AND REDUCE EROSION POTENTIAL.

SECTION AND DETAIL CONVENTION

SECTION OR DETAIL IDENTIFICATION (NUMBER OR LETTER)



REFERENCE SHEET FROM WHICH DETAIL OR SECTION IS TAKEN.

REFERENCE SHEET ON WHICH SECTION OR DETAIL IS SHOWN.

WATERWAYS CONSULTING INC.
1020 SW TAYLOR STREET, STE. 300
PORTLAND, OREGON 97205
PHONE: 503.251.1200 FAX: 503.251.1202
WWW.WATERWAYS.COM

DATE: 5/4/14
DRAWN BY: M.W.
CHECKED BY: M.W.
DATE: 06/04/14
JOB NO.: 13-0188
SCALE: 1"=200'

PREPARED AT THE REQUEST OF
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES

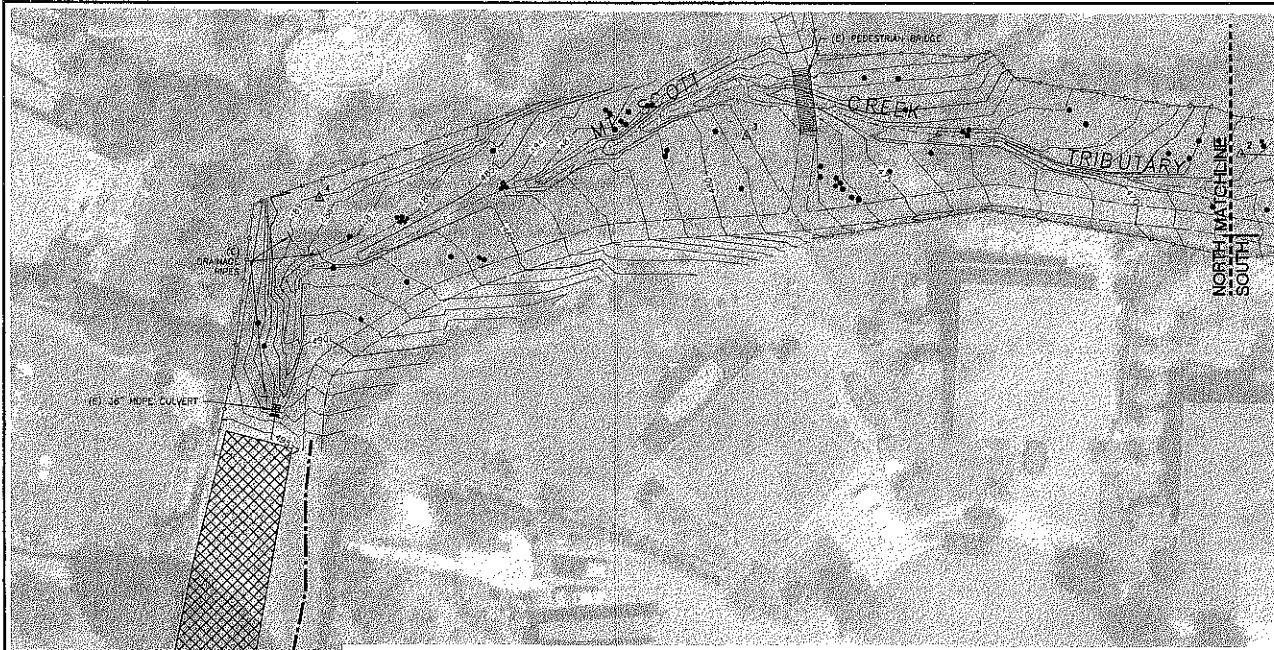
COVER SHEET

CEDAR WAY CREEK
STABILIZATION PROJECT
100% DESIGN SUBMITTAL

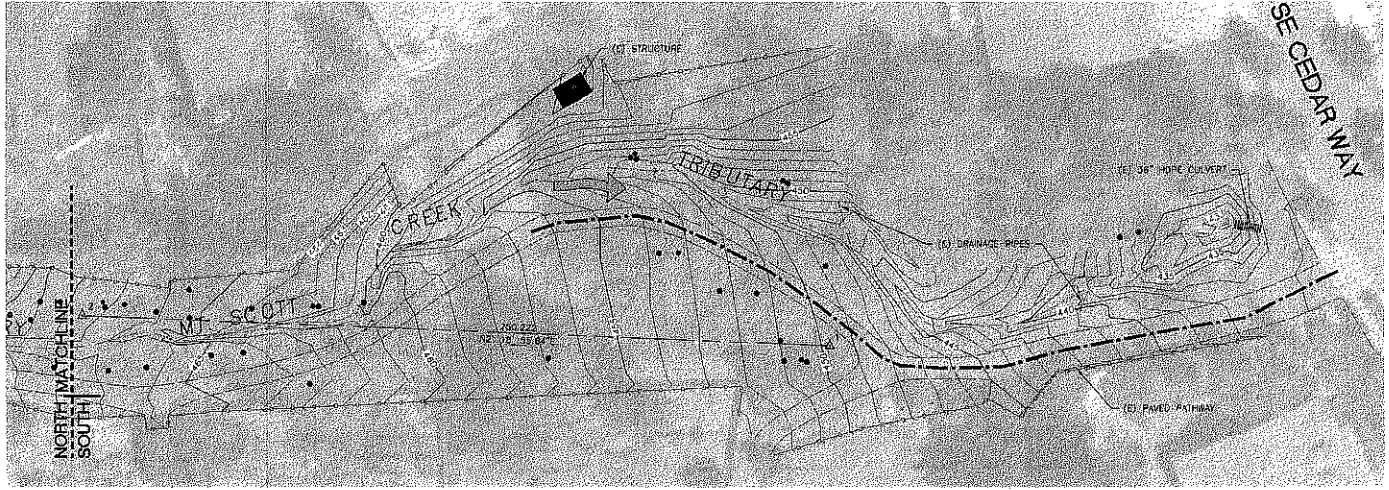
DESIGNED BY: J.D.H.
DRAWN BY: J.D.H./M.L.
CHECKED BY: M.W.
DATE: 06/04/14
JOB NO.: 13-0188

BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS.

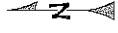
C1 1 OF 6



EXISTING CONDITIONS (NORTH)
SCALE: 1" = 20'



EXISTING CONDITIONS (SOUTH)
SCALE: 1" = 20'

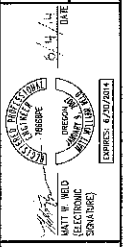


- LEGEND**
- 465---466--- EXISTING CONTOURS
 - △² SURVEY CONTROL POINT
 - — — EXISTING FLOW LINE
 - — — EXISTING FENCE
 - — — EXISTING EDGE OF PAVEMENT
 - EXISTING TREE (N.T.S.)
 - — — ACCESS ROUTE
 - ▨ STAGING AREA

CONTROL POINTS

POINT	NORTHING	EASTING	ELEV.	DESC.
1	653368.88	7679571.46	450.00	REBAR
2	653835.00	7679583.57	467.80	REBAR
3	653504.29	7678589.47	478.53	REBAR
4	653647.27	7679538.93	489.92	REBAR

WATERWAYS CONSULTING INC.
1305 SW TAYLOR STREET, STE. 380
PORTLAND, OR 97205
PHONE: 503-277-9977 FAX: 503-277-6467
WWW.WATERWAYS.COM



PREPARED AT THE REQUEST OF:
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES

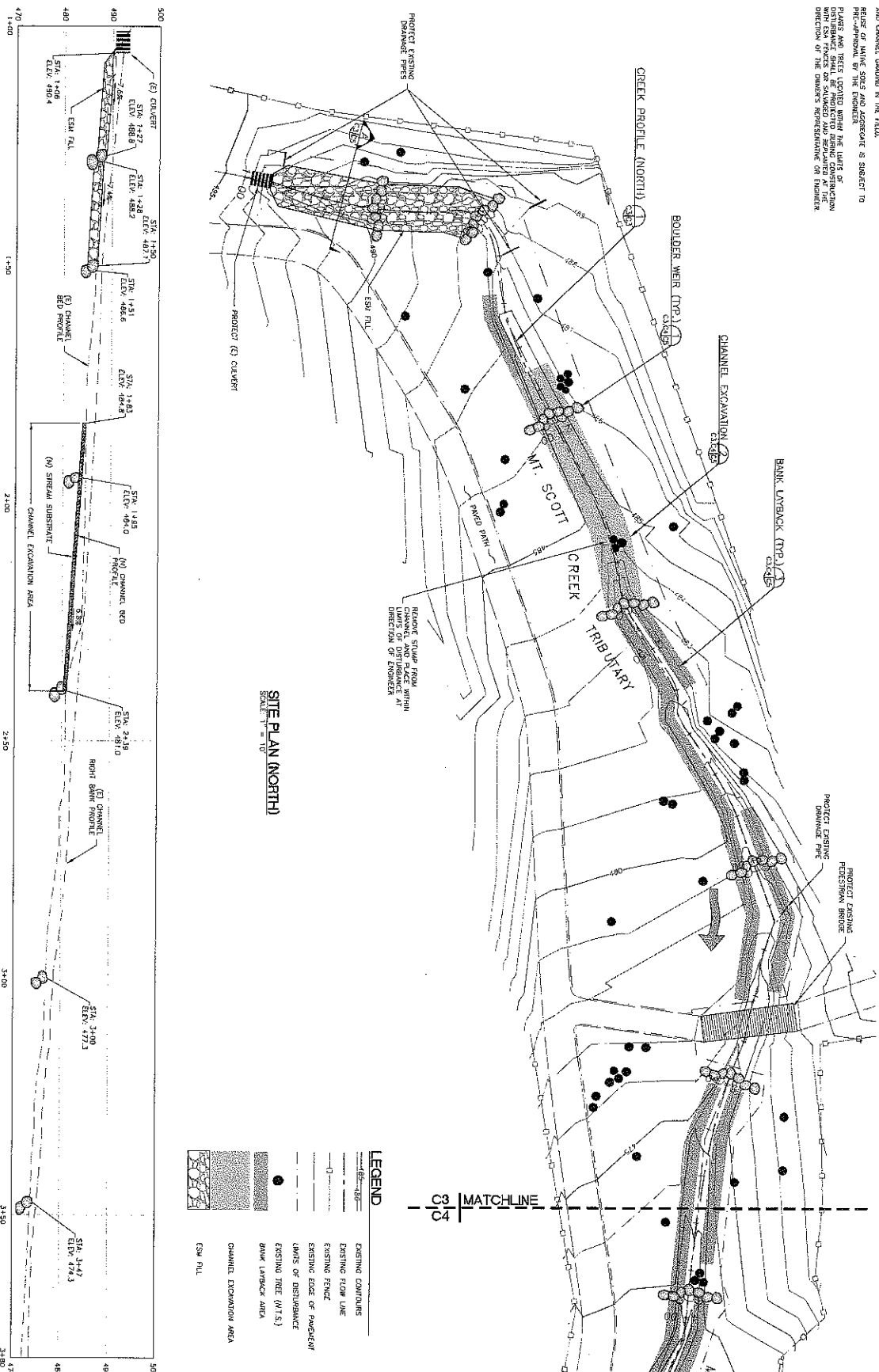
EXISTING CONDITIONS, ACCESS AND STAGING PLAN

CEDAR WAY CREEK STABILIZATION PROJECT 100% DESIGN SUBMITTAL

DESIGNED BY: J.D.H.
DRAWN BY: J.D.H., A.M.L.
CHECKED BY: J.N.W.
DATE: 06/04/14
JOB NO.: 13-0198

BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS.

- NOTES:**
1. LOCATION OF DAMPER, GROUND AND WEIR ARE APPROXIMATE. VERIFY LOCATION AND ELEVATION OF WEIR AND DAMPER, GROUND IN THE FIELD.
 2. REUSE OF MAINE SOILS AND AGGREGATE IS SUBJECT TO PRE-APPROVAL BY THE ENGINEER.
 3. PLANTS AND TREES LOCATED WITHIN THE LIMITS OF CHANNEL EXCAVATION SHALL BE REMOVED AND REPLANTED WITH ESM TREES OR SALICATED AND REPLANTED AT THE DIRECTION OF THE OWNER'S REPRESENTATIVE OR ENGINEER.



CREEK PROFILE (NORTH)
SCALE 1" = 10'

DESIGNED BY: JOHN
CHECKED BY: J.K. LAW
DATE: 09/04/14
DATE: 09/04/14
ADVIS: SEE E.C.S. 726
ORIGINAL DRAWING:
DATE: 09/04/14
SCALE: 1" = 10'

**CEDAR WAY CREEK
STABILIZATION PROJECT
100% DESIGN SUBMITTAL**

**NORTH SITE
PLAN AND
PROFILE**

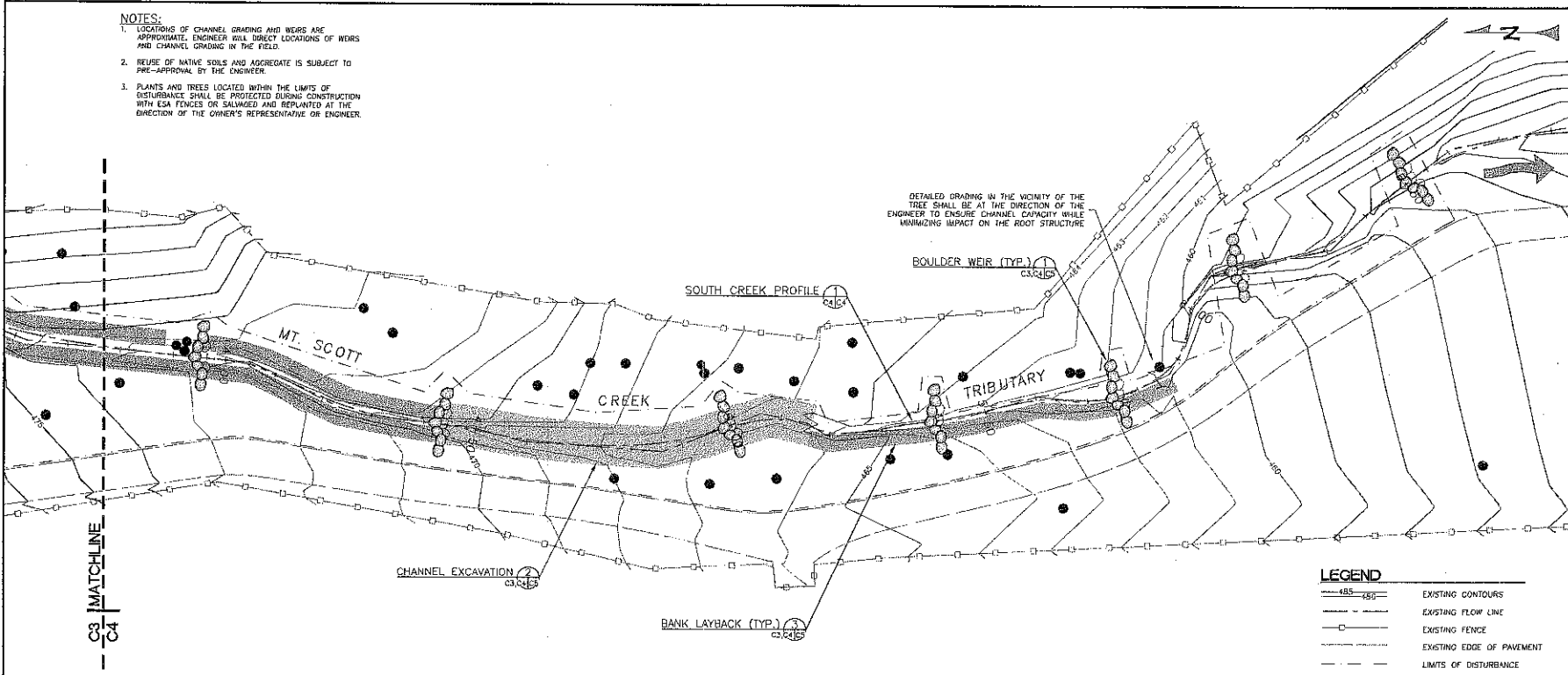
PREPARED AT THE REQUEST OF:
**CLACKAMAS COUNTY
WATER ENVIRONMENT
SERVICES**

REGISTERED PROFESSIONAL
ENGINEER
78869PC
MATT W. HEID
OREGON
DATE: 6/4/14
ELECTRONIC SIGNATURE
EXPIRES: 6/30/2014

**WATERWAYS
CONSULTING INC.**
1020 SW TAYLOR STREET, STE. 380
PORTLAND, OR 97205
PH: (503) 277-7777 | FAX: (503) 277-0847
WWW.WATWAYS.COM

NOTES:

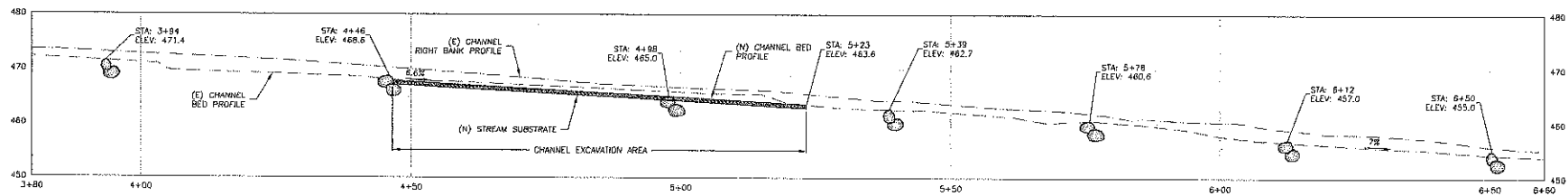
1. LOCATIONS OF CHANNEL GRADING AND WEIRS ARE APPROXIMATE. ENGINEER WILL DIRECT LOCATIONS OF WEIRS AND CHANNEL GRADING IN THE FIELD.
2. REUSE OF NATIVE SOILS AND AGGREGATE IS SUBJECT TO PRE-APPROVAL BY THE ENGINEER.
3. PLANTS AND TREES LOCATED WITHIN THE LIMITS OF DISTURBANCE SHALL BE PROTECTED DURING CONSTRUCTION WITH ESA FENCES OR SALVAGED AND REPLANTED AT THE DIRECTION OF THE OWNER'S REPRESENTATIVE OR ENGINEER.



SITE PLAN (SOUTH)
SCALE: 1" = 10'

LEGEND

	EXISTING CONTOURS
	EXISTING FLOW LINE
	EXISTING FENCE
	EXISTING EDGE OF PAVEMENT
	LIMITS OF DISTURBANCE
	EXISTING TREE (N.T.S.)
	BANK LAYBACK AREA
	CHANNEL EXCAVATION AREA



CREEK PROFILE (SOUTH)
SCALE: 1" = 10'

WATERWAYS CONSULTING INC.
1400 SW TAYLOR STREET, STE. 300
PORTLAND, OREGON 97209-4847
WWW.WATERWAYS.COM

DATE: 6/4/14

DESIGNED BY: J.D.H.
DRAWN BY: J.O.H./A.M.L.
CHECKED BY: M.V.W.
DATE: 06/04/14
JOB NO.: 13-0198

BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS.

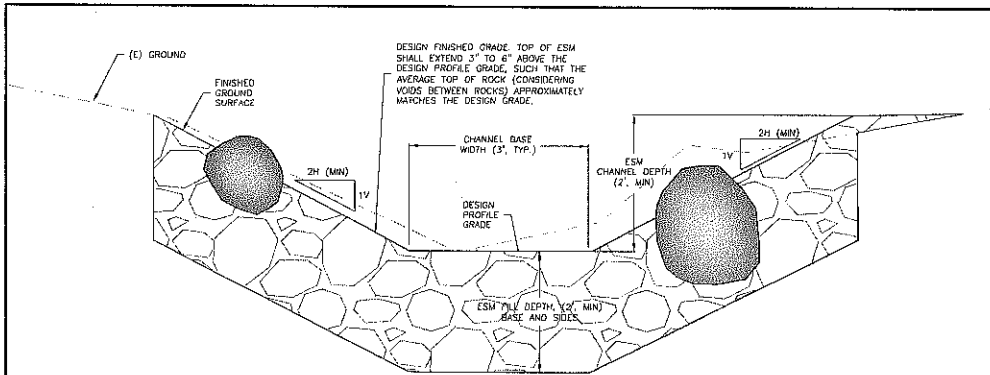
0 1" = 10'

PREPARED AT THE REQUEST OF:
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES

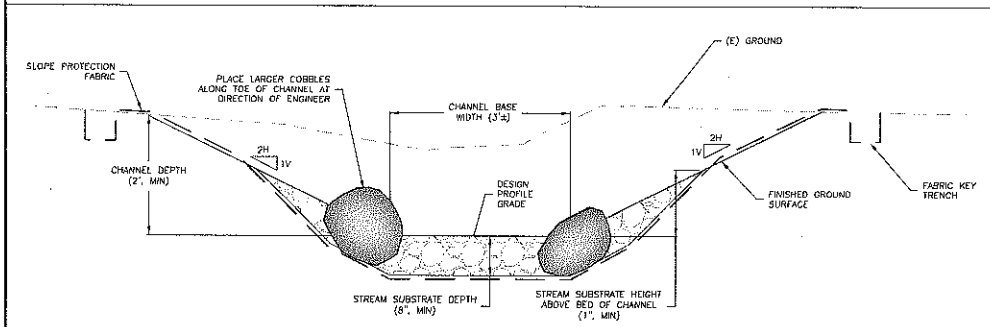
SOUTH SITE PLAN AND PROFILE

CEDAR WAY CREEK STABILIZATION PROJECT 100% DESIGN SUBMITTAL

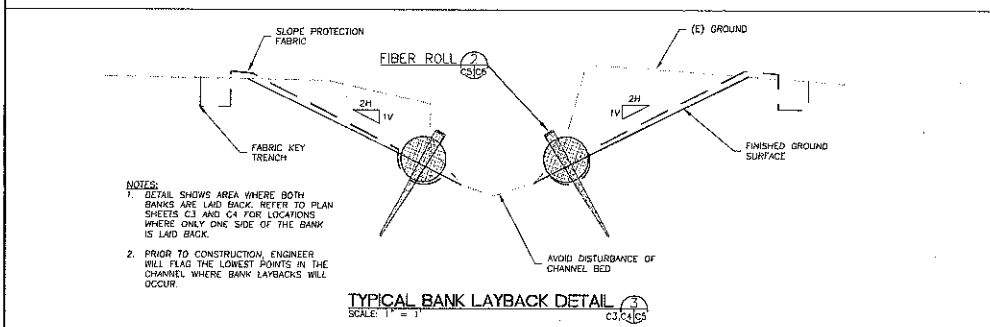
C4 4 OF 6



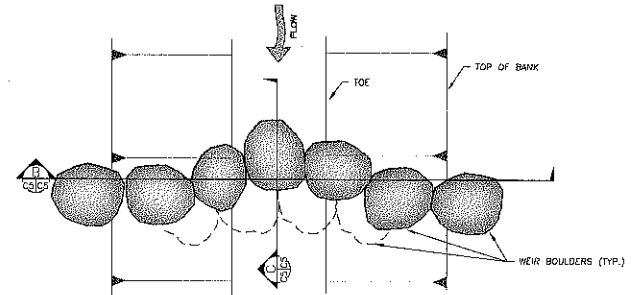
TYPICAL CULVERT OUTFALL SECTION A
SCALE: 1" = 1'



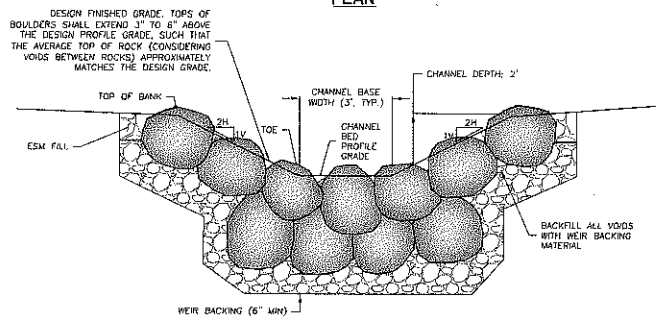
TYPICAL CHANNEL EXCAVATION DETAIL
SCALE: 1" = 1'



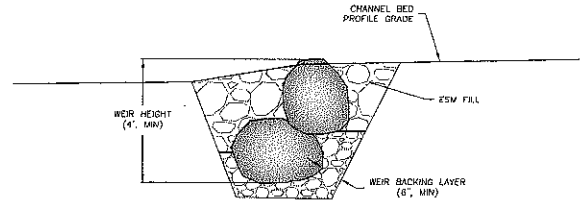
TYPICAL BANK LAYBACK DETAIL
SCALE: 1" = 1'



PLAN



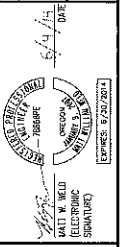
SECTION B



SECTION C

TYPICAL BOULDER WEIR DETAIL
SCALE: 1" = 2'

WATERWAYS CONSULTING, INC.
1020 SW TALL OAK STREET, STE. 360
PORTLAND, OR 97205
PHONE: 503.251.6877
WWW.WATERWAYS.COM



PREPARED AT THE REQUEST OF:
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES

SECTIONS AND DETAILS

CEDAR WAY CREEK STABILIZATION PROJECT 100% DESIGN SUBMITTAL

DESIGNED BY: J.D.M.
DRAWN BY: J.D.M./A.M.L.
CHECKED BY: M.W.W.
DATE: 05/04/14
JOB NO.: 13-0198

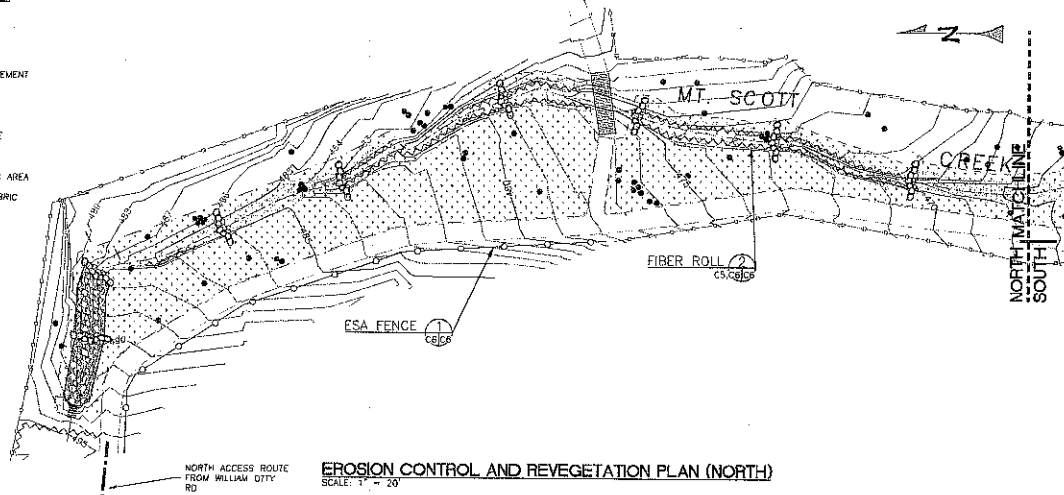
BAR IS ONE INCH ON ORIGINAL DRAWING, ADJUST SCALES FOR REDUCED PLOTS

LEGEND

- EXISTING CONTOURS
- EXISTING FLOW LINE
- EXISTING FENCE
- EXISTING EDGE OF PAVEMENT
- EXISTING TREE (N.T.S.)
- ESA FENCE
- LIMITS OF DISTURBANCE
- SITE ACCESS ROUTE
- SEEDING AND PLANTING AREA
- SLOPE PROTECTION FABRIC
- FIBER ROLL

NOTES:

1. MAINTAIN A CURRENT, COMPLETE, AND ACCURATE RECORD OF ALL AS-BUILT DEVIATIONS FROM THE CONSTRUCTION AS SHOWN ON THESE DRAWINGS AND SPECIFICATIONS FOR THE PURPOSE OF PROVIDING THE ENGINEER OF RECORD WITH A BASIS FOR THE PREPARATION OF RECORD DRAWINGS.
2. THE SEED MIX PRESENTED IN TABLE 1 SHALL BE APPLIED TO ALL DISTURBED AREAS AND COVERED WITH MULCH IMMEDIATELY FOLLOWING CONSTRUCTION. FOLLOW MANUFACTURER'S RECOMMENDATIONS FOR APPLICATION RATES. SEED MIX SHALL BE PROVIDED BY PWD TIME LAWN SEEDS, OR APPROVED EQUAL.
3. REVEGETATE ALL AREAS WITHIN THE LIMITS OF DISTURBANCE AT THE CONCLUSION OF CONSTRUCTION WITH SPECIES AND PLANTING DENSITY AS LISTED ON TABLE 2, THIS SHEET. PLANT PER DETAIL 3, THIS SHEET.



ACCESS AND STAGING AREA NOTES:

1. COORDINATE WITH OWNER'S REPRESENTATIVE ON STAGING AND STOCKPILE LOCATIONS BEFORE STARTING WORK ON THE PROJECT.
2. PRIOR TO STARTING WORK ON THE PROJECT, SUBMIT FOR ACCEPTANCE BY THE ENGINEER A HAZARDOUS MATERIALS CONTROL AND SPILL PREVENTION PLAN. THE PLAN SHALL INCLUDE PROVISIONS FOR PREVENTING HAZARDOUS MATERIALS FROM CONTAMINATING SOIL OR ENTERING WATER COURSES, AND SHALL ESTABLISH A SPILL PREVENTION AND COUNTERMEASURE PLAN.
3. UTILIZE ONLY THE APPROVED ACCESS POINTS AND ROADS, AS SHOWN ON THE DRAWINGS.
4. MATERIALS SHALL BE STOCKPILED WITHIN AN EXISTING FLAT AND PREVIOUSLY DISTURBED AREA.
5. THE DOWNSLOPE PERIMETER OF STAGING AND STOCKPILE AREAS SHALL BE CONTAINED WITH FIBER ROLLS.
6. ALL EQUIPMENT AND MATERIALS SHALL BE STORED, MAINTAINED AND REFUELED IN A DESIGNATED PORTION OF THE STAGING AREA, A MINIMUM OF 10 FEET AWAY FROM THE EDGE OF THE STREAM.
7. APPROVED ACCESS ROUTE SHALL BE RESTORED TO PRE-CONSTRUCTION CONDITIONS AT CONCLUSION OF WORK, UNLESS STATED OTHERWISE IN THE DRAWINGS, TO THE SATISFACTION OF THE ENGINEER.

EROSION AND SEDIMENT CONTROL NOTES:

1. ALL ESA FENCES SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION.
2. ALL CONSTRUCTION SHALL BE CONDUCTED FROM THE WEST SIDE OF THE CHANNEL. NO VEHICLES OR STOCKPILING SHALL BE ALLOWED ON THE EAST SIDE OF CHANNEL.
3. ACCESS TO THE CHANNEL SHALL BE CONDUCTED IN A MANNER TO MINIMIZE DISTURBANCE OF EXISTING VEGETATION. OBTAIN PREAPPROVAL FROM THE ENGINEER PRIOR TO REMOVING TREES OR OTHER VEGETATION FOR CONSTRUCTION.
4. INSTALL INLET PROTECTION DEVICES ON DOWNSLOPE CATCH BASINS AT EITHER ACCESS ROUTE. SELECT INLET PROTECTION DEVICES FROM THE CDOT 2014 QUALIFIED PRODUCTS LIST.
5. SEED AND MULCH ALL DISTURBED AREAS AT THE CONCLUSION OF CONSTRUCTION. SEED MIX LISTED IN TABLE 1, THIS SHEET.

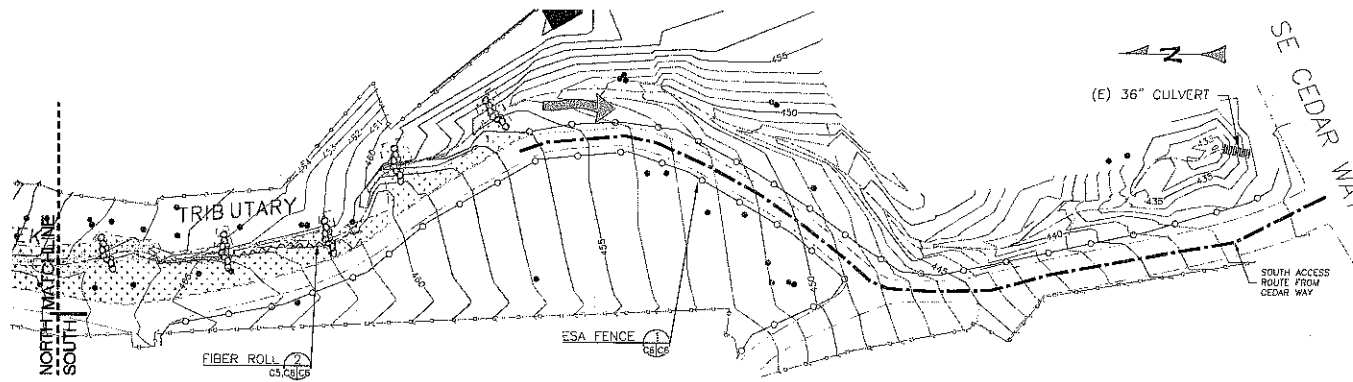
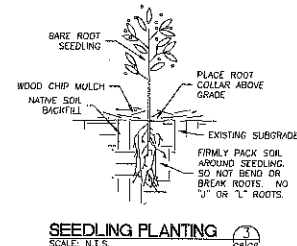
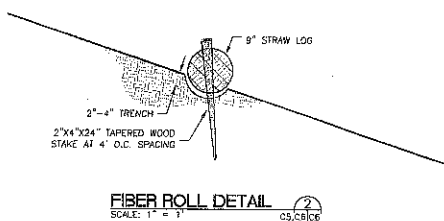
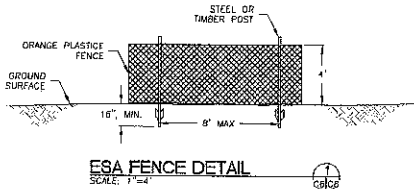


TABLE 1: NATIVE SEED MIX TABLE

SPECIES NAME	COMMON NAME	% BY WEIGHT
ELYMIUS GLAUCUS	BLUE WILD RYE	60
HORDEUM BRACHYANTHERUM	MEADOW BARLEY	30
DESCHAMPSIA CESPIGOSA	TUFFED HAIR GRASS	10

TABLE 2: PLANTING LIST TABLE

SPECIES NAME	COMMON NAME	MIN PLANT COUNT
TREES: 10' ON CENTER (BARE ROOT SEEDLING)		
ACER MACROPHYLLUM	BIELLEAF MAPLE	6
FRAXINUS LATIFOLIA	OREGON ASH	3
MALUS FUSCULA	WHITEN CRABAPPLE	6
CASCARIA HURSIANA	CASCARA	6
THUJA PLICATA	WESTERN RED CEDAR	6
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	6
ACER CIRCINATUM	VINE MAPLE	6
AMELANCHIER ALANIFOLIA	WESTERN SERVICEBERRY	3
PALMUS VIRGINIANA	CHOKECHERRY	3
PRUNUS EMARGINATA	BITTER CHERRY	6
TSUGA HETEROPHYLLA	WESTERN HEMLOCK	6
ABIES GRANDIS	GRAND FIR	3
SHRUBS: 5' ON CENTER (BARE ROOT SEEDLING)		
HOLODISCUS DISCOLOR	OCEANSPRAY	25
LONICERA INVOLUCRATA	TWINBERRY	25
MARONIA AETHIOPOLUM	OREGON GRAPE	25
OENLERIA	INDIAN PLUM	25
CERASIFORMIS	MOCK ORANGE	25
PHILADELPHUS LEWISII	MOCK ORANGE	25
ROSA PISOCARPA	SWAMP ROSE	25
RUBUS SPECTABILIS	SALMONBERRY	25
SAMBUCA RACEMOSA	RED ELDERBERRY	25
SYMPHORICARPUS ALBUS	SNOWBERRY	25
RIBES SANGUINEUM	REDFLOWERING CURRANT	25



WATERWAYS CONSULTING INC.
10000 W. HAYSTACK STREET, SUITE 300
PORTLAND, OR 97225
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WWW.WATERWAYSINC.COM

WATERWAYS CONSULTING INC.
10000 W. HAYSTACK STREET, SUITE 300
PORTLAND, OR 97225
PHONE: 503-257-9797 / FAX: 503-257-6847
WWW.WATERWAYSINC.COM

PREPARED AT THE REQUEST OF:
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES

EROSION CONTROL AND REVEGETATION PLAN AND DETAILS

CEDAR WAY CREEK STABILIZATION PROJECT 100% DESIGN SUBMITTAL

DESIGNED BY: J.O.H.
DRAWN BY: J.O.H./A.M.L.
CHECKED BY: M.W.W.
DATE: 08/04/14
JOB NO.: 15-0198

BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS.



September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF A JOINT FUNDING AGREEMENT (JFA) BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD#1) AND THE U. S. GEOLOGICAL
SURVEY (USGS) FOR CREEK FLOW MEASURING WORK**

Purpose/Outcomes	Intergovernmental Agreement with the USGS to maintain two crest-stage gages in creeks in CCSD#1 for water flow rate measuring work
Dollar Amount and Fiscal Impact	\$11,720
Funding Source	CCSD#1's 2014-2015 SWM Operating Budget; No general County funds involved
Safety Impact	None
Duration	Effective October 1, 2014 and terminates on September 30, 2015
Previous Board Action	Previous JFAs signed by the BCC authorized CCSD#1 funding for this service during the period from July 1, 2001 to September 30, 2014
Contact Person	Mona LaPierre, Environmental Monitoring Manager, WES 557-2830
Contract No.	None

BACKGROUND:

Creek water flow rates are monitored 24 hours/day, 7 days/week, by CCSD#1 (District) using battery powered units at these two gages. In addition, the gage on Kellogg Creek is visited during nine additional water quality & flow monitoring events each year by District field staff. This agreement allows for the acquisition of accurate water flow rate data which:

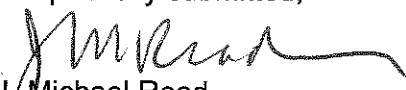
- Will continue to be useful for quantifying progress being made towards reducing stormwater discharge volumes and pollutant loads as low impact development standards – and other elements of our surface/stormwater program – are implemented.
- Will be combined with the water quality data from the site with the gage in Kellogg Creek. This data will also be submitted to Oregon's Department of Environmental Quality on an annual basis.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board approve the Joint Funding Agreement with the USGS for the maintenance of two crest-stage gages in CCSD#1.

Respectfully submitted,


J. Michael Read
Interim Director

**U.S. DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY**

JOINT FUNDING AGREEMENT

FOR

OREGON WATER SCIENCE CENTER

Customer #: 6000001801
Agreement #:
Project #:
TIN #: 93-6002286
Fixed Cost
Agreement YES

THIS AGREEMENT is entered into as of the, 1st day of October , 2014 by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation a data collection program which provides for the operation of two crest-stage gages in Clackamas County herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of \$0.00
 - (a) by the party of the first part during the period

Amount	Date	to	Date
\$0.00	October 1, 2014		September 30, 2015
 - (b) by the party of the second part during the period

Amount	Date	to	Date
\$11,720.00	October 1, 2014		September 30, 2015
 - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

- 7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
- 8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
- 9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annually. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

**U.S. Geological Survey
United States
Department of the Interior**

Board of Commissioners, Governing Body of
Clackamas County Service District No. 1

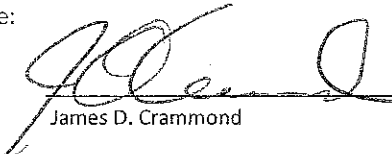
USGS Point of Contact

Customer Point of Contact

Name: Keith Overton
Address: USGS, ORWSC
2130 SW 5th Avenue
Portland, Oregon 97201
Telephone: 503-251-3246
Email: koverton@usgs.gov

Name: Mona LaPierre
Address: Water Environmental Services, CCSD#1
15941 South Agnes Avenue
Oregon City, Oregon 97045
Telephone:
Email:

Signatures and Date

Signature:  Date: 5/5/14
Name: James D. Crammond
Title: Center Director

Signature: _____ Date: _____
Name: John Ludlow
Title: Chair of BCC
Governing Body of CCSD#1

21



Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

J. Michael Read
Interim Director

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

APPROVAL OF A JOINT FUNDING AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD#1) AND THE U.S. GEOLOGICAL SURVEY (USGS) FOR COOPERATIVE HYDROLOGIC MONITORING WORK IN THE JOHNSON CREEK WATERSHED

Purpose/Outcomes	Intergovernmental Agreement with the USGS to provide surface/ground water monitoring in the Johnson Creek watershed
Dollar Amount and Fiscal Impact	\$10,000 (these funds would then be matched with \$8,180 from USGS)
Funding Source	CCSD#1's 2014-2015 SWM Operating Budget; No general County funds involved
Safety Impact	None
Duration	Effective October 1, 2014 and terminates on September 30, 2015
Previous Board Action	Previous JFAs signed by the BCC authorized CCSD#1 funding for service during the period from October 1, 1999 to September 30, 2014
Contact Person	Mona LaPierre, Environmental Monitoring Manager, WES 557-2830
Contract No.	None

BACKGROUND:

A cooperative, multi-jurisdictional hydrology study between the USGS and local governments in the Johnson Creek watershed is proposed to continue during Federal fiscal year 2014-2015. In 1999, CCSD#1 joined this long-term study. Other local governments who plan to participate this year are the Cities of Gresham, Milwaukie, and Portland, Multnomah County, and the East Multnomah County Soil & Water Conservation District. Funds would be used by the USGS to:

- Maintain a network of several continuous creek water quality and/or flow monitoring stations. Water quality parameters measured by this network includes temperature and turbidity.
- Maintain an existing network of monitoring stations which measure groundwater levels.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board approve the attached agreement between CCSD#1 and the USGS for joint hydrologic monitoring in the Johnson Creek watershed.

Respectfully submitted,

J. Michael Read
Interim Director

**U.S. DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY**

JOINT FUNDING AGREEMENT

Customer #: 600001801
Agreement #:
Project #:
TIN #: 93-6002286
Fixed Cost Agreement YES

FOR
OREGON WATER SCIENCE CENTER

THIS AGREEMENT is entered into as of the, 1st day of October, 2014 by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation a hydrologic monitoring program in the Johnson Creek basin herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of \$0.00
 - (a) by the party of the first part during the period

Amount	Date	to	Date
\$8,180.00	October 1, 2014		September 30, 2015
 - (b) by the party of the second part during the period

Amount	Date	to	Date
\$10,000.00	October 1, 2014		September 30, 2015
 - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner either party may terminate this agreement upon 60 days written notice to the other party.

- 7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
- 8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
- 9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annual. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

**U.S. Geological Survey
United States
Department of the Interior
USGS Point of Contact**

**Board of Commissioners,
Governing Body of Clackamas County
Service District No. 1
Customer Point of Contact**

Name: Adam Stonewall
Address: USGS ORWSC
2130 SW 5th Avenue
Portland, Oregon 97201

Telephone: 503-251-3276
Email: stonewal@usgs.gov

Name: Ms. Mona LaPierre
Address: Water Environment Services,
A Dept of Clackamas County
15941 S. Agnes Avenue
Oregon City, Oregon 97045

Telephone:
Email:

Signatures and Date

Signature:  Date: 7/3/14
Name: James D. Crammond
Title: Center Director

Signature: _____ Date: _____
Name: John Ludlow
Title: Chair of BCC
Governing Body of CCSD#1

22



Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

J. Michael Read
Interim Director

September 11, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF A JOINT FUNDING AGREEMENT (JFA) BETWEEN THE SURFACE WATER
MANAGEMENT AGENCY OF CLACKAMAS COUNTY (SWMACC) AND THE U.S. GEOLOGICAL
SURVEY (USGS) FOR TUALATIN RIVER MONITORING**

Purpose/Outcomes	Intergovernmental Agreement with the USGS to provide continuous monitoring of the Tualatin River's flow in SWMACC
Dollar Amount and Fiscal Impact	\$4,630 (these funds would then be matched with \$4,170 from USGS)
Funding Source	SWMACC's 2014-2015 Operating Budget; No general County funds involved
Safety Impact	None
Duration	Effective October 1, 2014 and terminates on September 30, 2015
Previous Board Action	Previous JFAs signed by the BCC authorized SWMACC funding for service during the period from October 1, 1999 to September 30, 2014
Contact Person	Mona LaPierre, Environmental Monitoring Manager, WES 557-2830
Contract No.	None

BACKGROUND:

A coordinated water resources monitoring project (Project) in the Tualatin River watershed has been underway since October 1999. In one element of this Project, Clean Water Services (CWS) of Washington County, the Cities of West Linn and Lake Oswego, and the SWMACC partner with the USGS to fund the operation of a continuous Tualatin River flow measuring station in the SWMACC. The operation of this station is the only element of the Project that SWMACC funds are allocated to. The other elements of the Project, such as the operation of the continuous water quality monitoring station in SWMACC, are funded by CWS and the USGS. The Project's benefits include:

- Use of flow data to make accurate revisions to FEMA floodplain maps
- Access to real-time in-stream water quality and flow conditions via the USGS website
- The calculation of the river's pollutant mass loads (for example, pounds of phosphorus/day)

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board approve the attached JFA with the USGS for the operation of a continuous Tualatin River flow measuring station at river mile 1.8 in the SWMACC.

Respectfully submitted,

J. Michael Read
Interim Director

**U.S. DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY**

JOINT FUNDING AGREEMENT

FOR
OREGON WATER SCIENCE CENTER

Customer #: 6000001801
Agreement #:
Project #:
TIN #: 93-6002286
Fixed Cost
Agreement YES

THIS AGREEMENT is entered into as of the, 1st day of October , 2014 by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation a hydrologic streamgage data collection program on the Tualatin River near West Linn, Oregon, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of \$0.00
 - (a) by the party of the first part during the period

Amount	Date	to	Date
\$4,170.00	October 1, 2014		September 30, 2015
 - (b) by the party of the second part during the period

Amount	Date	to	Date
\$4,630.00	October 1, 2014		September 30, 2015
 - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

- 7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
- 8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
- 9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annually. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

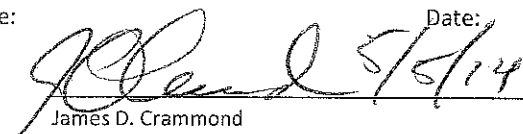
**U.S. Geological Survey
United States
Department of the Interior
USGS Point of Contact**

Name: Keith Overton
 Address: USGS, ORWSC
 2130 SW 5th Avenue
 Portland, Oregon 97201
 Telephone: 503-251-3246
 Email: koverton@usgs.gov

**Board of Commissioners, Governing Body of The
Surface Water Management Agency of
Clackamas County
Customer Point of Contact**

Name: Mona LaPierre
 Address: Water Environmental Services, SWMACC
 15941 South Agnes Avenue
 Oregon City, Oregon 97045
 Telephone:
 Email:

Signatures and Date

Signature:  Date: 5/5/14
 Name: James D. Crammond
 Title: Center Director

Signature: _____ Date: _____
 Name: John Ludlow
 Title: Chair of BCC
 Governing Body of SWMACC



Beyond clean water.

23

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

J. Michael Read
Interim Director

September 11, 2014

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment No. 1 to the Agreement to Furnish Professional Services between Clackamas County Service District No. 1 and CH2M Hill Engineers, Inc. for Stage II of the Kellogg Creek Water Pollution Control Plant Outfall Improvement Project

Purpose/Outcomes	Amend the original agreement for Stage I of the Kellogg Outfall Project to move forward with preliminary design, final design and services during construction. Provides construction bid documents and services during construction to design and install a new outfall that will meet stricter Environmental Protection Agency ammonia limits.
Dollar Amount and Fiscal Impact	Stage II Amendment is for an amount not-to-exceed \$560,895. The total contract for Stage I and Stage II is for a not to exceed amount of \$673,264.00. Funds for professional engineering services are budgeted in the CCSD#1 FY2014-15 budget.
Funding Source	Clackamas County Service District No.1 FY 2014-15 Annual Budget – no General County Funds are involved
Safety Impact	None
Duration	Stage II - September 4, 2014 to December 2016. Total Project Duration: November 2013 to December 2016
Previous Board Action	The original Professional Services Agreement for Stage I was approved on November 14, 2013 – Agenda Item 111413-VI.2. - with the understanding that Stage II would be negotiated and an Amendment to the agreement would be presented to the Board of County Commissioners at the completion of Stage I for approval.
Contact Person	J. Michael Read, Interim Director – Water Environment Services – 503-742-4560
Contract No.	P112077

BACKGROUND:

In August 2013, the District publicly advertised a request for proposals from qualified firms to provide professional services to assist the District in the development of technical studies, design, permitting and services during construction of necessary outfall improvements to meet the District's renewed NPDES permit requirements.

A selection committee was established and determined that CH2M Hill is the most responsive qualified firm to complete this work. The project was broken up into two Stages. Stage I of the agreement was for professional services to assist the District in establishing a compliance schedule in the new permit that allows the District time to design, permit, and construct the Wastewater Pollution Control Plant (WPCP) outfall improvements. Stage II has been negotiated for permitting, design and services during construction

at the completion of Stage I. On November 2013, an Original Agreement was developed for Engineering Services between Clackamas County Service District No.1 (CCSD #1) (the District) and CH2M Hill Engineers, Inc. (the Consultant). The original agreement was for Stage I of the Kellogg Outfall Improvement Project.

Approval of Amendment No.1 amends the original Agreement between CH2M Hill Engineers, Inc. and the District and defines the changes in contract scope, specific to Preliminary Design, Final Design, Bid Period Services and Engineering Services during construction and Post Construction. The original scope of work remains in effect except as modified by this amendment.

District Staff has negotiated Stage II of the Agreement for an amount not to exceed \$560,895.00. Total contract for both Stage I and Stage II is a not-to-exceed amount of \$673,264.00.

This Amendment No.1 has been reviewed and approved by County Counsel.

RECOMMENDATION:

For these reasons, Staff recommends:

- 1) The Board of County Commissioners, acting as the governing body of Clackamas County Service District No.1 (the "District"), approve Amendment No.1 for Stage II of the agreement between the District and CH2M Hill Engineers Inc. for an amount not to exceed \$560,895.00, and; recognize the total compensation under this agreement shall not exceed \$673,264.00 without prior written approval of the District, and;
- 2) The Interim Director of Water Environment Services be authorized to execute Amendment No.1 of the agreement for Stage II of the Project between CH2M Engineers, Inc. and the District without further Board action.

Respectfully submitted,



J. Michael Read
Interim Director

**AMENDMENT NO. 1
TO
AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
FOR
KELLOGG CREEK WATER POLLUTION CONTROL PLANT
OUTFALL IMPROVEMENT PROJECT**

This AMENDMENT NO. 1 to the AGREEMENT TO FURNISH PROFESSIONAL SERVICES (this "Amendment No. 1") is made and entered into on _____, 20____, by and between CLACKAMAS COUNTY SERVICE DISTRICT NO.1, a county service district formed under ORS 451 ("District"), and CH2M HILL ENGINEERS, INC., a Delaware corporation ("Consultant"), for performing professional services for the Kellogg Creek Water Pollution Control Plant Outfall Improvement Project, hereinafter referred to as the "Project."

WHEREAS, the parties entered into that certain Agreement to Furnish Professional Services dated November 14, 2013 for engineering consulting services to assist the District in engineering studies, design, permitting and construction services of outfall improvements to the existing Kellogg Creek Wastewater Pollution Control Plant outfall (the "Agreement");

WHEREAS, the Agreement divided the entire Project scope into two stages, with Stage 1 being the development of a compliance schedule in the new permit that allows the District time to design, permit and construct the Wastewater Pollution Control Plant; and

WHEREAS, Stage 1 is now complete and the parties now desire to enter into Stage 2 of the Project, by expanding the scope to include the necessary permitting, design and services during construction, and increasing the maximum compensation contained therein;

NOW, THEREFORE, for good and sufficient consideration, the parties hereby agree that:

1. To reflect additions to the scope, Article 1 of the Agreement is hereby replaced in its entirety with:

ARTICLE 1 – SERVICES OF THE CONSULTANT

The CONSULTANT agrees to perform, in accordance with applicable District, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the PROJECT as stated and defined in both Exhibit A and Exhibit A (Amended) (collectively, the "Services") and Exhibit B and Exhibit B (Amended), attached hereto and incorporated by reference. The terms of Exhibit A, Exhibit A (Amended), Exhibit B, and Exhibit B (Amended) shall control over this Agreement.

2. To reflect additions to the scope, Exhibit A and Exhibit B of the Agreement are hereby supplemented with the following documents attached hereto and incorporated by reference:

See attached Exhibit A (Amended) and Exhibit B (Amended).

3. To reflect an increase of total compensation by \$560,895, the Agreement's Paragraph 5.1.1 is hereby replaced in its entirety with:

5.1.1 The DISTRICT agrees to pay the CONSULTANT on a time and materials basis with a not-to-exceed amount equal to FIVE HUNDRED SIXTY THOUSAND EIGHT HUNDRED NINETY-FIVE and 00/100 DOLLARS (\$560,895.00) for the Services as billed monthly. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed SIX HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED SIXTY-FOUR and 00/100 DOLLARS (\$673,264.00) without prior written approval of the District.

4. The District and the Consultant ratify the remainder of the Agreement and affirm that no other changes are made hereby.

In witness thereof, the parties execute this Amendment No. 1 as of the date set forth above.

CONSULTANT

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1


CH2M Hill Engineers, Inc.

J. Michael Read, Interim Director

2020 SW 4th Ave
Address

Date

Portland OR 97201
City, State, Zip Code

32-0100027
Federal Tax ID Number

Sept 3, 2014
Date

Exhibit A (Amended)

Clackamas District Water Environment Services

Service District No. 1

Amendment 1

Kellogg Creek WPCP Outfall Improvement Project – Stage 2

Scope of Work and Estimated Fee

In November, 2013, an Original Agreement was developed for Engineering Services between Clackamas District Water Environment Services Service District No. 1 and CH2M HILL Engineers, Inc. This Original Agreement was for Stage 1 of the Kellogg Creek WPCP Outfall Improvement Project.

This Amendment No. 1 amends the original Agreement between CH2M HILL Engineers, Inc., (the Consultant) and the CCSD No. 1 (the District). This Amendment No. 1 defines changes in contract scope, specific to Preliminary and Final Design, Bid Period Services and Engineering Services During Construction, and Post-Construction Services.

The original Scope of Work remains in effect except as modified herein. Tasks noted below as 'amended' refers to the Task numbering from the Original Agreement. New tasks are also noted.

Background & Objectives

The Clackamas Service District No. 1 (District) requires engineering and permitting services for the Kellogg Creek Water Pollution Control Plant (WPCP) to design, permit, and construct outfall improvements to meet water quality standards for ammonia. The current National Pollutant Discharge Elimination System (NPDES) Permit for the Kellogg Creek WPCP expired in 2009, but is still in effect until the Oregon Department of Environmental Quality (DEQ) issues a new permit. The District will negotiate with DEQ (when DEQ begins renewal of the NPDES permit in early 2014) to establish a compliance schedule in the permit that allows the District time to design, permit, and construct WPCP outfall improvements. Significant outfall improvements (i.e. new diffuser) will provide sufficient dilutions to support elimination of the existing ammonia limits in the NPDES permit, and outfall improvements will need to consider current and projected future effluent concentrations to enable the Kellogg Creek WPCP to comply with existing Oregon water quality standards –and potential future more stringent Oregon ammonia criteria (based on EPA's updated ammonia criteria published in August 2013). At the same time, outfall structure improvements must maintain the ability to discharge under extreme flow and river conditions.

The District's timeline for design, permitting, and construction will require coordination of season-dependent field data collections, preliminary design development for DEQ permit negotiations, time allowance for the natural resource permit approval process, and construction within the allowable in-water construction work period in the lower Willamette River. The planned schedule of project activities and deliverables are as follows: 1) conduct wet season field data collections in November

Task 4 (New Task). Complete Preliminary Design

Task 4.1. Field Data Collections (Dry Season 2014): Prepare concise study plan for field data collections and update field safety instructions (FSI) prepared in 2013 to be applicable. Execute the study plan to obtain data for the preliminary design report and project permit application documentation. Field data collections during September 2014 (dry season) will include: two to three weeks of in-situ current measurements at the proposed new outfall diffuser sites (A & B); water column density profiles and drogue tracking near the potential new diffuser sites under low flow conditions; dive inspection and photographs of the existing outfall terminus conditions and flange, and photos along the route down-slope to the diffuser site in the river; collection and chemical analyses of surface sediment samples along the outfall extension route; and collection of background river water samples for WES lab analyses of dissolved and total metals (arsenic, cadmium, chromium, copper, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc), hardness, pH, and ammonia.

CH2M HILL staff will conduct water column density profiles and drogue releases and tracking, deploy and retrieve current meter instruments, collect surface sediment samples, and conduct the photo inspection using our 17-foot work vessel. Water column profiles will be conducted to measure temperature, conductivity, pH, turbidity, and dissolved oxygen using a Seabird SBE-19+ instrument. Drogues will be released (4 to 6 releases) near the potential new diffuser sites (A & B) and their paths tracked using GPS to assess discharge plume path. One taut-line cable array will be constructed and anchored at the proposed offshore diffuser site (B) with two InterOcean S4 current meters in-line. A second taut-line cable array will be constructed and anchored at the proposed near-shore diffuser site (A) with one InterOcean S4 current meters in-line. The current meters will record current speed and direction, temperature, conductivity, and water depth every 20 or 30 minutes during the deployment period. The offshore current meter array will be equipped with an acoustic release instrument for retrieval. The inspection of the riverbed on the outfall route (from the existing outfall terminus down-slope to the diffuser site) will be performed by CH2M HILL divers with a support vessel.

Four riverbed surface sediment grabs will be collected at intervals along the proposed outfall extension alignment, beginning 30 feet offshore of the existing outfall terminus and down to the base of the slope near -70 feet depth. These samples will be collected to represent the surface sediment chemistry along the probable outfall route to provide data for design and permitting. These four sample will be submitted to CH2M HILL's Applied Sciences Laboratory for the following physical and chemical analyses; particle size (sieve and hydrometer tests), total volatile solids, total organic carbon, total phenolics, and total metals (arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, tin, and zinc). These surface sediment chemical results will be documented in a technical memorandum that constitutes a Level 1 assessment to be submitted to the Army Corps for the Section 404 permit approval.

Three in-water soil borings will be conducted along the outfall pipe extension and diffuser route. These borings would need to extend to at least the depth of excavation in the riverbed (or depth of contacting bedrock), and they would provide design data for Tasks 4.2. Borings will be evaluated and logged by a geotechnical engineer and may also require physical analyses. The borings in the river would be conducted from a barge and will require in-water work permits.

Deliverables:

- Field Study Plan & Updated Field Safety Instructions (FSI)

-
- Technical Memorandum summarizing results of dry season field data collections two weeks following completion of field collections or after lab analytical results are received
 - Technical Memorandum – Level 1 Sediment Assessment

Assumptions:

- The field data collections can be completed in four field days at the site (two days during installation and two days during retrieval), assuming no interference due to weather or river conditions (field work will be scheduled consulting weather and river forecasts for the area). Field work will be suspended in the event of unsafe conditions at the river site. Data collections can be completed in September 2014, assuming approval to proceed from the District and suitable field working conditions allow for the work.
- Geotechnical borings will require permits from ACOE and DSL, and this work schedule assumes permit approval by the ACOE and DSL will be expeditious to allow coring in September or October 2014, and borings cannot be conducted during the same time that current meters are deployed at the proposed diffuser sites.

Task 4.2. Preliminary Design Engineering Report – Final Draft: Develop a Final Draft of the Preliminary Design Engineering Report that incorporates the results of summer/fall 2014 field data collections, and documents the basis of design for the selected outfall improvement to meet Oregon water quality standards under the range of effluent flows and critical river flow conditions. The Preliminary Design Engineering Report will review the outfall improvement concepts, but the design will only be developed for the outfall improvement option selected by the District.

The Final Draft Preliminary Design Engineering Report will be based on the Preliminary Draft Report and updated to include:

- Results of geotechnical, geomorphological, and survey data collected during the dry season of 2014 to document the selection of the outfall pipe route and diffuser location in the river, along with other physical and regulatory limitations.
- New effluent chemistry data (metals, organics, and ammonia) collected in 2014 for the Kellogg Creek WPCP (by WES) and new Willamette River background chemistry data (samples collected by CH2M HILL and analyzed by WES^[BM1]) to update the reasonable potential analyses (RPA) of compliance with water quality standards. RPA results are used to develop the minimum target dilutions required for the design (District will select a margin of safety above the minimum) and to document to DEQ how the design will comply with state water quality standards.
- Update effluent and river flow and stage inputs for dilution models – including dry and wet season effluent flows (existing, projected 2020, and build-out flows), and critical river flow (and stages) that cover the range of conditions required in the DEQ RMZ-IMD (DEQ, May 2012).
- Dilution modeling will be updated using the river current and water column measurements collected in September 2014 and these results will be used to confirm or modify the diffuser length and ports design configuration. Model critical low river flow, and off-design river flow conditions to cover all requirements of the RMZ-IMD (DEQ, May 2012). The new site-specific current measurements collected by CH2M HILL in the summer 2014 will be used to represent the current velocities at low river stage in the modeling. The current velocities at off-design or higher river flow conditions will be calculated as channel average velocities using Flow Master modeling. Dilution modeling will apply two EPA models; DKHW and CORMIX2. Dilution modeling inputs and approach will be consistent with the RMZ-IMD (DEQ, May 2012). The results of the

dilution modeling will include predicted dilutions and plume dimensions at the ZID and RMZ (defined for the new and existing outfalls). Model input and output will be included in an appendix to design engineering report.

- Update hydraulic modeling of the selected outfall and diffuser (at plant build-out flow under 100-year flood river stage), if changes to the diffuser are implemented based on the dilution modeling. The outfall hydraulic evaluation will encompass the outfall from the UV system outlet to the outfall terminus. CH2M HILL's hydraulic model HYDRO will be used for this evaluation.
- Environmental mapping information on the discharge site will be developed to be consistent with the RMZ-IMD, to define sediment conditions, habitat, aquatic resource uses, human uses, and salmonid seasonal migration for the site. Field data collections in summer 2014 will supplement the bathymetry data for use as environmental mapping information.
- Outfall pipe material and construction approaches will be updated if necessary due to design changes or environmental issues that are identified in 2014. Changes in pipe material and construction approach will be review with the District for selection.
- The draft preliminary construction cost estimate (Class 4 type estimate) for outfall improvements will be updated to include changes from the preliminary draft design.
- An updated Draft Report and Final Report will be developed following the completion of the Task 4.1 (dry season field data collections). The updated report will include updated dilution modeling of the selected outfall diffuser. The outfall diffuser configuration may be modified based on the modeling using site-specific current data collected during the 2014 dry season field data collections.
- Draft and Final Preliminary Design Engineering Report documents will be prepared to document the design basis of the preferred outfall option, including hydraulics, geology, river geomorphology, dilution, water quality compliance analyses, biological constraints, design layout, construction approach, permitting approach, schedule, and a preliminary construction cost estimate. The Preliminary Design Engineering Report will provide the technical basis for the project in the natural resources permitting.

Deliverables:

- An updated Draft Report will be submitted to the District for review in October 2014, following the completion of the Task 4.1 (dry season field data collections).
- A final report will be produced in November 2014 for submittal to DEQ for review and approval.

Assumptions:

- The District will be provided diffuser design information to decide on the margin of safety for diffuser dilution performance above the minimum target dilution required.
- If the selected outfall option will be buried by in-river excavation and the results of the Level 1 sediments assessment (surface sediments chemistry) along the outfall route show contamination – then the Army Corps may require the collection and analysis of sediment cores along the route for priority pollutant chemical analyses. Site-specific sediment cores could be collected in 2015 if required.

Task 4.3. Review Meetings: Conduct two review meetings with District staff.

Deliverables:

- Meeting notes will be prepared for the two meetings.

Assumptions:

- Two team members will attend each meeting at the District office or CH2M HILL office in Portland, and other team members will attend by phone.
- Two additional teleconference meetings may be held with the District to address information exchanges and facilitate design decisions.

Task 5 (New Task). Natural Resources Permitting

Task 5.1. Joint Permit Application (JPA) for Removal-Fill: Develop submittal to US Army Corps of Engineers and Oregon DSL for in-water removal-fill permits and Rivers and Harbors Act Section 10 permit. Prepare a Sampling and Analysis Plan under the 2009 Sediment Evaluation Framework for the Pacific Northwest for the US Army Corps of Engineers. Prepare the JPA in parallel with and based on the Preliminary Engineering Design Report.

Task 5.2. Regulatory Approvals for In-Water Work: Prepare application materials for obtaining the following natural resources regulatory approvals: Clean Water Act Section 401 Water Quality Certification from Oregon DEQ; fish passage plan review by ODFW; fish handling permit by ODFW/NMFS; and Approval of Safe Passage from Oregon State Marine Board.

Task 5.3. Biological Assessment: Prepare an individual biological assessment to support formal Section 7 Endangered Species Act (ESA) consultation. Assess the amount of take, and recommend conservation measures (construction BMPs). The biological assessment will reference and utilize other relevant individual project and programmatic biological opinions in the lower Willamette River. Provide ongoing coordination with NMFS review throughout the ESA consultation process to address any issues that arise and ensure timely approvals.

Task 5.4. DSL State Land and Waterways Easement for Outfall Extension: Assuming that the outfall improvement requires extension of the existing outfall into the Willamette River, then the District will need to obtain an easement from the DSL. CH2M HILL will work with District staff and attorney to develop the application for expanding the District's existing easement.

Task 5.5. Meetings with Regulatory Agencies: Attend meetings with regulatory agencies; anticipated meetings include a pre-application meeting with state and federal agencies and additional one-on-one meetings with NMFS, USACE, DSL, and ODFW. Prepare meeting notes.

Task 5.6. Permitting Support: Provide ongoing support and consultation to District staff as the design effort progresses. Adapt the permitting effort to accommodate new information during design development. Provide regular coordination with regulatory agency reviewers to ensure timely issuance of permits. Provide supplemental environmental and design information to the permitting agencies, as requested.

Task 5.7 City of Milwaukie Permitting Support Allowance: CH2M HILL team members will support engagement with City of Milwaukie, specific to local land use or Willamette Greenway permitting requirements. CH2M HILL will support development of materials to facilitate permit application and approval, if required. This task is scoped as an allowance. The extent of the Consultant's involvement will be limited to the budget available.

Assumptions:

- Assume pre-application meeting (Task 5.5) is held at CH2M HILL offices, with three CH2M HILL staff in attendance.
- Assume up to two one-on-one meetings (Task 5.5) with two CH2M HILL staff in attendance.
- No wetlands delineation, compensatory wetlands mitigation plans, or compensatory mitigation of wetlands will be needed and are not included.
- The District will obtain all local land use permits and approvals for the project.
- The District is responsible for all fees associated with activities under this task.
- No cultural resources investigation is included.
- Task 5.6 assumes 40 hours of labor for permitting lead and 8 hours for senior permitting resource.
- Task 5.7 assumes 40 hours of labor for permitting lead and 8 hours for senior permitting resource.

Task 6. (New Task) Design

The objective of this task is to develop the final design for the preferred outfall diffuser based on the findings and concepts presented in the preliminary design, and to provide 60 percent, 99 percent, and final bid-ready Technical Specifications and Design Drawings. It is assumed that the outfall extension and diffuser addition will be accomplished with HDPE pipe and precast concrete weights and will be laid in a shallow trench and backfilled in a manner similar to the existing outfall.

Task 6.1. 60-Percent Deliverable: Develop and submit final design contract documents that are 60 percent complete to the District for review.

This work task will include the following:

- QA/QC review of the all work products in accordance with Task 6.0 Quality Management
- Prepare design development (60%) drawings.
- Prepare estimate of construction costs based on design development drawings.

Deliverables:

- Written responses to District's review comments.
- 60% Design Drawings.
- Construction cost estimate based on the project as depicted at a 60% design level.
- Specification front-end documents, including General Conditions, General Requirements, bidding documents, bonds, and Instruction to Bidders.
- Technical Specifications.

Assumptions:

-
- Provide four hard copies and one electronic PDF copy of 60 percent deliverables.
 - Diffuser options will be specified in the Preliminary Design Engineering Report, as selected by the District.
 - Specifications and standard details will be developed using CH2M HILL's standard 49 Division master specifications. District staff will provide the WES Division 0 specifications and CH2M Hill will use standard CH2M Hill Division 1 specifications.
 - Electrical, instrumentation and controls, building mechanical, landscape and architectural design components are not required for this project.

Task 6.2 Prequalification Package: Develop a Request for Qualifications to allow for pre-qualifications-based review and selection of bidders for the outfall project. CH2M HILL will assist with the development of appropriate selection criteria and provide observations to the District selection committee to inform their selection of qualified bidders. The following work tasks are included:

- Develop draft RFQ.
- Submit final RFQ.
- Communicate with up to three potential marine contractors, alerting them of the RFQ and schedule for responding (assume District will issue RFQ, arrange for advertising, receive RFQ's, etc.).

Anticipated Meetings

- Attend one 1-hour meeting with District Staff to clarify goals, objectives and intent of the Prequalification (attended by Consultant's project manager).
- Attend one 1-hour meeting with District Staff to review draft RFQ (attended by Consultant's project manager).

Deliverables

- Draft and Final RFQ.
- Review and provide comments for selected contractor recommendation developed by District.

Task 6.3 Bid Ready Documents: Fix-up and finalize contract documents based on comments received by District, CH2M HILL's internal quality assurance/quality control (QA/QC), and regulatory agencies. Provide 99 percent documents for final District review and input and final Bid Ready documents

Deliverables:

- 99 Percent Contract Documents (Technical Specifications and Design Drawings) – provide four hard copies and one electronic PDF copy.
- Bid Ready Contract Documents (Technical Specifications and Design Drawings) – provide one stamped original and one electronic copy (searchable PDF). Also, provide electric sources files (drawings in CAD and specifications in WORD).

-
- Bid-ready specification front-end documents, including General Conditions, General Requirements, bidding documents, bonds, and Instruction to Bidders.
 - Engineer's Construction cost estimate.

Task 6.4. Review Meetings: Conduct review meetings with District staff.

Deliverables:

- Meeting notes will be prepared for each meeting.

Anticipated Workshops:

- A 1-hour workshop with District Staff to kickoff the design effort and finalize the design approach for outfall extension (attended by Consultant's project manager, and appropriate lead discipline engineers [2 budgeted]).
- A 2-hour workshop with District Staff to review the 60% level design drawings and cost estimate (attended by Consultant's project manager, and appropriate lead [1 budgeted] discipline engineer).
- A 1-hour workshop with District Staff to review the 99% construction documents (attended by Consultant's project manager, and appropriate lead [1 budgeted] discipline engineer).

It is anticipated that District staff will participate in each workshop.

Task 7. Engineering Services during Construction

Amendment No.1 adds Task 7.

Task 7.1 Engineering Services during Construction: Review submittals, respond to RFIs, and participate in weekly progress meetings via telephone.

Task 7.2 Permitting Assistance during Construction: Conduct site visits as required to assist with fish-handling and oversight of other permitting requirements; recommend regulatory compliance actions, if required.

Task 7.3 Record Drawings: Utilizing the marked up contract documents from the construction phase provided by the Contractor, electronically incorporate these mark ups and provide one electronic copy of the record drawings in AutoCAD format.

Assumptions:

The fee estimate associated with this task is based on providing the services outlined above. The amount of time furnished and the cost of performing such services are estimates. The Consultant is not obligated to provide services beyond the amounts shown in attached level of effort or summarized in Exhibit B, nor is the Owner obligated to pay for such services unless such services are mutually agreed to by both parties in an amendment.

Task 8 – Bidding and Construction Management Services

Amendment No.1 adds Task 8.

CH2M HILL will provide services to assist in coordinating the site activities, managing the contract for construction, monitoring the contractor's performance, responding to design and technical submittals, and closing out the contract for construction.

Task 8.1 Bidding Phase Services. CH2M HILL will provide technical assistance as needed to respond to questions from bidders and to interpret the contract documents during the bidding phase of the project. CH2M HILL will assist in preparing technical addenda to the contract documents (if needed) for the County to issue. Project management effort for this phase of the work is included within this task.

Task 8.2 Construction Management Services

Site Coordination

Pre-Construction Conference: CH2M HILL shall attend and participate in a pre-construction conference, led by the District, with the Contractor to review the project communication, coordination and other procedures and discuss the Contractor's general work plan and requirements for the project. CH2M HILL will take minutes or otherwise record the results of this conference.

Communications: CH2M HILL will implement and maintain regular communications with the Contractor during the construction. CH2M HILL will receive and log all communications from the Contractor and will coordinate the communications between the District and Contractor. CH2M HILL will not communicate directly with the Contractor's subcontractors.

Project Site Meetings: CH2M HILL will conduct periodic meetings with the Contractor and will prepare the minutes of these meetings.

Field Instructions and Orders: CH2M HILL will issue field instructions, orders or similar documents during construction as provided in the contract for construction.

Construction Contract Administration

Payments to Contractor: CH2M HILL will receive and review the Contractor's requests for payment. CH2M HILL will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. CH2M HILL shall provide recommendations to the District as to the acceptability of the requests.

Recommendations by CH2M HILL to the District for payment will be based upon the contract provisions, and CH2M HILL's knowledge, information, and belief from its observations of the work on site and selected sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by CH2M HILL to ascertain that the Contractor has completed the work in exact accordance with the contract for construction; that CH2M HILL has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work, materials or equipment has passed to the District free and clear of liens, claims, security interests, or encumbrances.

Correspondence and Communications: CH2M HILL will coordinate all written communications among the Contractor, CH2M HILL and District during the construction. CH2M HILL will prepare written communications to the Contractor and provide recommendations to the District for written communications between the District and Contractor.

Changes

Minor Variations in the Work: CH2M HILL may authorize minor variations in the work which do not involve an adjustment in the Contractor's contract price nor time for construction and are not inconsistent with the intent of the contract documents.

Coordinate Issuance of Changes: CH2M HILL will assist the District with the issuance of changes to the contract for construction.

CH2M HILL will receive and review the Contractor's response to the request for change and will obtain such further information as is necessary to evaluate the basis for the Contractor's proposal. CH2M HILL will assist the District with negotiations of the proposal and, upon approval by the District, prepare final change order documents for execution by the District and Contractor.

Review of Contractor's Requested Changes: CH2M HILL shall review all Contractor-requested changes to the contract for construction. CH2M HILL shall coordinate with the Design Team make recommendations to the District regarding the acceptability of the Contractor's request and, upon approval of the District, assist the District in negotiations of the requested change. Upon agreement and approval, CH2M HILL will prepare final change order documents. At the request of the District, CH2M HILL will prepare an independent cost estimate of the proposed change.

Design and engineering services of CH2M HILL to review Contractor initiated changes and to prepare drawings and specifications for issuance to the Contractor shall be considered as Additional Services, entitling CH2M HILL to additional compensation.

Interpretations of Contract Documents. CH2M HILL will coordinate with the District and Design Team and will provide written responses to the Contractor's request for interpretation or clarification of the contract documents.

As-Built Drawings and Record Documents. CH2M HILL will coordinate the Contractor's submittal of as-built drawings, specifications and other as-built or record documents and shall transmit these to the District. CH2M HILL will meet with the Contractor as necessary to discuss the preparation and submittal of as-built or record drawings.

Claims and Disputes. CH2M HILL will receive, log, and notify the District about all letters and notices from the Contractor concerning claims or disputes between the Contractor and District pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction. CH2M HILL will review all such letters and notices and will discuss them with the Contractor as necessary to understand each such claim or dispute. CH2M HILL will advise the District regarding the Contractor's compliance with the contract requirements for such claims and disputes. CH2M HILL will assist the District in discussions with the Contractor to resolve claims and disputes.

CH2M HILL will not issue decisions on Contractor claims or disputes. CH2M HILL will not, except as part of Additional Services, undertake comprehensive and detailed investigation or analysis of Contractor's claims and disputes, nor participate in judicial or alternative dispute resolution procedures for the claims or disputes.

Project Controls

Contractor's Schedule Submittal: CH2M HILL will review the Contractor's construction schedule and verify that it is consistent with the requirements of the contract for construction. CH2M HILL will advise the Contractor of any areas where the schedule is not in compliance with the contract for construction. CH2M HILL will provide comments to the District to assist the District in approving,

accepting or taking other action on the contractor's schedule, in accordance with the contract for construction.

CH2M HILL's review and comments shall not be considered as a guarantee or confirmation that the Contractor will complete the work in accordance with the contract for construction.

Contractor's Schedule Updates: CH2M HILL will review the Contractor's periodic schedule updates or other schedule submissions. CH2M HILL will advise the Contractor if the updates or other submissions are not in accordance with the contract for construction. CH2M HILL will provide comments to the District regarding the updates or other submissions.

Effect of Change Orders: CH2M HILL will review information submitted by the Contractor regarding the effect of proposed or issued Change Orders upon the construction schedule, duration and completion date. CH2M HILL will advise the District as to the potential impact of proposed or issued Change Orders. CH2M HILL will assist the District in discussions with the Contractor concerning the potential impact of proposed or issued Change Orders.

Field Inspection

Field Office: CH2M HILL will staff a field office on the project site for purposes of providing a Field Engineer to observe the work of the Contractor.

Review of Work: CH2M HILL will conduct regular on-site observations of the Contractor's work for the purposes of determining if the work generally conforms to the contract for construction and that the integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the Contractor. CH2M Hill will document the on-site observations and make reports available to the District.

CH2M HILL's observation of the work is not an exhaustive observation or inspection of all work performed by the Contractor. CH2M HILL does not guarantee the performance of the Contractor. CH2M HILL's observations shall not relieve the Contractor from responsibility for performing the work in accordance with the contract for construction, and CH2M HILL shall not assume liability in any respect for the construction of the project. CH2M HILL shall, with the assistance of the District, obtain written plans from the Contractor for quality control of its work, and will monitor the Contractor's compliance with its plan.

Deficient and Non-conforming Work: Should CH2M HILL discover or believe that any work by the Contractor is not in accordance with the contract for construction, or is otherwise defective, or not conforming to requirements of the contract or applicable rules and regulations, CH2M HILL will bring this to the attention of the Contractor and the District. CH2M HILL will there upon monitor the Contractor's corrective actions and shall advise the District as to the acceptability of the corrective actions.

Regulatory and Third Party Testing and Inspections: CH2M HILL will monitor the Contractor's coordination of inspection and testing by regulatory and third party agencies that have jurisdiction over the project.

Subsurface and Physical Conditions: Whenever the Contractor sends notice of subsurface or physical conditions at the site for which the construction contract requires such notification, CH2M HILL will

notify the District and Design Team for a response and assist the District in responding to the Contractor.

Substantial and Final Completion: CH2M HILL will assist the District with inspections at substantial and final completion, in accordance with the construction contract. CH2M HILL will prepare up to two (2) separate punch lists of items requiring completion or correction. CH2M HILL shall make recommendations to the District regarding acceptance of the work based upon the results of the final inspection.

Specialty Inspections: Specialty inspections and/or testing services are not anticipated to be required.

Shop Drawings, Samples and Submittals

Submittal Schedule: CH2M HILL will obtain from the Contractor a proposed shop drawing and submittal schedule, which shall identify all shop drawings, samples and submittals required by the contract for construction, along with the anticipated dates for submission.

Review of Shop Drawings, Samples and Submittals: CH2M HILL will coordinate with the Design Team for the reviews of the Contractor's shop drawings, samples, and other submittals. CH2M HILL will log and track all shop drawings, samples and submittals.

Contractor Clarifications and Requests for Information (RFI/CCIR)

Requests for Information: CH2M HILL will review the Contractor's requests for information or clarification of the contract for construction. CH2M HILL will coordinate such review with the Design Team and with the District as appropriate. CH2M HILL will coordinate and issue responses to the requests.

CH2M HILL will log and track the Contractor's requests.

Proposed Substitutions: CH2M HILL will assist the District and Design Team in reviewing and responding to the Contractor's requests for substitution of materials and equipment.

Safety

CH2M HILL will manage the health, safety and environmental activities of its staff and the staff of its subcontractors to achieve compliance with applicable health and safety laws and regulations.

CH2M HILL will coordinate its health, safety and environmental program with the responsibilities for health, safety and environmental compliance specified in the contract for construction. CH2M HILL will coordinate with responsible parties to correct conditions that do not meet applicable federal, state and local occupational safety and health laws and regulations, when such conditions expose CH2M HILL staff, or staff of CH2M HILL subcontractors, to unsafe conditions.

CH2M HILL will notify affected personnel of any site conditions posing an imminent danger to them which CH2M HILL observes.

CH2M HILL is not responsible for health or safety precautions of construction workers. CH2M HILL is not responsible for the Contractor's compliance with the health and safety requirements in the

contract for construction, or with federal, state, and local occupational safety and health laws and regulations.

Task 8 Assumptions

The District will lead and administer the Bidding Process. The District will provide contractual administration of the construction contract.

Support for Bidding Services is based on 40 hours of effort by a senior resource.

CH2M HILL will provide a Construction Manager/Field Engineering Resource for the duration of the construction contract. This is assumed to be one full-time-equivalent for a duration of four weeks.

The Construction Administration services fee estimate is based on providing the services outlined above. The amount of time furnished and the cost of performing such services are estimates generally based upon the contract times set forth in Contract Documents. The amount of time furnished is based on a four week period from the Bid Opening to Notice to Proceed, and 70 days contract duration from the date of the Construction Notice to Proceed to the date of final completion as evidenced by the CM's written recommendation for final payment.

Throughout the duration of Task 8, the commitment is assumed to be as shown in the attached level of effort. The amount of time furnished does not include overtime, if required by the Project or the Contractor to achieve final completion. Overtime, if deemed required by the District, will be addressed in a subsequent amendment.

Task 9 – Closeout Services

Amendment No. 1 adds Task 9.

CH2M HILL will assist the District in closing out the contract for construction and commencement of the District's use of the completed work. CH2M HILL's services shall include the following.

Task 9.1 Substantial Completion. CH2M HILL will assist the District and take the lead in issuing documents for substantial completion and acceptance of the work. CH2M HILL will advise the District on payment, and release of retention.

Task 9.2 Final Completion. CH2M HILL will assist the District and take the lead in issuing documents for final completion and acceptance of the work. CH2M HILL will advise the District on final payment, release of retention, and release of insurance and bonds.

Task 9.3 Close-out File and Records. CH2M HILL will provide to the District an organized set of project documents and records. Project documents and records are as described in the above tasks.

Task 10. Outfall Diffuser Mixing Zone/Dilution Performance Study

After completion of the outfall modification construction, a mixing zone/dilution performance study of the new diffuser structure will be conducted and submitted in a report to the DEQ. The purpose of this mixing zone/dilution performance study is to validate the model-predicted design dilutions for the new outfall diffuser structure, and to meet the requirements of the DEQ's Regulatory Mixing Zone Internal Management Directive (RMZ-IMD) (DEQ, 2012). This is an expected NPDES permit condition in the new permit, along with the outfall construction schedule.

Task 10.1 Outfall Mixing Zone/Dilution Study Plan

A detailed Outfall Mixing Zone/Dilution Study Plan will be developed for submittal to DEQ for approval. The study plan will define the approach and methodologies for the field tracer study and dilution modeling. Dilution modeling will cover the field study conditions and seasonal 7Q10 low and high river flow conditions. The study plan will specify the objectives and approach, data to be collected, quality control and quality assurance procedures, and field dilution study process and results. The study plan will be prepared to allow submittal to DEQ in July 2015, so that approval is secured and the field tracer study can be conducted in September or October 2015 under low river flow conditions (assuming construction is completed by early September 2015). If necessary, the study will be delayed until the low flow period in 2016.

Subtask 10.2 Field Measurements & Tracer Study

CH2M HILL will conduct a field performance test of the new Kellogg Creek WPCP outfall diffuser during low river flow conditions in either September 2015 or 2016 (depending on construction completion). The field study will be conducted during a five-day period using a team experienced with tracer studies, and the study will include specific QA/QC activities. The field study will include simultaneous measurements of ambient current speed and direction, water depth, and tracer dye during a period that corresponds with low river stage. Dye will be injected into the KCWPCP effluent and measured in the river during 8-10 hours. The focal points for in-stream dye measurements will be the defined acute and chronic mixing zone boundaries downstream from the diffuser.

CH2M HILL will provide all instruments for the study including two InterOcean S4 current meters, SeaBird SBE-19 water quality instruments, Turner Designs Model 10-AU fluorimeters and/or SCUFA fluorimeters, and injection and sample pumps. The tracer, Rhodamine WT dye, will be purchased for the study. One survey vessel with DGPS will be contracted from Solmar Hydro to provide the work vessel for instrument installations, tracer sampling, and site-specific field measurements. Prior to the field dye test, CH2M HILL will install cabled buoy systems upstream of the diffuser for in-situ continuous measurements during the field test. The field study will include the following activities: setup and calibrate the dye injection, fluorimeter calibration and testing, installation and retrieval of instruments in the river, water column measurements of dye, temperature, and conductivity during daylight hours, data download from instruments, and the post-study instrument calibrations. These data collections will be used to define the range of effluent concentrations (dilutions) at the acute and chronic mixing zone boundaries.

Following the completion of the field study, the collected field data will be developed and summarized to represent the plume within and at the mixing zone boundaries. The dye tracer study field data will be analyzed and summarized, and these data will be used for the dilution modeling and in the study report development.

Subtask 10.3 Dilution Modeling

Modeling will be used to predict wastewater dilutions and temperatures for the field-measured conditions (river flow during dye tracer study) and for the seasonal critical river flow conditions defined in the RMZ-IMD. The dilution and plume behavior will be predicted using the selected model, either Visual Plumes (UDKHW or UM3) or CORMIX2. The focal points for dilution modeling results will be acute and chronic mixing zone boundaries in accordance with the study plan agreement with DEQ. Dilution modeling will be developed to represent the same conditions as the dye tracer study and seasonal critical river flow conditions defined in the RMZ-IMD.

Measured receiving water and effluent conditions will be used in the dilution modeling to represent the field-measured conditions and to “calibrate” the model predictions. After modeling the field-measured condition, the model that provides the most accurate representation of the field-measured dilutions will be applied for subsequent dilution modeling of seasonal 7Q10 river flow conditions. The comparison of model-predicted versus field-measured dilutions will also be summarized in the report.

Subtask 10.4 Study Report

A draft and final mixing zone/dilution study report will be prepared based on the results of the field tracer study, dilution modeling, and updated effluent and receiving water data. The draft final report will be prepared for review by WES. This report will summarize the results of the field data collections, diffuser dilution performance measurements, dilution modeling, and an assessment of the attainment of water quality standards. Water column measurements of dye concentrations, temperatures, and current speeds will be summarized in graphical and tabular formats. The comparison of model-predicted dilutions to field-measured dilutions will be summarized in the report, along with the basis for the dilution model selection. The dilution modeling will be summarized in the report and model input and output will be in report appendices. The existing effluent chemical concentration data and available background data will be used to calculate chemical concentrations in the receiving water at the edge of the defined mixing zone boundaries (reasonable potential analyses). WES will provide the effluent chemistry (metals, organics, and ammonia) data to CH2M HILL.

The draft and final mixing zone/dilution study report will be provided to WES for review within twelve weeks of the completion of the field study. A teleconference meeting will be held with WES to review the results presented in the draft report and discuss comments. CH2M HILL will incorporate client comments and a final report will be provided for submittal to DEQ within two weeks of the receipt of WES comments.

Task 11. Optional Tasks for 2014-2015

Task 11.1 Public Outreach Support Allowance: CH2M HILL team members will support public outreach activities, as needed and required by the District project manager, up to the budget amount.

Task 11.2 NPDES Permitting Support Allowance: CH2M HILL team members will support regulatory issues and/or negotiations, as needed and required by District project manager, up to the budget amount.

Task 11.3 Surveying Allowance: If necessary, the consultant team will conduct site ground surveying for the project.

Estimated Budget

CH2M HILL will perform the work on a time and material basis. The budget for Stage 2 tasks is \$560,895. Budget for Optional tasks presented herein will be developed should they be required. Fee estimate is based on raw labor costs times 3.2 and expenses at cost.

Level of Effort and Fee Estimate

Task Description	Labor Hours	Stage 2 Fee, \$
Task 2: Project Management and QA/QC	216	\$42,026
Task 4: Complete Preliminary Design	632	\$169,094
Task 5: Natural Resources Permitting	702	\$117,461
Task 6: Design	404	\$67,336
Task 7: Engineering Services During Construction	100	\$17,665
Task 8: Bidding and Construction Administration Services	184	\$34,749
Task 9: Close-out Services	48	\$8,743
Task 10: Mixing Zone/Dilution Study	466	\$103,820
Task 11: Optional Tasks for 2014-2015	-	-
Total		\$560,895

Schedule

The following schedule is estimated for Stage 2 of the work, assuming a notice-to-proceed is issued on or before September 4, 2014

Develop Permit Applications & Biol. Assessment	September 2014	November 2014
Preliminary Design - Dry Season 2014 Data Collections	September 2014	September 2014
Preliminary Design Eng. Report – Updated Draft	September 2014	December 2014
Submittal to Agencies - Preliminary Design Engineering Report & Permit Applications		December 2014
50% Design Plans & Specifications	January 2015	February 2015
Bid-Ready Design Plans & Specifications	March 2015	April 2015
Services During Bidding/Procurement	May 2015	June 2015
Services During Construction	July 2015*	September 2015
Close-out Services	September 2015	December 2015
Outfall Mixing Zone Study (post-construction)**	August 2015	December 2015

*Assumes regulatory agencies will provide approval of the in-water work permit application on or before June 30, 2015.

** Assumes construction is completed by early September 2015, allowing time for the study to be conducted in September 2015. If construction does not complete in September, then the study will be delayed until August/September 2016.

Task	Task/Subtask	Michelle Burkhart	David Wilson	Vince Rybel	Peggy O'Neil	Brad Paulson	Lorin Davis	Alan Chang	Daniel Malmon	Mark Mullins	Steve Mader	Erin Thatcher	Mike Stansaw	Carrie Andrews	Diana Worthen	Bob Wells	Matt Stainer	Travis Laney	John Hall	Erin Huber	Janis Freeman	Terry Goff	Labor	Expense	Stage 2 - Total Labor and Expenses																			
																										Project Manager	Technical Lead	Engineering Lead	Permitting Lead	Modeling & Field Data	Hydraulics & Inflowing Advisor	Hydraulics	Revised Analyses	Fisheries Permitting	Senior Review - Permitting	Technical Support	Technical Support	Sediment Tech Services	Sediment Tech Services	Cost Estimator	Engineering Support	CAD & Graphics	Technical Writer	Accg
2014 Rates		209.98	202.43	191.44	150.74	202.83	196.74	157.07	182.86	157.78	235.34	109.37	128.40	145.84	121.75	205.87	101.76	103.64	139.89	140.61	84.62	79.51																						
2015 Rates		218.28	208.50	197.19	156.26	208.91	202.64	161.78	188.35	162.51	242.40	112.65	132.25	150.22	125.40	212.05	104.87	106.75	144.09	144.83	97.46	81.90																						
																						Total	Total	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2.0	Project Management & QA/QC	\$ 35,277	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	176	\$ 42,026	\$ -	\$ 42,026																		
2.3	Development of Plan and Ongoing PM - Stage 2	128																					40	\$ 8,359	\$ -	\$ 8,359																		
2.4	QA/QC - Stage 2	49																					40	\$ 8,359	\$ -	\$ 8,359																		
Task Hours		168	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48	0	0	216																					
4.0	Complete Preliminary Design	\$ 7,979	\$ 30,769	\$ 8,806	\$ 3,618	\$ 26,774	\$ 2,301	\$ 2,513	\$ 1,463	\$ -	\$ 941	\$ -	\$ 4,109	\$ 4,667	\$ 7,305	\$ 2,470	\$ 814	\$ 1,866	\$ 1,679	\$ -	\$ 2,271	\$ 159	202	\$ 110,564	\$ 58,530	\$ 169,094																		
4.1	Field Data Collection (Dry Season 2014)	6	66	8	16	72							32	32	60						8		202	\$ 49,207	\$ 57,650	\$ 106,857																		
4.2	Preliminary Design Report (Eng. Rpt) - Updated Draft & Final	24	80	32	8	60	12	16	8		4				10	12	8	16	12		16	2	322	\$ 97,133	\$ -	\$ 97,133																		
4.3	Review Meetings	6	6	6																			18	\$ 3,623	\$ 850	\$ 4,503																		
Task Hours		38	152	48	24	132	12	16	8	0	4	0	32	32	60	12	8	16	12	0	24	2	632																					
5.0	Natural Resource Permitting	\$ 12,599	\$ 6,478	\$ 3,063	\$ 96,178	\$ -	\$ -	\$ -	\$ 6,593	\$ 35,343	\$ 10,355	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,602	\$ -	\$ -	\$ 2,082	\$ -	204	\$ 115,681	\$ 1,860	\$ 117,481																		
5.1	Joint Permit Application for In-Water Work	20	8	12	100						8									12			68	\$ 9,431	\$ -	\$ 9,431																		
5.2	Regulatory Approvals for In-Water Work	4																					2	\$ 2,271	\$ -	\$ 2,271																		
5.3	Biological Assessment	24	8		16						160	8						16			8		240	\$ 38,014	\$ 850	\$ 39,464																		
5.4	DSL Easement for Outfall Extension	8			12						16	4									2		42	\$ 7,144	\$ -	\$ 7,144																		
5.5	Meetings with Regulatory Agencies	4	16	4	16						16	4									2		62	\$ 10,911	\$ 950	\$ 11,861																		
5.6	Permitting Support				40						8												48	\$ 7,912	\$ -	\$ 7,912																		
5.7	City of Milwaukee Permitting Support Allowance				40						8												48	\$ 7,912	\$ 80	\$ 7,992																		
Task Hours		80	32	16	240	0	0	0	36	224	44	0	0	0	0	0	0	28	0	0	22	0	792																					
6.0	Design	\$ 6,921	\$ 4,170	\$ 31,549	\$ -	\$ -	\$ 1,621	\$ -	\$ 3,014	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,089	\$ -	\$ 8,540	\$ -	\$ -	\$ 6,237	\$ -	\$ -	192	\$ 67,441	\$ 195	\$ 67,336																		
6.1	60-Percent Deliverable		16	80			8		16						6		40				24		68	\$ 9,431	\$ -	\$ 9,431																		
6.2	Prequalification Package	24			80																		60	\$ 9,986	\$ -	\$ 9,986																		
6.3	Bid Ready Documents				80										16		40				16		132	\$ 21,053	\$ -	\$ 21,053																		
6.4	Review Meetings	6	4	8																			20	\$ 4,142	\$ 195	\$ 4,337																		
Task Hours		32	20	160	0	0	8	0	16	0	0	0	0	0	24	0	80	0	0	64	0	0	404																					
7.0	Engineering Services During Construction	\$ -	\$ -	\$ 6,465	\$ 3,726	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,036	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,135	\$ -	\$ -	\$ -	\$ -	\$ -	32	\$ 17,265	\$ 400	\$ 17,665																		
7.1	Engineering Services			32							8												32	\$ 6,310	\$ -	\$ 6,310																		
7.2	Permitting Assistance during Construction			24																			36	\$ 5,685	\$ 400	\$ 6,085																		
7.3	Record Drawings			16							8												36	\$ 5,200	\$ -	\$ 5,200																		
Task Hours		0	0	48	24	0	0	0	0	0	8	0	0	0	0	0	28	0	0	0	0	0	100																					
8.0	Bidding and Construction Administration Services	\$ -	\$ -	\$ 96,282	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	24	\$ 36,282	\$ 3,200	\$ 34,749																		
8.1	Bidding Services			24																			24	\$ 4,732	\$ 600	\$ 5,332																		
8.2	Construction Management Services			160																			180	\$ 31,549	\$ 3,200	\$ 34,749																		
Task Hours		0	0	184	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	184																					
9.0	Close Out	\$ 865	\$ -	\$ 7,099	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	8	\$ 8,743	\$ -	\$ 8,743																		
9.1	Substantial Completion			8																			8	\$ 1,677	\$ -	\$ 1,677																		
9.2	Final Completion			24																			24	\$ 4,732	\$ -	\$ 4,732																		
9.3	Close-out File and Records	4		4																	3		16	\$ 2,434	\$ -	\$ 2,434																		
Task Hours		4	0	36	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	48																					
10.0	Mixing Zone/Dilution Study	\$ 1,730	\$ 31,692	\$ -	\$ -	\$ 33,009	\$ 811	\$ -	\$ -	\$ -	\$ -	\$ 4,055	\$ 7,835	\$ -	\$ -	\$ -	\$ 2,562	\$ 1,153	\$ -	\$ 360	\$ 983	\$ -	24	\$ 84,320	\$ 19,500	\$ 103,820																		
10.1	Study Plan & FSI		12			8						4											24	\$ 4,624	\$ 50	\$ 4,674																		
10.2	Field Measurements & Tracer Study		56			62							60										180	\$ 32,981	\$ 19,350	\$ 52,331																		
10.3	Dilution Modeling		10			66	2																68	\$ 14,190	\$ -	\$ 14,190																		
10.4	Reporting		8	72		32	2					32						24	8		12		194	\$ 32,525	\$ 100	\$ 32,625																		
Task Hours		8	152	0	0	158	4	0	0	0	0	36	60	0	0	0	0	24	8	0	4	12	466																					
11.0	Optional Tasks for 2014-2015	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0	\$ 0	\$ -	\$ -																		
11.1	Public Outreach Support Allowance																						0	\$ 0	\$ -	\$ -																		
11.2	NPDES Permit Support Allowance																						0	\$ 0	\$ -	\$ -																		
11.3	Surveying Allowance																						0	\$ 0	\$ -	\$ -																		
Task Hours		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0																					
TOTAL HOURS - STAGE 2		310	336	466	288	290	24	16	60	224	44	36	92	32	60	36	8	170	20	48	122	14	2,728																					
FEES - STAGE 2		\$ 65,371	\$ 75,110	\$ 96,264	\$ 43,522	\$ 39,702	\$ 4,730	\$ 2,513	\$ 11,059	\$ 35,343	\$ 13,236	\$ 4,955	\$ 12,644	\$ 4,667	\$ 7,305	\$ 7,550	\$ 814	\$ 18,004	\$ 2,831	\$ 4,749	\$ 11,759	\$ 1,142	\$ 481,922	\$ 93,705	\$ 566,895																			