



AGENDA – Revised

(*Added Item D.2.)

Thursday, November 6, 2014 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2014-108

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Spotlight – Clackamas County Veterans Services Office and Recognition of Veterans Day (Erica Silver, Clackamas County Social Services)

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

III. 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.)*

SERVICE DISTRICT NO. 5 – STREET LIGHTING

(Wendi Coryell, Service District No. 5 will present the following 6 Assessment Areas)

1. Board Order No. _____ Forming a 3 Lot Assessment Area within Clackamas County Service District No. 5 Assessment Area 26-13, Portland to Milwaukie Light Rail
2. Board Order No. _____ Forming a 15 Lot Assessment Area within Clackamas County Service District No. 5 Assessment Area 02-14, Ashlee Meadows 15 Lot Subdivision
3. Board Order No. _____ Forming a 127 Lot Assessment Area within Clackamas County Service District No. 5 Assessment Area 09-14, Rock Creek Meadows 127 Lot Subdivision
4. Board Order No. _____ Forming a 13 Lot Assessment Area within Clackamas County Service District No. 5 Assessment Area 35-14, Siri Hills 13 Lot Subdivision
5. Board Order No. _____ Forming a 12 Lot Assessment Area within Clackamas County Service District No. 5 Assessment Area 36-14, Mountain Gate II 12 Lot Subdivision
6. Board Order No. _____ Forming a 1 Lot Assessment Area within Clackamas County Service District No. 5 Assessment Area 37-14, Black Rock Coffee Store

IV. DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Citizens wishing to comment on a discussion item must fill out a blue card provided on the table outside of the hearing room prior to the beginning of the meeting.)*

~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

1. Approval of a Renewal Revenue Participating Provider Service Agreement with Pacific Source to Provide Primary Care and Behavioral Health Services – *Health Centers*
2. Approval of a Professional Services Agreement with Performance Health Technology, LTD for Third Party Claims Administration Services – *Behavioral Health*

B. Department of Transportation & Development

1. Approval of Cooperative Improvement Agreement No. 29968 with Oregon Department of Transportation and the City of Damascus for the Highway 224 at Springwater Road Traffic Signal Project
2. Approval of Intergovernmental Agreement No. 30103 with Oregon Department of Transportation for Right-of-Way Services for the Highway 224 Springwater Road Traffic Signal Project

C. Department of Emergency Management

1. Approval of Fiscal Year 2014 State Homeland Security Grant Program Agreement No. 14-208, 14-209 and 14-210 with the State of Oregon

D. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
- *2. Approval of an Amendment to the Intergovernmental Agreement between the District Attorney's Office and the State of Oregon Department of Human Services to Enhance the Quality of Juvenile Dependency Proceedings - *DA*

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

November 6, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Recognition of Veterans Day

Purpose/Outcomes	Acknowledge the service, commitment and sacrifices of those who have served our great nation. Appreciation and support for those who have served and those who are currently serving, and for the family and friends who are also impacted by military service.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Safety Impact	N/A
Duration	N/A
Previous Board Action	None
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	N/A

BACKGROUND:

Since 1938, the United States has commemorated the sacrifices of its armed forces by designating November 11th as Veterans Day, a national holiday. Today, the Program Manager of the Clackamas County Veterans Service Office, Erika Silver, comes before the Board of County Commissioners to acknowledge the service, commitment and sacrifice of those who have served our great nation.

Clackamas County is home to an estimated 34, 380 veterans. These are our friends, neighbors, employees and family members. Most veterans successfully reintegrate after their military service, enriching our communities with their leadership, loyalty, and sense of duty.

For those veterans who need a little help finding a job, a safe place to live, or accessing benefits through the Veterans Administration, the county is here to help. Last year, the County's Veterans Service Office assisted over 800 veterans access over \$9 million in monetary benefits. The Clackamas County Veterans Workforce Program helped 44 veterans gain living wage employment, with an average wage of over \$14/hour.

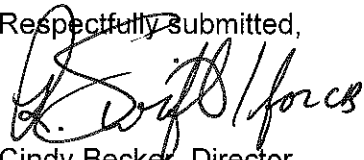
Clackamas County continues to use innovative strategies to support our Veterans by helping them address a broad spectrum of needs. A strategic multi-media outreach campaign is helping to ensure that all Clackamas County Veterans are aware of the free, high quality services available to help them secure VA benefits. Veterans in the county who are experiencing homelessness will be identified and connected to services thanks to two newly hired Homeless Veteran Outreach Workers. A Stand Down will occur in January 2015, and a grant will be submitted to HUD to fund housing for 18 veterans who are chronically homeless.

Recommendation

Staff respectfully requests that the Board recognize and honor the service, commitment and sacrifices of all military personnel, reservists, veterans and their families.


Respectfully submitted,

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Becker" with a stylized flourish at the end.

Cindy Becker, Director

Veteran's Day





PRESENTATION TO THE
CLACKAMAS COUNTY
BOARD OF COUNTY COMMISSIONERS

NOVEMBER 6, 2014

VETERANS IN THE STATE AND COUNTY

Veterans in Oregon	316,626
Veterans in Clackamas County	34,380

- * Only 30% Oregon veterans are currently receiving VA benefits
- ** 75 Veterans were counted in the 2013 Homeless Count

11/9/2014 3

GOALS FOR VETERANS IN CLACKAMAS COUNTY

- Employment, training and education opportunities are available so that all veterans in Clackamas County have the education and skills needed to obtain employment that pays a living wage
- Ensure that returning veterans receive the support they need to successfully re-enter local communities, with an emphasis on veterans with physical disabilities, PTSD and traumatic brain injuries
- Provide easy access to VA benefits through the County Veterans Service Office

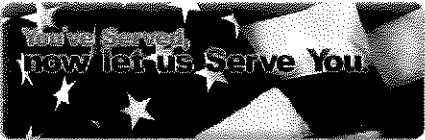
11/9/2014 3

GOALS (CONT'D)

- Provide support to families before, during, and after deployment to meet unique veteran needs
- All homeless veterans in Clackamas County have the services and supports they need to regain stable housing
- Increase housing assistance options available to veterans including a variety of housing models to meet unique veteran needs

11/9/2014 4

CLACKAMAS COUNTY VETERANS' SERVICE OFFICERS



11/9/2014 5

CLACKAMAS VETERANS SERVICE OFFICERS

- During 2013, CVSO staff
 - Met with 2,050 clients
 - Filed 626 initial compensation claims
 - Had 825 claims granted, a 27% increase from last year
 - Generated new federal monetary benefits of \$9.4 million dollars.
- Increased compensation and benefits brought to Clackamas veterans by 89% since between 2007-2013

11/9/2014 6


CLACKAMAS VETERANS SERVICE OFFICERS

- Assist Veterans and their Families get the benefits they deserve
 - Monthly compensation for service connected disability
 - Monthly income for pension eligible veterans and dependents
 - Monthly compensation for eligible surviving spouses and dependent children
 - Additional income for pension eligible veterans who are housebound or in long term care
 - Health care
 - Education
 - Vocational rehabilitation
 - Home loans
 - State benefits related to military service
 - Burial benefits
 - Ancillary benefits in particular situations

10/30/2014 7

CLACKAMAS VETERANS SERVICE OFFICERS

- Connect Veterans and their Families to services
 - Staff also provides information and referral and participates in outreach events, employment fairs, and community meetings to ensure and increase community awareness of these important services.
 - A free, family friendly "Stand Up" to connect veterans and their family members to a wide range of available services was held in April 2014 at Clackamas Community College.




10/30/2014 7

SERVICES AND ACTIVITIES

10/30/2014 7

CLACKAMAS VETERANS' WORKFORCE PROGRAM (COMMUNITY SOLUTIONS)

- Served 40 Veterans
- Average wage \$12.66
- Demographics:
 - 40% former offenders,
 - 38% have a disability,
 - 46% received on public assistance



10/30/2014 10


HOUSING FOR VETERANS

- VASH Vouchers provide on-going rental assistance:
 - 25 formerly homeless veteran households provided with on-going rental assistance to maintain housing stability
- Hope II Program provides permanent Supporting Housing to chronically homeless veterans and their families.
 - Three households, comprised of 4 adults and 9 children, received housing and support services.

10/30/2014 11

EDUCATION AND TRAINING

- Veterans Education and Training Center and Veterans Services Department at Clackamas Community College
 - 4,900 individual education & training services were provided during the year; 200 veterans per term utilized VA educational benefits in pursuit of a degree or certificate program



10/30/2014 12

ACTIVITIES IN 2014-15

STAND DOWN

Clackamas County is planning a Stand Down resource event for homeless veterans in conjunction with the bi-annual Homeless count in January 2015.

The Stand Down will help connect homeless veterans with medical care, food, shelter and programs to assist with accessing housing and veteran's benefits.

Two part-time homeless veteran outreach specialists will support this effort with a year-round pilot project.



11/9/2014 13

ACTIVITIES IN 2014-15

OUTREACH

An outreach campaign is underway to reach Veterans and their families who may not be aware of the free services offered by the CVSO who will assist them in receiving any or all of the benefits they have earned.

This project includes outreach focused on veterans in long term care facilities who may not be connected to additional benefits that could help them afford their needed level of care.

And, As a result of an investment by the Board, we will be doing targeted outreach to Veterans during the homeless count to identify them and their needs.

11/9/2014 14

MUCH MORE WORK TO DO . . .

- **EMPLOYMENT:** Veterans in Oregon experience unemployment rates that are higher than the nation average for veterans, and are higher than the rate for non-veterans in Oregon
- **SUICIDE PREVENTION:** Veterans in Oregon are twice as likely to die of suicide compared to non-veterans.
- **MENTAL HEALTH STIGMA:** The stigma associated with mental health problems is a serious barrier to veterans accessing needed services.
- **TRAUMA:** Female veterans experience unique health and mental health concerns, including the impact of military sexual trauma
- **HOMELESSNESS:** The majority of homeless veterans identified during the 2013 homeless count reported having a disability.

11/9/2014 15

PLEASE CONTACT THE CVSOs!

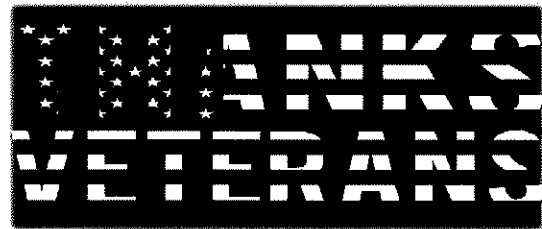
- **CVSO Location** Public Services Building, 2nd Floor
2051 Kaen Road, Oregon City
Monday – Thursday
7 a.m. to noon
1 p.m. to 5 p.m.
- **Phone** 503-650-5631
- **Email** veterans@clackamas.us
- **Website** <http://www.clackamas.us/socialservices/veterans.html>

11/9/2014 16

PLEASE CONTACT THE CLACKAMAS VETERANS WORKFORCE PROGRAM!

- **Community Solutions Location:** 112 11th St.
Oregon City
Monday – Thursday
7:30 a.m. to 5pm
- **Phone** 503-650-8914
- **Email** RPalma@clackamas.us
- **Website** <http://www.clackamas.us/communitysolutions/employment.html>

11/9/2014 17



11/9/2014 18



COPY

2

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

**Board Order and Public Hearing Forming a Three Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
26-13 Portland to Milwaukie Light Rail Project**

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule D; the current rate for this schedule is \$1.21 per frontage foot per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Safety Impact	Street lighting helps to improve public safety.
Duration	None
Previous Board Contact	None
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering – 503-742-4657
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current address as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 6, 2014, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendi Coryell', written over a horizontal line.

Wendi Coryell, Service District Specialist, CCSD#5

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

In the Matter of the Formation
of an Assessment Area 26-13
(Portland to Milwaukie Light Rail Project)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 26-13, Portland to Milwaukie Light Rail Project, 2735, 2650 & 2750 SE Park Ave., have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2014-66 and subsequent rate change Orders shall be applied to Assessment Area 26-13, Portland to Milwaukie Light Rail Project, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule D: \$1.21 per frontage foot per tax lot each year, applied to commercial, industrial, and multi-family residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by ORS 451.495, and that said public hearing was duly held on the 6th day of November, 2014, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

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

In the Matter of the Formation
of an Assessment Area 26-13
(Portland to Milwaukie Light Rail Project)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 26-13 All lots in the Portland to Milwaukie Light Rail Project
development, 21E01BC00100, 21E01BA03300 and 09800; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

ADOPTED this 6th day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary



3

COPY

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

**Board Order and Public Hearing Forming a 15-Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
02-14 Ashlee Meadows 15-Lot Subdivision**

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule C; the current rate for this schedule is \$67.82 per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Safety Impact	Street lighting helps to improve public safety.
Duration	None
Previous Board Contact	None
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering – 503-742-4657
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current address as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 6, 2014, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendi Coryell', written over a faint circular stamp or watermark.

Wendi Coryell, Service District Specialist, CCSD#5

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

In the Matter of the Formation
of an Assessment Area 02-14
(Ashlee Meadows 15-Lot Subdivision)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 02-14, Ashlee Meadows 15-Lot Subdivision, 13989 SE 139th Ave., have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2014-66 and subsequent rate change Orders shall be applied to Assessment Area 02-14, Ashlee Meadows 15-Lot Subdivision, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule C: \$67.82 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by ORS 451.495, and that said public hearing was duly held on the 6th day of November, 2014, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

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

In the Matter of the Formation
of an Assessment Area 02-14
(Ashlee Meadows 15-Lot Subdivision)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 02-14 All lots in the Ashlee Meadows 15-Lot Subdivision
development, 22E02DA02800; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

ADOPTED this 6th day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary



COPY

M. BARBARA CARTMILL
DIRECTOR

4

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 127-Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
09-14 Rock Creek Meadows 127-Lot Subdivision

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule R; the current rate for this schedule is \$253.95 per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Safety Impact	Street lighting helps to improve public safety.
Duration	None
Previous Board Contact	None
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering – 503-742-4657
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current address as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 6, 2014, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendi Coryell', written in a cursive style.

Wendi Coryell, Service District Specialist, CCSD#5

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

In the Matter of the Formation
of an Assessment Area 09-14
(Rock Creek Meadows 127-Lot Subdivision)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon

ORDER NO:
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 09-14, Rock Creek Meadows 127-Lot Subdivision, 13E31D 1501, 1700, 1800, and 1801, have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2014-66 and subsequent rate change Orders shall be applied to Assessment Area 09-14, Rock Creek Meadows 127-Lot Subdivision, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

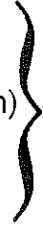
Rate Schedule R: \$253.95 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by ORS 451.495, and that said public hearing was duly held on the 6th day of November, 2014, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

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

In the Matter of the Formation
of an Assessment Area 09-14
(Rock Creek Meadows 127-Lot Subdivision)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 09-14 All lots in the 127-Lot Subdivision development,
13e31d 1501, 1700, 1800; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

ADOPTED this 6th day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary



CC COPY

M. BARBARA CARTMILL
DIRECTOR

5

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 13-Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
35-14 Siri Hills 13-Lot Subdivision

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule H; the current rate for this schedule is \$88.86 per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Safety Impact	Street lighting helps to improve public safety.
Duration	None
Previous Board Contact	None
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering – 503-742-4657
Contract No.	None

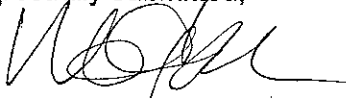
BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current address as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 6, 2014, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendi Coryell', written over a horizontal line.

Wendi Coryell, Service District Specialist, CCSD#5

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

In the Matter of the Formation
of an Assessment Area 35-14
(Siri Hills 13-Lot Subdivision) Within
Clackamas County Service District No. 5,
Clackamas County, Oregon



ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 35-14, Siri Hills 13-Lot Subdivision, 16490 SE Siri Loop, have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2014-66 and subsequent rate change Orders shall be applied to Assessment Area 35-14, Siri Hills 13-Lot Subdivision, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule H: \$88.86 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by ORS 451.495, and that said public hearing was duly held on the 6th day of November, 2014, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

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

In the Matter of the Formation
of an Assessment Area 35-14
(Siri Hills 13-Lot Subdivision) Within
Clackamas County Service District No. 5,
Clackamas County, Oregon



ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 35-14 All lots in the Siri Hills 13-Lot Subdivision development,
23E07CB05100; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

ADOPTED this 6th day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary



COPY

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 12-Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
36-14 Mountain Gate II 12-Lot Subdivision

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule H; the current rate for this schedule is \$88.86 per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Safety Impact	Street lighting helps to improve public safety.
Duration	None
Previous Board Contact	None
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering – 503-742-4657
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current address as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 6, 2014, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendi Coryell', written over a horizontal line.

Wendi Coryell, Service District Specialist, CCSD#5

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

In the Matter of the Formation
of an Assessment Area 36-14
(Mountain Gate II 12-Lot Subdivision)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 36-14, Mountain Gate II 12-Lot Subdivision, 12E35BD02900, 03000 and 03300 have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2014-66 and subsequent rate change Orders shall be applied to Assessment Area 36-14, Mountain Gate II 12-Lot Subdivision, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule H: \$88.86 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by ORS 451.495, and that said public hearing was duly held on the 6th day of November, 2014, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

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

In the Matter of the Formation
of an Assessment Area 36-14
(Mountain Gate II 12-Lot Subdivision)
Within Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 36-14 All lots in the Mountain Gate II 12-Lot Subdivision,
12E35BD02900, 03000, 03300; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

ADOPTED this 6th day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary



COPY

7

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a One Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
37-14 Black Rock Coffee Store

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule D; the current rate for this schedule is \$1.21 per frontage foot per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Safety Impact	Street lighting helps to improve public safety.
Duration	None
Previous Board Contact	None
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering – 503-742-4657
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current address as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 6, 2014, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendi Coryell', written in a cursive style.

Wendi Coryell, Service District Specialist, CCSD#5

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

In the Matter of the Formation
of an Assessment Area 37-14
(Black Rock Coffee Store) Within
Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 37-14, Black Rock Coffee Store, 10910 SE 82nd Ave., requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2014-66 and subsequent rate change Orders shall be applied to Assessment Area 37-14, Black Rock Coffee Store, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule D: \$1.21 per frontage foot per tax lot each year, applied to commercial, industrial, and multi-family residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by ORS 451.495, and that said public hearing was duly held on the 6th day of November, 2014, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

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

In the Matter of the Formation
of an Assessment Area 37-14
(Black Rock Coffee Store) Within
Clackamas County Service District
No. 5, Clackamas County, Oregon



ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 37-14 All lots in the Black Rock Coffee Store, 12E33BB00903;
and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

ADOPTED this 6th day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary

November 6, 2014

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a renewal Revenue Participating Provider Service Agreement with
PacificSource to provide primary care and behavioral health services

Purpose/Outcomes	Provide primary care and mental health services to referred persons to Clackamas County Health Centers.
Dollar Amount and Fiscal Impact	This is a revenue contract. No contract maximum. Revenue depends on number of referred persons.
Funding Source	This revenue agreement is funded by fee for services. No County General Funds are involved.
Safety Impact	None
Duration	Effective December 1, 2014 and terminates on November 30, 2015. This agreement auto renews for 1 year terms unless terminated.
Previous Board Action	The last Board action was August 8, 2013, Agenda item 080113-A2
Contact Person	Deborah Cockrell – 503-742-5495
Contract No.	6976

BACKGROUND:

The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of a Revenue Participating Provider Service Agreement with PacificSource. CCHCD has been working with local High Schools to establish health centers located at the High Schools to promote access to health care for the students.

CCHCD is the medical sponsor for Canby, Oregon City, and Sandy High School's – School Based Health Centers (SBHC). CCHCD provides primary care services to referred persons, primarily at the SBHC, however, care may be given at any of the County's Health Centers. This agreement enables CCHCD to register our medical staff with the insurance company and allows CCHCD to bill for services.

This contract is effective December 1, 2014 and continues through November 30, 2015. This contract has been reviewed by County Counsel on October 21, 2014.

RECOMMENDATION:

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

Respectfully submitted,



Cindy Becker, Director



Contract # 6976 PARTICIPATING PROVIDER SERVICE AGREEMENT

THIS AGREEMENT is entered into as of this 1st day of **December, 2014** (hereinafter referred to as the Effective Date) by and between **PacificSource Health Plans** (hereinafter referred to as PacificSource), an Oregon non-profit corporation, and **Clackamas County acting by and through its Health, Housing and Human Services Department, Health Centers Division**, (hereinafter referred to as **Provider**).

RECITALS

- A. PacificSource is a healthcare service contractor, which currently contracts for the provision of comprehensive healthcare services for its Members enrolled in various Benefit Plans.
- B. PacificSource wishes to contract for the provision of certain healthcare services to its Members by entering into service agreements with various healthcare providers.
- C. Provider desires to enter into a service agreement with PacificSource for the provision of certain covered services to PacificSource Members.
- D. PacificSource has several wholly owned subsidiaries, including one that is a Medicare Advantage Organization contracted with the Centers for Medicare and Medicaid Services ("CMS") to offer Medicare Advantage health insurance products.
- E. PacificSource and Provider mutually desire to enter into an agreement to provide PacificSource Members with Health Benefit Plans that are committed to high quality, cost effective care and service, positive patient outcomes, and Member satisfaction.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Provider does hereby agree as follows:

AGREEMENTS

I. DEFINITIONS

- 1.1 "Ancillary Medical Services" shall mean those Covered Services necessary to the diagnosis and treatment of Members, including, but not limited to, ambulance, ambulatory or day surgery, durable medical equipment, imaging services, laboratory, pharmacy, physical or occupational therapy, urgent or Emergency care, and other Covered Services customarily deemed ancillary to the care furnished by Primary Care or Specialist Physicians.
- 1.2 "Benefit Plan" shall mean the Covered Services, Copayments, Coinsurance and Deductible requirements, and limitations and exclusions contained in the contract between PacificSource and a Member or Subscriber Group.

- 1.3 "Claim" shall mean a statement prepared by a Physician, Provider or other Participating Provider for the purpose of completely itemizing all services and treatments provided to, and identifying all diagnoses for, a Member.
- 1.4 "Clean claim" means a claim that complies with any and all regulatory requirements, and contains no defect or impropriety, such as a lack of any required substantiating documentation, or particular circumstances requiring special treatment that prevents timely payments from being made on the claim under this section.
- 1.5 "Coordination of Benefits" shall mean the determination of whether Covered Services provided to a Member will be paid for, either in whole or in part, under any other private or government health benefit plan or any other legal or contractual entitlement, including, but not limited to, a private group indemnification or insurance program.
- 1.6 "Copayment," "Coinsurance," and "Deductible" shall mean any portion of the allowed amount charged to a Member that is provided for in PacificSource's contracts with Subscriber Groups or individuals.
- 1.7 "Covered Services" shall mean those Medically Necessary healthcare services and supplies which are within Provider's license and scope of practice, which Provider routinely provides, and which a Member is entitled to receive from PacificSource pursuant to the applicable Benefit Plan.
- 1.8 "Dependent" shall mean a person who is enrolled in and covered under PacificSource on the basis of that individual's family relationship with a Subscriber, in accordance with the provisions of the applicable contract between PacificSource and an individual or a Subscriber Group.
- 1.9 "Emergency" shall mean a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the failure to receive immediate medical attention could be reasonably expected to place the health of a person, or a fetus in the case of a pregnant woman, in serious jeopardy.
- 1.10 "Emergency Services" shall mean those Covered Services that are Medically Necessary to treat Emergency conditions.
- 1.11 "Health Facility" shall mean those Providers, including, but not limited to, hospitals, skilled nursing facilities, ambulatory surgery centers or home health agencies.
- 1.12 "Medically Necessary" shall mean those services that PacificSource determines, through its professional review process, are (i) appropriate for the symptoms and diagnosis or treatment of a Member's medical condition, (ii) provided for the diagnosis, or the direct care and treatment of that medical condition, (iii) provided in accordance with standards of good medical practice, (iv) not primarily for the convenience of the Member or the Member's provider of care and (v) the most appropriate level of service that can be safely provided to the Member. PacificSource may retroactively deny or adjust payments to any Provider if PacificSource subsequently determines that a service was not Medically Necessary despite any prior determination or authorization given by PacificSource with respect to such service.
- 1.13 "Member" shall mean any PacificSource Subscriber or Dependent as determined by PacificSource in accordance with the applicable eligibility requirements.

- 1.14 "Never Event" shall mean a serious adverse event that is determined by PacificSource to be preventable according to its policies as may be amended from time-to-time, and within the control of the Provider.
- 1.15 "Non-Covered Services" shall mean those services not eligible for coverage under the terms of the applicable Benefit Plan.
- 1.16 "Other Payor" shall mean other payors for healthcare services, including but not limited to PacificSource subsidiaries, self-funded employers, trusts, and governmental entities or authorized contracting agencies or divisions, with whom PacificSource has entered into a contract.
- 1.17 "Out-of-Area" shall mean that area that is outside the Service Area of PacificSource.
- 1.18 "Physician and Provider Manual" shall mean the policies and procedures adopted by PacificSource for the administration of health benefits and the implementation of the terms and conditions of this Agreement, as may be updated and/or amended from time-to-time.
- 1.19 "Participating" shall refer to those Physicians and Providers that have met the credentialing requirements and entered into contracts directly with PacificSource, or that participate indirectly by being a member or contracting with a Participating Individual Practice Association, Medical Group, Physician-Hospital Organization or any other Provider contracting directly with PacificSource to provide Covered Services to Members.
- 1.20 "Physician" shall mean a person duly licensed and qualified to practice medicine or osteopathy in the state where his or her practice is located.
- 1.21 "Preauthorization" shall mean the processes for reviewing and authorizing specific Covered Services as specified in the Physician and Provider Manual.
- 1.22 "Primary Care Practitioner" shall mean the Medical Group Physician or Provider selected by a Member, whose Benefit Plan requires the designation of a Primary Care Practitioner, who shall have the responsibility of providing initial and primary care, and for referring, authorizing, supervising and coordinating the provision of all other Covered Services to the Member in accordance with PacificSource's Quality Assurance and Utilization Management Programs (collectively referred to as "QA/UM Program"). A Primary Care Practitioner may be either a family practitioner, general practitioner, nurse practitioner, internist, pediatrician, obstetrician, gynecologist or other women's healthcare provider as defined or limited by state law, or other Physician or Provider who has otherwise limited his or her practice of medicine to general practice or a Specialist Physician or Provider who PacificSource and Medical Group have mutually agreed to be designated as a Primary Care Practitioner.
- 1.23 "Physician and Provider Complaint and Grievance Procedure" shall mean the system for the receipt, handling, and disposition of Physician and Provider complaints and grievances, as described in the Physician and Provider Manual.
- 1.24 "Provider" shall mean a Health Facility, a vendor or provider of healthcare supplies and equipment, or any healthcare practitioner other than a Physician. To the extent required by applicable law, Providers shall be licensed and/or certified according to federal and/or state law.
- 1.25 "Quality Assurance Program" shall mean the program and processes established by PacificSource, and carried out by PacificSource in cooperation with Providers to monitor, maintain

and improve the quality of services provided to Members, as described in the Physician and Provider Manual.

- 1.26 "Referral" shall mean the process by which the Member's Primary Care Practitioner directs the Member to seek Covered Services from other Physicians and Providers.
- 1.27 "Referral Authorization" shall mean the process by which PacificSource or its designee reviews and authorizes referrals.
- 1.28 "Service Area of PacificSource" shall mean the geographic area defined by the boundaries of the state of Oregon, Idaho, Montana and specific counties in Washington, as modified from time to time by PacificSource.
- 1.29 "Specialist Physician" shall refer to a physician who practices a specialty and who has entered into a written agreement with PacificSource, or any other Participating Provider to provide Covered Services to Members upon Referral.
- 1.30 "Subscriber" shall mean the person who is the primary policyholder and responsible for payment to PacificSource, or whose employment or other status, except for family dependency, is the basis for eligibility for membership in PacificSource.
- 1.31 "Subscriber Group" shall mean the organization, firm, or other entity contracting with PacificSource to arrange for the provision of Covered Services for its employees or members and their Dependents.
- 1.32 "Utilization Management and Review Program" shall mean the programs and processes established and carried out by PacificSource to authorize and monitor the utilization of Covered Services provided to Members, as described in the Physician and Provider Manual.
- 1.33 "Usual and customary charges" means the average amount charged for a specific medical procedure or service in a given geographical area.

II. DUTIES OF PROVIDER

- 2.1 Provision of Covered Services. Provider, in coordination with PacificSource, shall provide or arrange for the provision of Covered Services for Members enrolled in the PacificSource products listed in **Attachment A**. Services will be provided by or referred to Provider or Participating Physicians and Providers unless such services are not available from Provider or Participating Physicians and Providers (see Section 2.9). Nothing in this Agreement shall require Provider to directly provide or contract for all Covered Services and the practitioners may freely communicate with patients about their treatment, regardless of the benefit coverage limitations.
- 2.2 Provision of Services for Other Payors. Pursuant to each agreement with any Other Payor, Provider shall provide Covered Services to the members or beneficiaries of that Other Payor pursuant to and in accordance with the provisions of this Agreement.
- 2.3 Standard of Care. Provider shall comply with all applicable federal and state laws, licensing requirements, and professional standards, and shall provide or arrange for the provision of Covered Services in accordance with generally accepted medical and surgical practices and standards prevailing in the applicable professional community at the time of treatment, and in conformity with the law of the state in which the Provider is licensed.

- 2.4 Credentialing and Re-Credentialing. Provider shall comply with any and all credentialing and re-credentialing policies adopted by PacificSource, as may be revised or modified from time-to-time, and shall cooperate with any and all credentialing and re-credentialing activities which PacificSource may undertake. Failure to comply with such policies and/or cooperate with such activities is a material breach of this Agreement. Provider shall provide PacificSource with a copy of its credentialing plan, and, upon request by PacificSource, supply evidence of any or all Physician and Provider licensure.
- 2.5 Primary Care Practitioner. PacificSource shall, at time of enrollment in a plan requiring a Primary Care Practitioner, require Members to select a Primary Care Practitioner. Upon selection and notification, the Primary Care Practitioner shall assume responsibility for coordinating, supervising, and monitoring the Members' overall healthcare, subject to the terms of this Agreement. Providers, who act as a Primary Care Practitioner or who have Primary Care Practitioners under this Agreement, agree to notify PacificSource in writing at least thirty (30) days in advance of the date that Provider or one of its Primary Care Practitioner will close medical practice to new patients or terminate the relationship with Provider.
- 2.6 Physician and Provider Licensure and Medical Staff Privileges. Provider warrants and represents as a material term of this Agreement that all Providers under this Agreement are, and will continue to be as long as this Agreement remains in effect, holders of a valid, current, and unrestricted license to practice medicine or osteopathy in the state(s) where the Physician or Provider cares for PacificSource's Members. Providers are members in "good standing" of the medical staff of one or more contracted hospitals, if applicable. Provider further warrants and represents as a material term of this Agreement that Provider is, and will continue to be as long as this Agreement remains in effect, licensed to provide their respective services hereunder as required pursuant to applicable law. Provider agrees to comply with all policies, procedures and standards as detailed in the Physician and Provider Manual. In the event that a Physician or Provider is found guilty of a criminal offense or acts contrary to this Agreement, the Physician or Provider shall immediately discontinue providing services to PacificSource Members. Nothing in this Agreement shall prohibit a Physician or Provider while using the degree of care, skill, and diligence which is used by ordinarily careful physicians or providers in the same or similar circumstances in the physician's or provider's community, from advocating a decision, policy or practice without being subject to termination or penalty for the sole reason of such advocacy.
- 2.7 Facilities, Equipment and Personnel. Provider shall provide and maintain sufficient facilities and equipment, and shall provide sufficient personnel and administrative services, including any training that may be necessary, to perform the duties and responsibilities set forth in this Agreement.
- 2.8 Accessibility and Hours of Service. Provider shall provide or arrange for the provision of Covered Services to Members on a readily available and accessible basis, including, but not limited to, during normal business hours at the usual place of business of Provider. Emergency Covered Services and access to Provider by telephone shall be available and accessible to Members on a twenty-four (24) hour, seven (7) day a week basis. Provider shall arrange for an appropriate call schedule to provide for such availability and accessibility of services.
- 2.9 Nondiscrimination. Provider shall not differentiate or discriminate in its provision of Covered Services to Members because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age or for any reason or purpose prohibited by applicable federal or state law. Provider shall make available Covered Services to Members in the same manner, in accordance with the same standards, and within the same time availability as offered to non-Member patients.

Nothing in this Agreement shall prohibit Provider from withdrawing from the care of a patient when, in his or her professional judgment, it is in the best interest of the patient to do so.

- 2.10 Referrals. Provider shall refer Members only to Participating Physicians and Providers for the provision of Covered Services except in cases of Emergencies or if no Participating Physician or Provider is available to perform the appropriate Covered Service. Provider shall make all other Referrals for Covered Services to Participating Physicians and Providers in accordance with PacificSource's Referral authorization policies as well as its Quality Assurance and Utilization Management Programs. PacificSource must approve Referrals to nonparticipating Physicians or Providers.
- 2.11 Member Medical Records. Provider shall establish and maintain a medical record for each Member. Each Member's medical record shall be opened upon the Member's first visit to Provider. The record shall contain that information normally included in accordance with generally accepted medical and surgical practices and standards prevailing in Provider's professional community. Provider shall facilitate the sharing of medical information with other Physicians and Providers in cases of authorized Referrals. Provider shall make records available to appropriate State or Federal authorities as required under applicable law. Subject to applicable Federal and State laws and professional standards regarding the confidentiality of medical records, Provider shall make available at no charge to PacificSource records that are necessary for coordination of benefits, quality assurance, utilization review, third party claims administration, underwriting, preexisting conditions investigations, and benefits administration.
- 2.12 Physician and Provider Complaint and Grievance Procedures. Provider shall comply with the complaint and grievance procedures established by PacificSource, which may be revised or modified from time-to-time, as described in the Physician and Provider Manual. PacificSource shall have the option to deduct any claims cost related to resolution of any such dispute, where it is determined the service is a Non-Covered Service or not Medically Necessary, from the compensation payable to Provider per this Agreement.
- 2.13 Prescriptions. Subject to generally accepted medical and surgical practices and standards prevailing in Provider's professional community, Provider shall comply with any drug formularies and policies regarding the prescription of generic or lowest cost alternative brand name pharmaceuticals adopted by PacificSource, and shall recognize the authority of pharmacists to substitute generic drugs for trade name drugs consistent with federal and/or state law.
- 2.14 Prior Authorizations. Provider shall comply with the prior authorization process as detailed in the Physician and Provider Manual, as may be amended or updated from time-to-time. Failure to follow the prior authorization process may result in the services being deemed Non-Covered Services.
- 2.15 Identification of Provider. Provider shall provide PacificSource with the identifying information set forth in **Attachment B** with respect to each Provider. Provider shall use its best efforts to notify PacificSource promptly and in advance of any change in this information or of the addition or termination of a Provider. Provider agrees that PacificSource may list the name, address, telephone number and other identifying information of Provider in PacificSource publications furnished to Physicians and Providers, Members and Subscriber Groups, and may identify Provider as a PacificSource Participating Provider in advertising and marketing materials.
- 2.16 Promotional Materials. Provider agrees to display promotional materials provided by PacificSource and approved by Provider in Provider's office.

- 2.17 Out-of-Area Transfers. For any Member who has selected Provider as his or her Primary Care Practitioner, but is receiving Emergency or other authorized care from non-Participating Hospitals, Physicians or Providers, Provider shall assist PacificSource in facilitating the transfer of that Member to a Participating Hospital. The Participating Hospital must be one in which the Member's attending Physician or Provider, or another suitable Participating Physician or Provider, as determined medically acceptable by Provider and the attending Physician or Provider subject to review by the PacificSource Medical Director, has medical staff privileges.
- 2.18 Physician and Provider Agreements. Provider shall require that all Physicians and Providers, either employed, sub-contracted, or a member if the Provider is acting as a IPA, or PHO, comply with the applicable terms and conditions of this Agreement by entering into a written participation agreement which shall include, but shall not be limited to, the following provisions:
- a. Accepting Members for care subject to the Nondiscrimination provisions specified in Section 2.8;
 - b. Accepting, as payment in full, (less Copayments, Coinsurance and Deductibles), all applicable reimbursement arrangements, including, but not limited to, capitation, discounted rates and/or acceptance of a withhold from usual, customary and reasonable charges, agreed to by Provider;
 - c. Hospitalizing Members for Non-Emergency Covered Services only in accordance with the admission approval procedures set forth in PacificSource's Utilization Management Program;
 - d. Maintaining in force professional liability insurance in accordance with the standards established by Provider and Article VI of this Agreement;
 - e. Complying with and accepting as final the decisions of the PacificSource Quality Assurance and Utilization Management Programs, as applicable and in consideration to PacificSource's appeal and grievance procedures;
 - f. Following the procedures established by PacificSource for verifying eligibility of Members and authorizing Covered Services;
 - g. Providing and maintaining sufficient facilities, equipment, personnel, and services to provide specified Covered Services to Members on a readily available and accessible basis;
 - h. Complying with all applicable federal and state laws, licensing requirements, and professional standards and providing Covered Services in accordance with generally accepted medical and surgical practices and standards prevailing in the applicable professional community at the time of treatment;
 - i. Resolving disputes and controversies in accordance with the provisions of Article VIII of this Agreement;
 - j. Provider shall provide to PacificSource, without charge, copies of such executed agreements or such other documentation at PacificSource's request; and
 - k. Provider shall require all Physicians and Providers to comply with the termination procedures described in this Agreement and the Physician and Provider Manual.
- 2.19 Coordination of Benefits and Subrogation. Provider agrees that the procedures used for Coordination of Benefits shall be in conformity with the applicable Subscriber Group Contract, the PacificSource Physician and Provider Manual, and applicable law.
- 2.20 Physician and Provider Manual. PacificSource shall make available a copy of the Physician and Provider Manual to Provider, which will be modified from time to time by PacificSource, and Provider agrees to regularly review and abide by the terms thereof.
- 2.21 Bill Review. Provider agrees to cooperate with any requests by PacificSource, or its agent to review any claims or bills submitted by Provider to determine whether a bill submitted for a

Covered Service rendered to a Member covered by a Benefit Plan, and subject under this Agreement, was properly billed relative to the services provided (as reflected on the medical record), and that payments made to Provider were accurate, in accordance with the terms and conditions set forth herein.

2.22 Attachments Made Part of Agreement. Provider shall provide the following administrative services marked with an "X" below. If an administrative service is not indicated by an "X," it will not be included as part of this Agreement:

- Physician and/or Provider Information per **Attachment B**;
- Physician and/or Provider Credentialing per **Attachment C**;
- Referral Authorization per **Attachment D**.

III. DUTIES OF PACIFICSOURCE

3.1 Administrative Services. PacificSource shall provide Physician and Provider relations services, including: (i) providing orientation and education programs to train Physician and Providers and their office staff in the use of the administrative services described herein and in the Physician and Provider Manual; (ii) the maintenance of a Physician and Provider Complaint and Grievance Procedure; and (iii) unless otherwise noted in Section 2.21, provider credentialing services; unless otherwise indicated in Section 2.21, all Referral Authorization services; and claims and benefit administration services, including third party and Coordination of Benefit administration.

3.2 Final Medical and Mental Health Decisions. A doctor of medicine or osteopathy shall be retained by PacificSource and shall be responsible for all final medical and mental health decisions relating to coverage or payment made by PacificSource pursuant to the dispute procedures listed in Section VII, Dispute Resolution and/or Section 2.12, Physician and Provider Complaint and Grievance Procedures of this Agreement, or for Washington State providers, Sections IX, Grievance Procedure, or Dispute Resolution of the Washington Addendum.

IV. COMPENSATION

4.1 Billing. Provider agrees to submit billings to PacificSource directly for services and supplies rendered not later than three hundred and sixty five (365) days after services are provided and using current industry standard forms or in an electronic mode. Provider will submit billings, including full itemizations for charges (using current industry standard coding methods, when applicable), dates of service, and billing PacificSource as secondary insurance, when applicable. Additionally, Provider shall insure that the amount billed to PacificSource is the same amount that would be billed to the general public and to other payors. Provider also agrees that claims received more than three hundred and sixty five (365) days from the date of service will not be reimbursed by PacificSource or Member.

4.2 Utilization Management Program. As a condition for payment for Covered Services, Provider agrees to participate in and comply with the QA/UM Program utilized by PacificSource to promote the efficient use of resources. Provider shall comply with and, subject to Provider's right to appeal as provided in this Agreement and described in the Physician and Provider Manual and as subject to change from time-to-time, be bound by such QA/UM Program. Failure by Provider to comply with the requirements of this paragraph shall be deemed a material breach of this Agreement.

4.3 Compensation. Except as otherwise provided for in this Agreement, PacificSource shall pay Provider according to the terms set forth in **Attachment A**. Compensation shall be considered payment in full for Covered Services, except for Copayments, Coinsurance, Deductibles, or amounts due as a result of Coordination of Benefits or other third party liability. Any modifications

to **Attachment A** shall be attached to this Agreement by written amendment, pursuant to Section 9.1.

- a. PacificSource shall make payment to Provider according to the provisions of this Agreement within thirty (30) days of receiving a Clean Claim, unless additional time is permitted by statute or administrative rule. PacificSource shall make interest payments when required by applicable state law. Provider acknowledges that some Other Payors may not be subject to interest payments and that interest payments will be limited to those required by applicable state law.
- b. To the extent that any payment(s) for Covered Services under the terms of this Agreement are based, either in whole or in part, on funds obtained from any state or federal program, of any nature, those payments are subject to modification as a result of any change in state or federal law, rule, regulation, or Executive Order.

4.4 Member Non-Liability. Provider shall look solely to PacificSource for compensation for Covered Services. Provider, or other designee or agent of Provider, shall not attempt to collect from Members any sums owed to Provider by PacificSource, notwithstanding the fact that either party fails to comply with the terms of this Agreement. Provider further agrees that if PacificSource determines that a Covered Service was not Medically Necessary, or that Covered Services are provided outside of generally accepted treatment protocols, Provider shall not attempt to collect from Member or PacificSource any sums deemed not reimbursable by PacificSource.

4.5 Member Hold Harmless. Pursuant to applicable state law, Provider and all providers and facilities subcontracted with Provider agree that in no event, including but not limited to nonpayment by PacificSource, PacificSource insolvency, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, payment or reimbursement from, or have any recourse against a Member or person (other than PacificSource) acting on Member's behalf for services pursuant to this Agreement or for Covered Services where payment is denied because Provider failed to comply with the terms of this Agreement. This provision shall not prohibit collection from Members of amounts due for Copayments, Deductibles, Coinsurance, and Non-Covered Services under the applicable health policy, which has not otherwise been paid by a primary or secondary carrier according to the terms of this Agreement. Provider agrees, in the event of PacificSource's insolvency, to continue to provide the services promised in this Agreement to Members for the duration of the period for which premiums on behalf of the Member were paid to PacificSource or until the Member's discharge from inpatient facilities, whichever time is greater. The provisions of this section shall survive termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of Members. This provision shall also supersede any oral or written contrary agreement now existing or henceforth entered into between Provider and Members or persons acting on a Member's behalf.

4.6 Never Events. Provider agrees not to seek payment from either PacificSource or Member for costs resulting from a Never Event.

4.7 Payment for Non-Covered Services. Provider may seek payment directly from or on behalf of Members for Non-Covered Services.

4.8 Copayments, Coinsurance and Deductibles. Provider shall be responsible for the collection of applicable Copayments, Coinsurance and Deductibles from or on behalf of Members.

- 4.9 Overpayment / Underpayment. Provider agrees that PacificSource may deduct from any payment owed to Provider, any overpayments received due to error, improper billing, Coordination of Benefits or third party payment, which results in duplicate or excessive payment for Covered Services. PacificSource will provide written notification to Provider of such credit. All requests for a refund of an overpayment(s) or payment of amounts believe to be underpaid, by either Party, shall be paid in accordance with applicable State and/or Federal law and regulations as detailed in the Physician and Provider Manual, as updated from time to time. A copy of the Manual is available on the web at www.pacificsource.com. Applicable state law is determined based on the location where services are provided.
- 4.10 Member's Benefit Plan. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to modify the rights and benefits contained in the Member's Benefit Plan. The provisions in this section shall survive termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for benefit of Members.

V. INSURANCE

- 5.1 PacificSource Liability Insurance. PacificSource, at its sole cost and expense, shall procure and maintain such policies of general liability, professional liability, and other insurance as shall be necessary to insure it and its employees, contractors, agents, shareholders, directors, and officers against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of or failure to perform any services required and provided hereunder.
- 5.2 Physician and Provider Liability Insurance. Provider, at its sole cost and expense, shall procure and maintain such policies of general liability, professional liability, and other insurance as shall be necessary to insure it and its employees, contractors, agents, shareholders, directors, and officers against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of or failure to perform any services required and provided hereunder. Provider further agrees to require each Provider that may provide Covered Services on its behalf, to procure and maintain, at Provider's expense, appropriate general and professional liability insurance coverage as specified in the Physician and Provider Manual. Provider shall provide PacificSource evidence of the required coverage upon request and shall give PacificSource not less than fifteen (15) days' advance written notice of any cancellation, reduction, or other material change in the amount or scope of such coverage. Such coverage maybe provided through a self-insurance program.

VI. TERM AND TERMINATION

- 6.1 Term of Agreement. The term of this Agreement shall be for one (1) year beginning on the Effective Date and shall automatically renew for successive one (1) year terms, unless terminated as set forth in this Agreement. Any modification of the rates and/or arrangements reflected in this Agreement must be in compliance with Section 8.1.
- 6.2 Termination.
- a. With Cause. Either Party may terminate this Agreement for cause by giving ninety (90) days prior written notice to the other Party. Provider is entitled to those rights of appeal as described in PacificSource's Provider Termination Appeal Policy outlined in the Physician and Provider Manual.
 - b. Without Cause. Either Party may termination this Agreement without cause by giving a hundred and twenty days (120) prior written notice to the other Party. Provider is entitled to

those rights of appeal as described in PacificSource's Provider Termination Appeal Policy and the Physician and Provider Manual.

- 6.3 Transfer of Records. In the event of termination of this Agreement, Provider shall submit to PacificSource, or its designee, such information and records, or copies thereof, as PacificSource may request concerning its Members.

VII. DISPUTE RESOLUTION

- 7.1 Dispute Resolution. Controversies between Provider and PacificSource shall be resolved, to the extent possible, by informal meetings and discussions in good faith between appropriate representatives of the Parties.
- 7.2 Arbitration. In the event the Parties are unable to resolve the controversy, the parties hereto agree to submit any dispute under this Agreement to binding arbitration in Eugene, Oregon, in accordance with the rules of procedure and evidence then in effect as adopted by the Arbitration Service of Portland. The prevailing party in the action shall be entitled to payment of its attorneys' fees and costs.

VIII. GENERAL PROVISIONS

- 8.1 Amendment. Except as otherwise provided herein, this Agreement and its Attachments may be amended at any time during the term of this Agreement by PacificSource with sixty (60) days prior written notice to Provider. Provider shall have sixty (60) days from the date of such notice in which to object to the amendment by giving written notice of such objection to PacificSource. When PacificSource receives the objection it may, at its sole option, withdraw the amendment and notify Provider that the amendment has been withdrawn. If the amendment is not withdrawn, PacificSource shall notify Provider that the amendment has not been withdrawn and the amendment shall become effective as outlined. If Provider does not withdraw the objection, Provider may terminate this Agreement by providing a 90 day written notice to PacificSource, which shall be in compliance with Section 8.6. Failure by Provider to provide written notice to PacificSource shall constitute Provider's acceptance of said amendment. Except as provided above, any other amendment or modification of this Agreement shall be in writing and executed by each party hereto. Any provision of an amendment, addendum or exhibit, which conflicts with any provision of this Agreement, shall take precedence and supersede the conflicting provision(s) of this Agreement. The applicable amendment(s), addendum(s) and exhibit(s) together with this Agreement, shall constitute the Agreement of the parties.
- 8.2 Confidentiality. Except to the extent that state or federal law requires disclosure, all information pertaining to the provisions of services under the Agreement will be treated in a confidential manner, and in compliance with state and federal laws. This applies to the following types of information: patient-specific information, the financial terms of the Agreement, or statistical reports shared between the parties to this Agreement.
- 8.3 Waiver. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.
- 8.4 Governing Law. This Agreement shall be governed in accordance with the laws of the State of Oregon. Any claim, action, or suit between the parties that arises out of or relates to performance of this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon.

Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District court for the District of Oregon.

- 8.5 Non-Assignment. Except as provided in this Agreement for Other Payors, this Agreement shall not be assigned, delegated, or transferred by either party without the written consent of the other party. Any assignment, delegation, or transfer without prior written approval shall be void.
- 8.6 Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be delivered by hand or sent by certified mail, return receipt requested, postage prepaid, to PacificSource or Provider at their respective addresses set forth on the signature page hereof or as otherwise designated in writing from time to time by the Parties; provided, however, that notice to Idaho based Providers for the purposes identified in 41-1847, Idaho Code, as allowed in this Agreement for Other Payors, shall be sent electronically.
- 8.7 Hold Harmless. The Parties agree to indemnify and hold each other harmless from and against any and all claims or suits, losses, damages, liabilities, judgments, expenses, attorney fees, and court costs in any way arising out of services or supplies that they render hereunder. In the event of alleged improper medical treatment of a Member, Provider agrees to indemnify and hold PacificSource harmless as provided in this Section 8.7.
- 8.8 Independent Entities. None of the provisions of this Agreement are intended to create, be deemed or construed to create any relationship between the parties hereto other than that of independent entities or persons contracting with each other hereunder solely for the purpose of effecting the provisions of the Agreement. Neither of the parties hereto, nor any of their respective agents or employees, shall be construed to be the agent, employee or representative of the other.
- 8.9 Severability. If any provision of this Agreement is declared invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired, and the parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that reflects the original intentions of the parties as nearly as possible in accordance with applicable law.
- 8.10 Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.
- 8.11 Continuity of Care. It is agreed that when continuity of care is required under the health plan or by applicable law, the parties agree to provide such continuity of care to enrollees as provided in the health plan or applicable law.
- 8.12 Headings. The headings contained in this Agreement are included for purposes of convenience only, and shall not affect in any way the meaning or interpretation of any of the terms or provisions of this Agreement.
- 8.13 Non-Exclusivity. This Agreement is not exclusive, and nothing herein shall preclude either party from contracting with any other person or entity for any purpose. PacificSource makes no representation or guarantee as to the number of PacificSource members who may select or Provider for the purpose of receiving Covered Services.

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

PACIFICSOURCE HEALTH PLANS

CLACKAMAS COUNTY ACTING BY AND THROUGH ITS HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT, HEALTH CENTERS DIVISION

By: _____

By: _____
(Signature)

Peter McGarry

(Print or type name)

Title: Vice President – Provider Network

Title: _____

Date: _____

Date: _____

Address: PO Box 7068
Springfield, OR 97475-0068

Address: 2051 Kaen Road Suite 367
Oregon City, OR 97045

ATTACHMENT A

**Clackamas County acting by and through its Health,
Housing and Human Services Department, Health
Centers Division
Effective 12/01/2014**

These rates shall apply to all PacificSource Commercial Networks and Products

SERVICE/PROCEDURE	MAXIMUM ALLOWABLE
All Professional Services for MD/DO: CPT procedures categorized with an RVU as defined by the Federal Register	\$67.00 RBRVS conversion factor ^{1,2}
Laboratory: As defined by CMS Clinical Diagnostic Laboratory Fee Schedule	110% of CMS allowed for the State of OR ³
Anesthesia: Service or supply with ASA value	\$48.00/unit ASA conversion factor ⁴
Other HCPCS Services/Supplies: All other HCPCS services/supplies	100% of CMS allowed for State of OR ³
Injectables, Vaccines, Immunizations: HCPCS services (J0000 - J9999 and Q0000 - Q9999 codes) Other vaccines & immunizations	106% of ASP allowed ³ 106% of ASP allowed ³
Services and Procedures without an established unit value in the stated version of the Federal Register, ASA Guide, or CMS HCPCS allowable, PacificSource Health Plans may establish such unit values for purposes of its Maximum Allowable rate determination.	PacificSource Fee Allowance (OR) ⁵

Note: Payment will be based upon the lesser of the billed amount or PacificSource negotiated rates in effect at the time the service or supplies are rendered or provided as specified above.

1. This is applicable for professional services performed by MDs and DOs. Services performed by non-MDs and non-DOs will be reimbursed consistent with PacificSource's payment policies, unless specifically noted.
2. RBRVS Relative Value Units (RVUs) as defined and instructed by the Federal Register for use in 2010. Transitional facility and non-facility RVUs shall be used and determined by the setting in which the service occurs.
3. Updates to the ASP and CMS schedules noted above shall be reviewed and updated from time to time.
4. ASA Basic Unit Value and annual updates as defined by the American Society of Anesthesiologists Relative Value Guide. Time units shall be based on fifteen (15) minute increments.
5. PacificSource may utilize The Essential RBRVS publication to supplement codes not established by the above noted methodologies.

ATTACHMENT A-1

**Clackamas County acting by and through its Health,
Housing and Human Services Department, Health
Centers Division
Effective 12/01/2014**

These rates shall apply to all PacificSource Medicare Advantage Networks and Products

SERVICE/PROCEDURE	MAXIMUM ALLOWABLE
All Professional Services CPT procedures categorized with an RVU as defined by the Federal Register	110% of local CMS ^{1,2}
Laboratory: As defined by CMS Clinical Diagnostic Laboratory Fee Schedule	100% of CMS allowed for the State of OR ³
Anesthesia: Service or supply with ASA value	100% of local CMS ⁴
Injectables, Vaccines, Immunizations: HCPCS services (J0000 - J9999 and Q0000 - Q9999 codes) Other vaccines & immunizations	100% of CMS allowed for the State of OR ³ 100% of CMS allowed for the State of OR ³
Other HCPCS Services/Supplies: All other HCPCS services/supplies	100% of CMS allowed for the State of OR ³
Services and Procedures without an established unit value in the stated version of the Federal Register, ASA Guide, or CMS HCPCS allowable, PacificSource Health Plans may establish such unit values for purposes of its Maximum Allowable rate determination.	PacificSource Fee Allowance (OR)

1. Services performed by non-MDs and non-DOs will be reimbursed consistent with CMS payment guidelines.
2. RBRVS Relative Value Units (RVUs) as defined and instructed by the most current Federal Register, facility and non-facility RVUs shall be used and determined by the setting in which the service occurs. Updates shall be in accordance to CMS.
3. Updates to the ASP and CMS schedules noted above shall be updated in accordance to CMS.
4. ASA Basic Unit Value and annual updates as defined by the American Society of Anesthesiologists Relative Value Guide. Time units shall be based on fifteen (15) minute increments.

ATTACHMENT B

Clackamas County acting by and through its Health, Housing and Human Services Department,
Health Centers Division
Effective 12/01/2014

PacificSource Physician and/or Provider Information Requirements

I. In the event that PacificSource is responsible for the credentialing of Physicians and/or Providers, the following information will be necessary to satisfy PacificSource credentialing requirements:

Completed application for each Physician and/or Provider to include:

- Physician or Provider name
- Practice name
- Specialty
- Physical Address
- Billing Address
- Tax Identification number
- DEA Number
- NPI number
- Phone (Appointment/billing)
- Fax number
- Clinical privileges at primary admitting facility
- Current valid license
- Current valid DEA certificate (if applicable)
- Education/training
- Board certification (if applicable)
- Current adequate professional liability coverage
- History of liability claims
- Work history
- Signed, dated PacificSource authorization for information release
- Signed, dated statements attesting to:
 - Lack of ability to perform the essential functions of the position, with or without accommodations
 - Lack of present illegal drug use
 - History of loss of license and/or felony convictions
 - History of loss or limitation of privileges
 - The correctness/completeness of the application

Copies of the following must accompany the application:

- Current valid license
- Valid DEA certificate
- Current professional liability face sheet

Other information needed:

- Date Physician and/or Provider approved

II. In the event that Physician and/or Provider Credentialing Delegation is included in the contract provisions, PacificSource will require the following to satisfy PacificSource credentialing requirements:

Physician and/or Provider demographics to include:

- Physician or Provider name

- Practice name
- Specialty
- Physical Address
- Billing Address
- Tax Identification number
- DEA number
- NPI number
- Phone (Appointment/billing)
- Fax number

Information verification checklist for the following items:

- IPA/Medical Group is **required** to have a file copy of the following:

- current valid DEA certificate (if applicable)
- current adequate malpractice insurance
- work history
- history of liability claims

- Primary Source Verification, including date and initials of staff in charge of verification for the following:

- Current valid license (active & good standing)
- Primary admitting facility (if applicable)
- Education/training (verification necessary only if practitioner is not board certified)
- Board certification (if applicable)
- NPDB (which includes Medicare/Medicaid Sanctions) date queried and date received
- Sanctions - Licensing Board reviewed and date of report

Note: The documentation may be received directly from the institution, or documented oral confirmation from the institution, which includes the date received, name of the person providing the information, and the signature of the person receiving the information



PacificSource Community Health Plans, Inc. Addendum

Clackamas County acting by and through its Health, Housing and Human Services Department,
Health Centers Division
Effective 12/01/2013

Medicare Plan Provisions

This Addendum provides the provisions applicable to Health Plan's Medicare Advantage Plans, whereas PacificSource Community Health Plans, Inc. ("Health Plan") is a Medicare Advantage Organization contracted with the Centers for Medicare and Medicaid Services ("CMS") to offer Medicare Advantage health insurance products and ("Contractor") is contracted with Health Plan to provide certain covered services to Health Plan's Medicare beneficiaries.

CMS requires that specific terms and conditions be incorporated into the Agreement between a Medicare Advantage Organization or First Tier Entity and a First Tier Entity or Downstream Entity to comply with the Medicare laws, regulations, and CMS instructions, including, but not limited to, the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066 ("MMA"); and

Except as provided herein, all other provisions of the Agreement between Health Plan and Contractor not inconsistent herein shall remain in full force and effect. This Addendum shall supersede and replace any inconsistent provisions to such Agreement; to ensure compliance with required CMS provisions, and shall continue concurrently with the term of such Agreement.

NOW, THEREFORE, the parties agree as follows:

Definitions:

Centers for Medicare and Medicaid Services ("CMS"): The agency within the Department of Health and Human Services that administers the Medicare program.

Clean Claim: (1) A claim that has no defect, impropriety, lack of any required substantiating documentation (consistent with § 422.310(d)) or particular circumstance requiring special treatment that prevents timely payment; and (2) A claim that otherwise conforms to the clean claim requirements for equivalent claims under original Medicare.

Unclean Claim: A claim that is not a clean claim.

Completion of Audit: Completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of a Medicare Advantage Organization, Medicare Advantage Organization contractor or related entity.

Contractor: The party that is contracted with Health Plan to provide certain covered services to Health Plan's Medicare beneficiaries. A contractor may be a provider who provides health care services, or a non-provider who provides administrative services.

Downstream Entity: Any party that enters into a written arrangement, acceptable to CMS, with

persons or entities involved with the MA benefit, below the level of the arrangement between an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

Final Contract Period: The final term of the contract between CMS and the Medicare Advantage Organization.

First Tier Entity: Any party that enters into a written arrangement, acceptable to CMS, with Health Plan or applicant to provide administrative services or health care services for a Medicare eligible individual under the Health Plan program.

Health Plan: PacificSource Community Health Plans, Inc.

Medicare Advantage (“MA”): An alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.

Medicare Advantage Organization (“MA Organization”): A public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements.

Member or Enrollee: A Medicare Advantage eligible individual who has enrolled in or elected coverage through a Medicare Advantage Organization.

Provider: (1) Any individual who is engaged in the delivery of health care services in a State and is licensed or certified by the State to engage in that activity in the State; and (2) any entity that is engaged in the delivery of health care services in a State and is licensed or certified to deliver those services if such licensing or certification is required by State law or regulation.

Related Entity: Any entity that is related to the Health Plan by common ownership or control and (1) performs some of the Health Plan’s management functions under contract or delegation; (2) furnishes services to Medicare enrollees under an oral or written agreement; or (3) leases real property or sells materials to the Health Plan at a cost of more than \$2,500 during a contract period.

Required Provisions for Contractor:

Contractor agrees to the following:

1. HHS, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including medical records and documentation of the first tier, downstream, and entities related to CMS’ contract with Health Plan through 10 years from the final date of the final contract period of the contract entered into between CMS and Health Plan or from the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii)]
2. Contractor will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with

applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13) and 422.118]

3. Contractor agrees to not hold enrollees liable for payment of any fees that are the legal obligation of the Health Plan. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]
4. For all enrollees eligible for both Medicare and Medicaid, enrollees will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts. Provider will be informed of Medicare and Medicaid benefits and rules for enrollees eligible for Medicare and Medicaid. Provider may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under title XIX if the individual were not enrolled in such a plan. Provider will: (1) accept Health Plan's payment as payment in full, or (2) bill the appropriate State source. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]. This paragraph does not apply to Contractor who is not a Provider.
5. Any services or other activity performed in accordance with a contract or written agreement by Contractor are consistent and comply with the Health Plan's contractual obligations with CMS. [42 C.F.R. § 422.504(i)(3)(iii)]
6. Health Plan is obligated to pay Provider in accordance to the prompt payment provision for clean claims and unclean claims as contained in the provider agreement. [42 C.F.R. §§ 422.520(b)(1) and (2)]. This paragraph does not apply to Contractor who is not a Provider.
7. Contractor and any related entity, contractor or subcontractor will comply with all applicable Medicare laws, regulations, and CMS instructions. [42 C.F.R. §§ 422.504(i)(4)(v)]
8. As applicable, if Health Plan's activities or responsibilities under its contract with CMS are delegated to any first tier, downstream and related entity:
 - (i) Health Plan and Contractor acknowledge that delegated activities are clearly outlined in the Agreement, or a companion agreement specifying specific services that are delegated and the reporting responsibilities.
 - (ii) CMS and the Health Plan reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where CMS or the Health Plan determines that such parties have not performed satisfactorily.
 - (iii) Health Plan will monitor the performance of the parties on an ongoing basis.
 - (iv) The credentials of medical professionals affiliated with the party or parties will be either reviewed by the Health Plan or the credentialing process will be reviewed and approved by the Health Plan and the Health Plan must audit the credentialing process on an ongoing basis. This paragraph does not apply to Contractor who is not a Provider.

- (v) If the Health Plan delegates the selection of providers, contractors, or subcontractor, the Health Plan retains the right to approve, suspend, or terminate any such arrangement. [42 C.F.R. §§ 422.504(i)(4) and (5)]
- 9. Contractor must comply with Health Plan's policies and procedures.
- 10. Health Plan may only delegate activities or functions to Contractor in a manner consistent with CMS requirements.
- 11. Health Plan and Contractor shall comply with the termination provision contained in the contract, which at a minimum must require both parties to provide a minimum of 60 days written notice to each other before terminating the contract without cause. This paragraph is not applicable if termination without cause is prohibited by the contract.
- 12. Contractor shall complete compliance and fraud, waste and abuse training and review and abide by Health Plan's Standards of Conduct and compliance policies and procedures for all of its current employees at least annually and new employees within 90 days of hire.

In the event of a conflict between the terms and conditions above and the terms of a related agreement, the terms above control.

November 6, 2014

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Professional Services Agreement with
Performance Health Technology, Ltd. for Third Party Claims Administration Services

Purpose/Outcomes	This contractor will act as a third party claims administrator for behavioral health services authorized and funded by capitation funds through Health Share of Oregon.
Dollar Amount and Fiscal Impact	This agreement has no maximum value; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
Funding Source	Health Share of Oregon/Oregon Health Plan – No County general funds are involved.
Safety Impact	None
Duration	Effective July 1, 2014 and terminates on June 30, 2015
Previous Board Action	The previous agreement was approved by the Board of County Commissioners on June 20, 2013 - agenda item 062413-A6
Contact Person	Jill Archer, Director–Behavioral Health Division – (503)742-5336
Contract No.	6929

BACKGROUND:

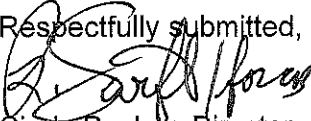
The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Professional Services Agreement with Performance Health Technology, Ltd. (PH Tech) for third party claims administration for behavioral health services pre-authorized and monitored by Behavioral Health Division staff. Specific functions include authorizations tracking, claims adjudication, and management reporting.

The Behavioral Health Division has partnered with PH Tech since 2009 to provide third party claims administration services.

This agreement is effective July 1, 2014 and continues through June 30, 2015. Health Share of Oregon pays the administrative fee to the contractor, not the actual claims, this agreement pays the claims. It is retroactive due to a recent discovery that when shifting the administrative services part of the contract to Health Share, necessary contract language had inadvertently been removed allowing PH Tech to pay claims from the providers of mental health services. This agreement has been reviewed and approved by County Counsel as part of the H3S contract standardization project.

RECOMMENDATION:

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

Respectfully submitted,

Cindy Becker, Director

PROFESSIONAL SERVICES AGREEMENT

Agreement # 6929

This Professional Services Agreement is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and PERFORMANCE HEALTH TECHNOLOGY, LTD, hereinafter called "CONTRACTOR".

AGREEMENT

1.0 Engagement

COUNTY hereby engages CONTRACTOR to provide Third Party Administration services as described in Exhibit A, Scope of Work, attached hereto and incorporated herein.

2.0 Term

Services provided under the terms of this agreement shall commence **July 1, 2014**. This agreement shall terminate **June 30, 2015** unless terminated earlier by one or both parties as provided for in paragraph 6.0.

3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate CONTRACTOR on a monthly basis as described in Exhibit B, Compensation attached hereto.

3.2. Method of Payment. To receive payment, CONTRACTOR shall submit invoices as follows:

CONTRACTOR shall submit a monthly invoice following that in which service was performed. CONTRACTOR may use the invoice template provided in Attachment 1. The invoice shall include the contract # **6929**, dates of service and the total amount due for all service provided during the month. Invoices shall be submitted electronically to:

healthcenterap@clackamas.us

When submitting electronically, designate CONTRACTOR name and contract # **6929** in the subject of the e-mail.

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

3.3 Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should CONTRACTOR fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until CONTRACTOR performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CONTRACTOR.

3.4 Financial Records. CONTRACTOR shall maintain complete and legible financial records pertinent to payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles. Financial records shall be retained for at least five (5) years after final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, CONTRACTOR shall repay the amount of the excess to COUNTY.

3.4.1 CONTRACTOR shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. CONTRACTOR shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

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

3.4.3 CONTRACTOR may be subject to audit requirements. CONTRACTOR agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over CONTRACTOR.

3.4.4 CONTRACTOR shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. CONTRACTOR shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CONTRACTOR shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit B, Performance Standards, attached hereto and incorporated herein.

4.2 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this agreement.

4.3 Independent Contractor. CONTRACTOR certifies that it is an independent contractor and not an employee or agent of Clackamas County, State of Oregon or Federal government. CONTRACTOR is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the solely the responsibility of CONTRACTOR.

5.0 General Conditions

5.1 Indemnification. CONTRACTOR agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of CONTRACTOR, and CONTRACTOR's officers, agents, and employees, in performance of this agreement.

CONTRACTOR shall defend, save, hold harmless and indemnify the State of Oregon, Oregon Health Authority and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of CONTRACTOR, or its agents or employees under this agreement.

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

5.2 Insurance. During the term of this agreement, CONTRACTOR shall maintain in force at its own expense each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall obtain, at CONTRACTOR's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall obtain at CONTRACTOR's expense, and keep in effect during the term of the agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

5.2.3 Professional Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

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

5.2.5 Additional Insurance Provisions. All required insurance other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

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

5.2.7 Insurance Carrier Rating. Coverages provided by CONTRACTOR must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this agreement, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY ten days prior to coverage expiring.

5.2.9 Primary Coverage Clarification. CONTRACTOR's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.

5.3 Governing Law: Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and CONTRACTOR that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by CONTRACTOR and COUNTY.

5.5 Severability. If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or 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.

5.6 Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.

5.8 Oregon Public Contracting Requirements. Pursuant to the requirements of Oregon law, the following terms and conditions are made a part of this agreement:

5.8.1 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. CONTRACTOR shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.8.2 Oregon Constitutional Limitations. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with such law, are deemed inoperative to that extent.

5.8.3 Oregon Public Contracting Conditions. Pursuant to the terms of ORS 279B.220, CONTRACTOR shall:

- a. Make payments promptly, as due, to all persons supplying to CONTRACTOR labor or materials for the performance of the work provided for in this agreement.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in performance of this agreement.

c. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.

d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.8.4 CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.

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

5.9 Integration. This agreement contains the entire agreement between COUNTY and CONTRACTOR and supersedes all prior written or oral discussions or agreements.

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

6.0 Termination

6.1 Termination Without Cause. This agreement may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days notice, in writing and delivered by certified mail or in person.

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

a. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the contract may be modified to accommodate a reduction in funds.

b. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this agreement.

c. If any license or certificate required by law or regulation to be held by CONTRACTOR to provide the services required by this agreement is for any reason denied, revoked, or not renewed.

d. If CONTRACTOR fails to provide services, outcomes, reports as specified by COUNTY in this agreement.

e. If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

6.2.1 If CONTRACTOR fails to perform any of the provisions of this agreement, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of

written notice from COUNTY fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

6.3 Transition. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. CONTRACTOR and COUNTY shall continue to perform all duties and obligations under this agreement with respect to individuals under care of CONTRACTOR to the date of termination.

7.0 Notices

Any notice under this agreement shall be deemed received the earlier of the time of delivery of two (2) business days after mailing certified and postage prepaid through the U.S. Postal Service addressed as follows:

If to CONTRACTOR:

Performance Health Technology, LTD
3993 Fairview Industrial Drive SE
Salem, OR 97302

If to COUNTY:

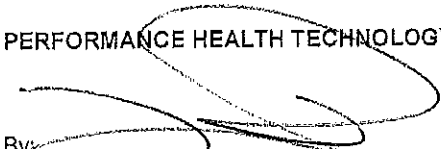
Clackamas County Behavioral Health Division
2051 Kaen Road, # 367
Oregon City, OR 97045

This agreement consists of seven (7) sections plus the following exhibits, which by this reference are incorporated herein:

Exhibit A Scope of Work
Exhibit B Compensation
Business Associate Agreement

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

PERFORMANCE HEALTH TECHNOLOGY, LTD

By: 
Nathan P. Perrizo, Chief Operating Officer

Date 10/17/2014

3993 Fairview Industrial Drive SE

Street Address

Salem, Oregon 97302

City / State / Zip

(503)362-2818 / (503)566-9801

Phone / Fax

CLACKAMAS COUNTY

Commissioner: John Ludlow, Chair

Commissioner: Jim Bernard

Commissioner: Paul Savas

Commissioner: Martha Schrader

Commissioner: Tootie Smith

Signing on Behalf of the Board:

Cindy Becker, Director
Health, Housing and Human Service Department

Date

EXHIBIT A
SCOPE OF WORK

CONTRACTOR shall provide third party administration functions on behalf of COUNTY. These services include, but are not limited to:

1. Payment of Medical Claims, which includes:

- a. Providing a web interface for entering service authorizations from COUNTY to allow claims payment and tracking of utilization.
- b. Receiving and compiling service authorizations from COUNTY in paper, Excel or tab delimited or electronic format.
- c. Claims payment for COUNTY's contracted panel provider as well as COUNTY-approved non-contracted providers utilizing:
 - i. COUNTY's rate schedule
 - ii. Authorization information from COUNTY
 - iii. State-generated member information
- d. Clean claims will be paid within 30 days of receipt.
- e. CONTRACTOR will:
 - i. Meet all Federal and state requirements that pertain to claims payment.
 - ii. Abide by all COUNTY policies in regard to timely and accurate filing and submission of outcome measurement paperwork with panel provider claims.
 - iii. Maintain a bank account into which COUNTY will deposit funds and CONTRACTOR will disburse funds to pay claims. CONTRACTOR will retrieve, disseminate, and pay refunds, when necessary.
 - iv. Produce and disseminate Explanation of Benefits (EOB).
 - v. Respond to or provide regular, ongoing communication with providers, to answer their questions regarding claims issues and to explain claims payment decisions, policies, and procedures.
 - vi. Provide claim disposition reports to COUNTY in an electronic format.
 - vii. Coordinate third party responsibility.
 - viii. Provide monthly communication with COUNTY management, as needed to ensure accurate and timely payment of authorized services.
 - ix. Receive and process claims electronically in accordance with HIPAA requirements.
 - x. Provide readily available technical assistance/customer services to COUNTY and contracted providers in regard to claims processing.

- xi. Provide good communication and reliable information that can be verified by COUNTY.
- xii. Provide COUNTY and Provider staff with access to web-based reporting tools to verify eligibility, validate authorizations and investigate claims processing issues.
- xiii. Provide training for COUNTY staff, contractors and subcontractors annually or at COUNTY request, and maintain online training manual for use of web-based tools for verifying eligibility, validating authorizations and correction of claims processing issues.

2. Information Management and Compliance

Encounter data will be electronically transmitted to CONTRACTOR from Clackamas County Behavioral Health clinic.

- a. Participate in any COUNTY, state or other government testing and/or quality assurance functions, as required.
- b. Maintain COUNTY data.
- c. On a monthly basis or as otherwise specified, provide standard management reports and additional management reports as needed to meet the needs of COUNTY. Develop mutually agreed upon ad hoc reports. Provide monthly extract of data in electronic format to COUNTY.
- d. Work cooperatively with COUNTY to problem-solve barriers to the timely and accurate gathering of encounter data throughout COUNTYs system of care.
- e. Validate encounter data submissions to the state by comparing CONTRACTOR system data with files provided by the state.
- f. Assist State and COUNTY with validation of all encounters submitted during rate and risk setting periods.
- g. Provide education and training, to COUNTY, contracted providers and partner counties.
- h. CONTRACTOR guarantees that COUNTY will achieve an annual encounter data accuracy level of at least 90% as well as meet all other applicable regulatory standards.

EXHIBIT B
COMPENSATION

1. COUNTY shall reimburse CONTRACTOR for the actual cost of claims authorized by COUNTY and paid to providers by CONTRACTOR.
2. CONTRACTOR will request payments for the actual amount of claims paid on a weekly basis and will submit a full report of claims paid for reconciliation by COUNTY. COUNTY will arrange for a transfer of funds for weekly claims payments by such date as agreed to by both parties.

ATTACHMENT 2

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into as of July 1, 2014 (Effective Date) by and between Clackamas County Health, Housing and Human Services, Behavioral Health Division (Covered Entity) and Performance Health Technology, Ltd (Business Associate) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (HIPAA).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose individually identifiable health information to the Business Associate in the performance of services for or on behalf of the Covered Entity;

Whereas, such information may be Protected Health Information (PHI) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Agreement to address certain requirements under the HIPAA Rules;

Now, Therefore, the parties hereby agree as follows:

SECTION I - DEFINITIONS

- 1.1 "Breach" is defined as any unauthorized acquisition, access, use or disclosure of PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an employee's course and scope of employment;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate work force members (workforce member means employee, volunteer, trainees, etc. whether paid or unpaid); and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 "Business Associate" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 "Covered Entity" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.4 "Data Aggregation" shall have the meaning given to such term under the HIPAA Rules, including but not limited to, 45 CFR §164.501.
- 1.5 "Designated Record Set" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.6 "Effective Date" shall be the Effective Date of this amended and restated Agreement.
- 1.7 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.

- 1.8 "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.9 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.10 "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.11 "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.12 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501, (45 CFR §160.103 and §164.501).
- 1.13 "Protected Information" shall mean PHI provided by the Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- 1.14 "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.15 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.16 "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.17 "Unsecured Protected Health Information" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. (45 CFR §164.402).

SECTION II - OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR 164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- 2.11 That if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the covered entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Plan any Security Incident of which it becomes aware;
- 2.12 To ensure that the provisions of this Section are supported by reasonable and appropriate security measures to the extent that the designees have access to electronic PHI;
- 2.13 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
- 2.14 Implement administrative safeguards in accordance with 45 CFR §164.308, physical safeguards in accordance with 45 CFR §164.310, technical safeguards in accordance with 45 CFR §164.312, and policies and procedures in accordance with 45 CFR §164.316;
- 2.15 To notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 60 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 §CFR 164.404(c); and
- 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III - THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV - NOTICE OF PRIVACY PRACTICES

- 4.1 The Covered Entity shall (a) provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice; (b) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (c) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (d) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

SECTION V - BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412:
 - a. Without unreasonable delay and in no case later than 60 days after discovery of a Breach.
 - b. By notice in plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity involved is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. Use a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provide notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.

SECTION VI - TERM AND TERMINATION

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of PHI.

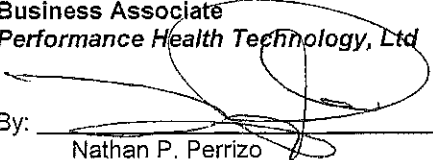
b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart

C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII - GENENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy personal information about individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- 7.4 **Indemnification by Covered Entity.** Covered Entity agrees to indemnify, defend and hold harmless the Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Covered Entity's breach of Section 4.1 of this Business Associate Agreement. Accordingly, on demand, Covered Entity shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Covered Entity's breach hereunder. Covered Entity's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate's breach of Section 2 of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.6 **Survival.** The respective rights and obligations of Business Associate under Section Two of this Business Associate Agreement shall survive the termination of this Agreement.
- 7.7 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

In Witness Whereof, the Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

Business Associate
Performance Health Technology, Ltd
By: 
Nathan P. Perrizo

Covered Entity
Clackamas County
By: _____
Cindy Becker

Title: Chief Operating Officer

Title: Director, H3S

Date: 9/26/14

Date: _____



COPY

M. BARBARA CARTMILL
DIRECTOR

10

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Cooperative Improvement Agreement No. 29968
with Oregon Department of Transportation and City of Damascus for the
Highway 224 at Springwater Road Traffic Signal Project**

Purpose/Outcomes	This agreement defines the roles and responsibilities of the County, the City of Damascus and ODOT relating to design, construction and maintenance requirements for the Highway 224 at Springwater Road Traffic Signal Project.
Dollar Amount and Fiscal Impact	Total Construction Cost Estimate: \$507,000 of which \$10,000 is estimated for ODOT staff time related to design review and construction inspection
Funding Source	OTIA Interest Development Conditions of Approval (Windswept Waters)
Safety Impact	Completion of this project will result in the signalization of the intersection of Hwy224 and Springwater Rd located in the City of Damascus and will relieve traffic congestion and the present safety issues of this intersection.
Duration	Execution until completion of the project and acceptance by ODOT
Previous Board Action	None
Contact Person	Stan Monte, Project Manager 503-742-4678

BACKGROUND:

Through the planning and design of the Clackamas River (Springwater Road) Bridge several alignment options were considered, some of which included the installation of a traffic signal at the bridge connection to OR Hwy 224. Due to funding constraints at the time, the final design for the bridge did not include a signal at the OR Hwy 224 / Springwater Road intersection; however, the County and ODOT continued to work together to design a solution to relieve the congestion and address safety issues at this intersection.

The intersection of Springwater Road and OR Hwy 224 is owned and controlled by ODOT. Clackamas County has now been granted approval by ODOT to proceed with design and construction of a temporary traffic signal at this location. This agreement outlines the roles and responsibilities for the County, ODOT and the City of Damascus for the design, construction, operation and maintenance of the signal. The County accepts responsibility for the full cost of designing and constructing the signal, including reimbursing ODOT for design review and construction inspection expenses. The construction total is estimated at \$507,000 and ODOT

Y700

staff expenses are estimated at \$10,000. ODOT will accept ownership, operation and maintenance of the signal upon completion of the project. City of Damascus accepts all future power costs associated with the signal.

This Agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends approval of the Cooperative Improvement Agreement with Oregon Department of Transportation for the Highway 224 at Springwater Road Traffic Signal Project.

Respectfully submitted,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Stan Monte at 503-742-4678

**COOPERATIVE IMPROVEMENT AGREEMENT
OR224 @ S. SPRINGWATER ROAD**

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

RECITALS

1. Clackamas Highway, OR224, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). South Springwater Road is a part of the County road system under the jurisdiction and control of County.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes.
4. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
5. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
6. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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

TERMS OF AGREEMENT

1. Under such authority, the Parties agree to County's design and construction of improvements to the intersection of Hwy 224 at S. Springwater Road, hereinafter referred to as "Project." The Project includes installation of a traffic signal, crosswalks, and minor curb and sidewalk work. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. Work shall be constructed in accordance with the requirements listed in the Traffic Signal Approval Letter attached hereto, marked Exhibit B, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$507,000.00 in County funds. County shall be responsible for any Project costs beyond the estimate.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

COUNTY OBLIGATIONS

1. County, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. County, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. The State District Permitting Office shall verify compliance with this requirement prior to construction.
3. County shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in S. Springwater Road in such a manner as to provide adequate protection for said detector loops.

4. County shall provide to State permanent mylar "as constructed" plans for work on state highways. If County redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, County shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
5. County shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$10,000 for State's plan reviews and inspection of work performed on State facilities. Said amount being equal to the estimated total cost for the work performed by State.
6. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, County shall pay any amount which, when added to County's advance deposit, will equal 100 percent of actual total State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to County.
7. All employers, including County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. County shall ensure that each of its contractors complies with these requirements.
8. County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
9. County shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of 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 State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.

10. Any such indemnification shall also provide that neither the County's contractor and subcontractor nor any attorney engaged by County's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any County of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that County's contractor is prohibited from defending the State of Oregon, or that County's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against County's contractor if the State of Oregon elects to assume its own defense.
11. County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, County expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
12. County shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
13. If County chooses to assign its contracting responsibilities to a consultant or contractor, County shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
14. County or its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
15. County or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the County (or on behalf of its consultant) doing the work. If County acquires the right of way, it shall provide a letter from County's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The

certification form shall be routed through the State Region 1 Right of Way Office for co-signature and possible audit. If County elects to have State perform right of way functions, a separate agreement shall be executed between County and State right of way, referencing this Agreement number.

16. County shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2C Project Manager as well as land use permits, building permits, and engineering design review approval from State. County agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
17. Pursuant to the statutory requirements of ORS 279C.380 County shall require their contractor to submit a performance bond to County for an amount equal to or greater than the estimated cost of the Project.
18. If County enters into a construction contract for performance of work on the Project, then County will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and County shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.

- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
19. County is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at County's own expense.
20. County is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, County shall contact State's Geometronics Unit for replacement procedures.
21. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. County agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate County Surveyor's office as required.
22. For all work being performed on State facilities, County shall cause the Project to be designed and constructed in accordance with State standards and shall, upon completion of the Project, release ownership of all traffic signal equipment to State.
23. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
24. County's Project Manager for this Project is Stan Monte, 150 Beavercreek Road, Oregon City, OR 97045; Phone: (503) 742-4678, or assigned designee upon

individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

25. County agrees that in the event that City should disincorporate and is no longer responsible for the power cost for the Project signal, that the County will assume the responsibility of paying for the signal and attached illumination power costs and will coordinate with the power company to transfer power bills to County's name.

STATE OBLIGATIONS

1. State shall, at Project expense, provide Project plan review for the areas of the Project to be constructed on State facilities. State shall also, at Project expense, perform periodic inspection of the work performed on State facilities.
2. State shall, upon execution of the agreement, forward to County a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$10,000 for payment of State's plan review and inspection of all work being performed on State facilities. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
3. State shall keep accurate cost accounting records. State shall prepare and submit monthly itemized, progress invoices for its expense to County's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed.
4. Upon completion of the Project, State shall either send to County a bill for the amount which, when added to County's advance deposit, will equal 100 percent of the total State costs for work on the Project or State will refund to County any portion of said advance deposit which is in excess of the total State costs for their work on the Project.
5. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed on the highway in such a manner as to provide adequate protection for said detector loops.
6. State shall, at Project expense, be responsible for traffic signal and illumination inspection, testing and turn-on.
7. State, upon completion of the Project, shall assume sole ownership of the Project traffic signal and attached illumination and shall, at its own expense, and upon signal turn on and proper operation, perform all necessary maintenance of said traffic signals and attached illumination), and control the timing established for operation of the traffic signals.

8. State grants authority to County to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 2B Office.
9. State's Project Manager for this Project is Mike Keyes, 999 NW Frontage Rd. Suite 250, Troutdale, OR 97060; Phone: (503) 667-7441, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

CITY OBLIGATIONS

1. City shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signal and attached illumination (if any). City shall require the power company to send invoices directly to City.
2. City's Project Manager for this Project is Dan O'Dell, 19920 SE Highway 212, Damascus, OR 97089; Phone: (503) 658-8545, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of all Parties.
2. State may terminate this Agreement effective upon delivery of written notice to County and City, or at such later date as may be established by State, under any of the following conditions:
 - a. If County or City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County or City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If County fails to provide payment of its share of the cost of the Project.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of 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 State on the one hand and of 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which County is jointly liable with State (or would be if joined in the Third Party Claim), 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 State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. 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 shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

SIGNATURE PAGE TO FOLLOW

State/Clackamas County/City of Damascus
Agreement No. 29968

Clackamas County, by and through its
Board of Commissioners

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By *[Signature]*
County Counsel

Date 10/23/14

City of Damascus, by and through its
Elected Officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Counsel

Date _____

County Contact:

Stan Monte
150 Beaver Creek Road
Oregon City, OR 97045
Phone: (503) 742-4678

State Contact:

Mike Keyes
999 NW Frontage Rd. Suite 250
Troutdale, OR 97060
Phone: (503) 667-7441

STATE OF OREGON, by and through
its Department of Transportation

By _____

Highway Div. Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Region 1 Manager

Date _____

By _____

District 2C Manager

Date _____

By _____

State Traffic Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *Mark Schumacher*
Assistant Attorney General

Date August 6, 2014

City Contact:

Dan O'Dell
19920 SE Highway 212
Damascus, OR 97089
Phone: (503) 658-8545

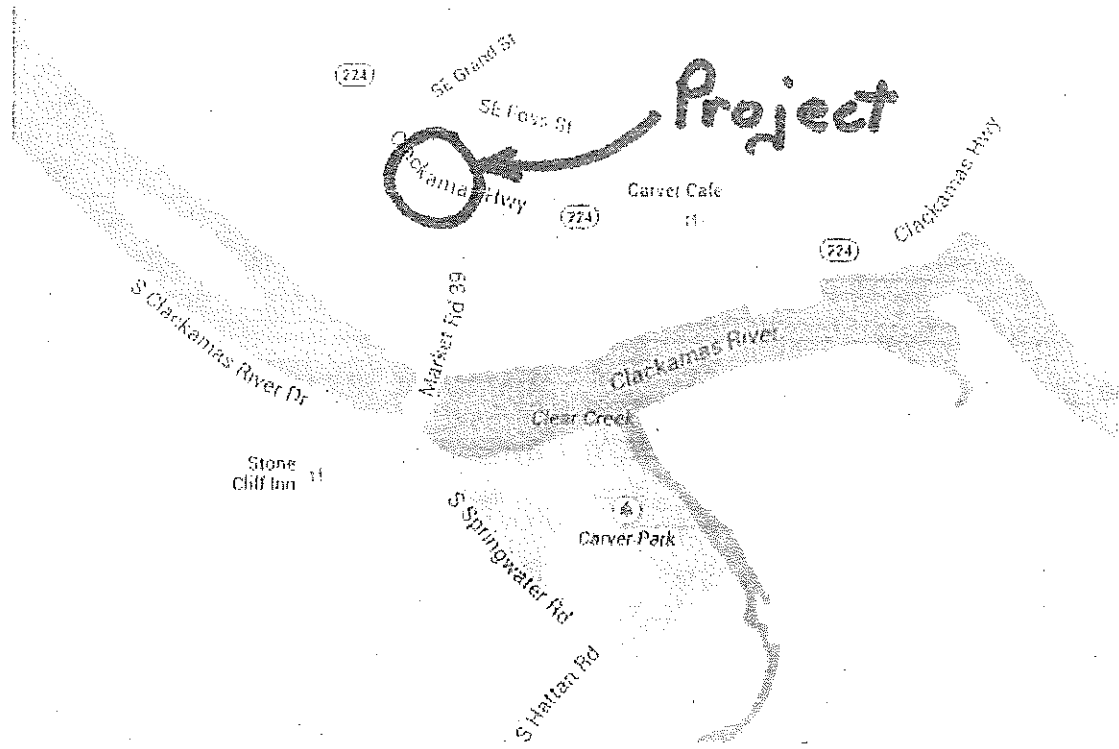


EXHIBIT B



INTEROFFICE MEMO

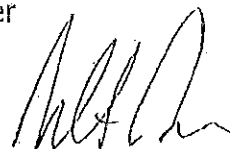
TECHNICAL SERVICES
Traffic Engineering and Operations Section
Office Phone: (503) 986-3568
Fax Phone: (503) 986-4063

FILE

DATE: April 13, 2011

TO: Dennis Mitchell
Region 1 Traffic Engineer

File Code: Hwy 171- MP 9.30

FROM: Bob Pappé, P.E., P.L.S. 
State Roadway/Traffic Engineer

SUBJECT: **Traffic Signal Approval
OR 224 at Springwater Road
Clackamas Highway MP 9.30
City of Damascus**

We have reviewed your request to install a traffic signal at the intersection of OR 224 at Springwater Road in the community of Carver. Under OAR 734-020-0430, I approve this request and authorize inclusion of this intersection on the Traffic Signal Approval List. The approval is based on our review of the Traffic Signal Engineering Investigation you submitted. The signal will alleviate long delays and safety concerns for traffic accessing the highway from Springwater Road. The approval has the following stipulations:

1. The design and operation will be according to the **Manual on Uniform Traffic Control Devices** (2003 edition), ODOT's **Traffic Signal Policy and Guidelines**, and ODOT's **Traffic Signal Design Manual**.
2. The western crosswalk may be closed.
3. Due to concerns regarding the intersection layout, this office must be given the opportunity to comment on the preliminary signal design plans.
4. This office must approve the final signal design plans.
5. The need for the signal should be reevaluated upon any future realignment of OR 224 through the area.
6. Lane configuration and phasing shall be designed according to a Preliminary Signal Operations Design report as provided by the Region Traffic Operations Engineer.

If you have concerns or questions regarding this approval, please contact Gary Obery at 503-986-3576.

Attachment: Preliminary Signal Operations Design Report

Electronic Copies To:

Sue D'Agnese, Region 1 Traffic
Jordon Orser, Region 1 Traffic
Richard Watanabe, Metro East Area Manager
Doug Anderson, Region 1 Traffic

Kate Freitag, Region 1 Traffic
Scott Cramer, Traffic Standards
Larry Olson, District 2C Manager

GRO/tc

Preliminary Signal Operations Design

Use this form for projects involving new signals or significant modifications to an existing signal.

Location: OR 224 @ Springwater Rd.

Hwy No: 171

M.P.: 9.3

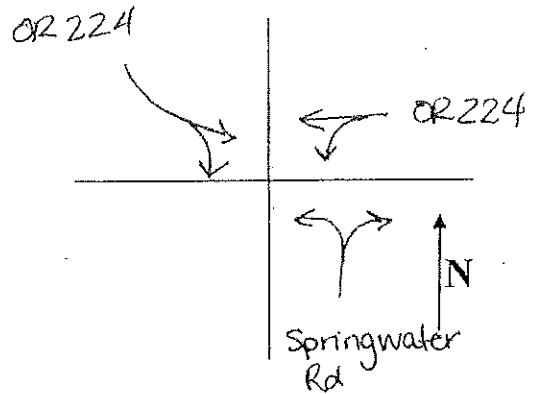
Date: 3/10/2011

Existing Traffic Information

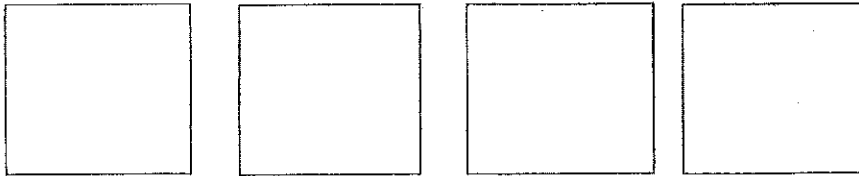
Existing Traffic Control

- 2-way STOP
- All-way STOP
- Signalized

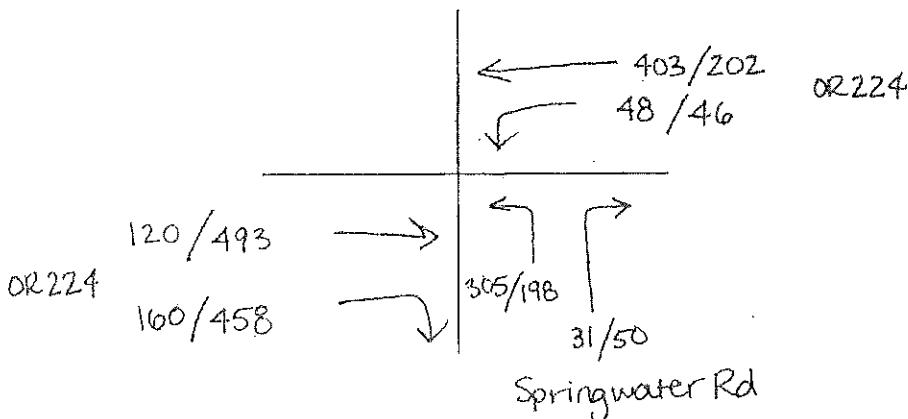
Existing Lane Configuration



Existing Vehicle and Pedestrian Phasing if signalized:

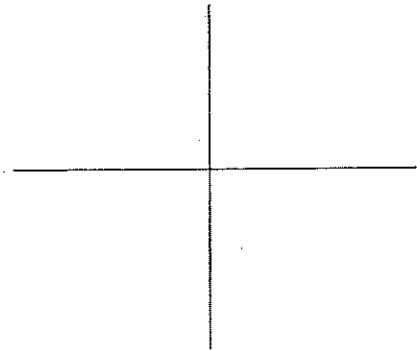


Opening Day Volumes (AM/PM)



Future Volumes (AM/PM)

Not Available

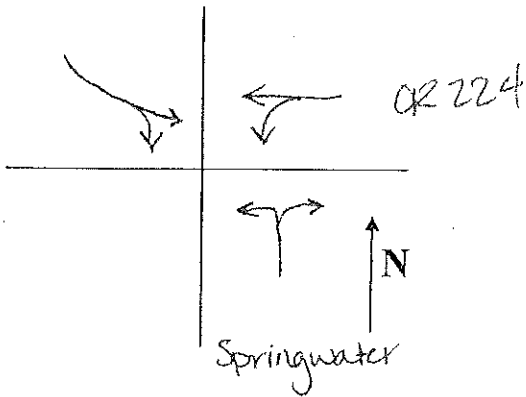


Other Relevant Information: Posted Speed = 25 mph. Curvature of highway to the northwest causes sight distance limitations for traffic turning from Springwater Road. Uphill grade of ~3% on Springwater Road also makes it difficult for side street traffic to turn onto OR 224.

Preliminary Signal Operations Design

Recommended Signal Design

Recommended Lane Configuration



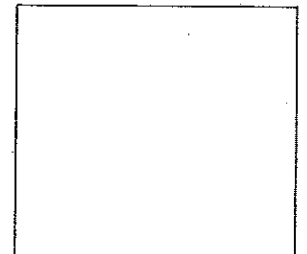
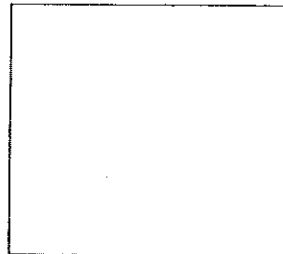
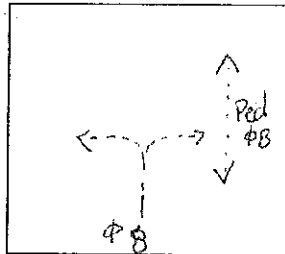
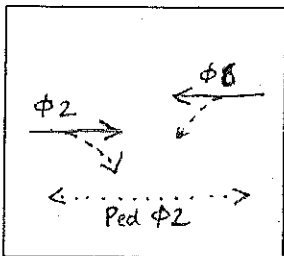
Pedestrian Crosswalks

- All Crosswalks Provided
- Following Crosswalks Closed: Westerly Xwalk across OR 224

Other Required Features

- Signal interconnect to _____
- Phone drop or cellular network router
- 2070 Controller
- Audible/accessible pedestrian signals
- RR Pre-emption
- Other: _____

Recommended Phasing



Notes regarding right turn lane control: Permissive-only right-turn phasing due to lack of right-turn lanes

Primary considerations used to determine left turn phasing: Permissive left-turn phasing due to lack of dedicated left-turn lanes

Design Vehicle info: (to be confirmed with Roadway Engineer)

- "Design for"
- "Accommodate"

WB - 67

WB-50

other turn radii will remain same as existing

Recommended by: Kathleen M. Freitag
Region Traffic Operations Engineer



COPY

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

November 6, 2014

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement No. 30103
With Oregon Department of Transportation for Right of Way Services for the
Highway 224 at Springwater Road Traffic Signal Project**

Purpose/Outcomes	This agreement defines the roles and responsibilities of the County and ODOT relating to acquiring right of way for the Highway 224 at Springwater Road Traffic Signal Project.
Dollar Amount and Fiscal Impact	Total Right of Way Cost Estimate: \$70,000 of which \$62,000 is estimated for ODOT staff time and to perform right of way acquisition services
Funding Source	OTIA Interest Development Conditions of Approval (Windswept Waters)
Safety Impact	Completion of this project will result in the signalization of the intersection of Hwy224 and Springwater Rd located in the City of Damascus and will relieve traffic congestion and the present safety issues of this intersection.
Duration	Execution until completion of the project and acceptance by ODOT
Previous Board Action	None
Contact Person	Stan Monte, Project Manager 503-742-4678

BACKGROUND:

Through the planning and design of the Clackamas River (Springwater Road) Bridge several alignment options were considered, some of which included the installation of a traffic signal at the bridge connection to OR Hwy 224. Due to funding constraints at the time, the final design for the bridge did not include a signal at the OR Hwy 224 / Springwater Road intersection; however, the County and ODOT continued to work together to design a solution to relieve the congestion and address safety issues at this intersection.

The intersection of Springwater Road and OR Hwy 224 is owned and controlled by ODOT. Clackamas County has now been granted approval by ODOT to proceed with design and construction of a temporary traffic signal at this location. As is customary with projects that intersect or are within ODOT right of way, ODOT will retain authority to conduct all right of way negotiations and acquisitions. This agreement outlines the roles and responsibilities for the County and ODOT related to right of way acquisition for this project. The total cost of right of way acquisition for this project remains unchanged; ODOT staff will be performing the work instead of County staff to streamline the acquisition process, as ODOT will be the final recipient and owner of any acquired right of way.

This IGA has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends approval of the Intergovernmental Agreement with Oregon Department of Transportation for Right of Way Services for the Highway 224 at Springwater Road Traffic Signal Project.

Respectfully submitted,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments please contact Stan Monte at 503-742-4678

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

Highway 224 at Springwater Road Traffic Signal

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain S. Springwater Road (Clackamas County Market Road No. 39) is a County road under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. OR224 (Clackamas Highway No. 171), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Cooperative Improvement Agreement number 29968. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local agencies certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement.

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

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in Agreement No. 29968, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency's obligations

exceed a maximum of \$30,000.00, including all expenses, unless agreed upon by both Parties.

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

STATE OBLIGATIONS

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

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency may utilize its own staff, State's staff, or subcontract from the qualified list of consultants using State's Full Service Architectural and Engineering (A&E) Price Agreement II Tier Selection Process for Agency's work identified in Exhibit A provided Agency receives prior written approval of any staff, consultant or contractor by the State's Region Right of Way office prior to performance of said activities. State's Full-Service A&E Work Order

Contract (WOC) User-Guide for Local Public Agencies (LPA) Projects Tier 2 Forms and Procedures for LPAs and Local Agency Liaisons (LALs) is located at the following link:

<http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>

4. The Tier 2 forms must be reviewed and filled out by State's LAL and submitted to State's Procurement Office's Personal Services Request Inbox for processing the contract located at the following e-mail address:

PersonalServicesContract@odot.state.or.us

5. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
6. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
7. Agency's right of way contact person for this Project is Kath Rose, Right of Way, Clackamas County Dept. of Transportation & Development, 150 Beavercreek Rd., DSB, Oregon City, OR 97045, kathros@co.clackamas.or.us, (503) 742-4713, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$30,000.00. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure will be from, or reimbursed from, Agency funds. Payment in Agency funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. State shall upon execution of this Agreement, forward to Agency either: 1) a request to sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of the Agency, or 2) a letter of request for an advance deposit. Agency shall make an advance deposit to the State's Financial Services Branch, in an amount equal to the estimate of costs to be incurred by State for the Project. The preliminary estimate of costs is \$62,000.00. Additional deposits, if any, shall be made as needed upon request from State and acceptance by Agency. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
 - a. Both parties understand the Agency has limited funds to design and construct Project and Agency may at any time cancel said Project, or one or more individual ROW files, should it determine there are not sufficient funds to complete the scope of work in Exhibit A or any portion thereof and construct Project. Agency is liable for all funds spent up to and including the date of cancellation of the project in addition to State's work necessary to close/cancel project and ROW files once notified by Agency.

- b. Agency agrees to pay or reimburse all salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures, plus 10 percent surcharge on salary costs to cover administrative costs of Right of Way Section.
- c. State shall present invoices for 100 percent of actual costs incurred by State on behalf of the Project directly to Agency's right of way contact for review and approval. Such invoices shall be in a form identifying the Project, the agreement number, invoice number or account number, and shall itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one (1) month duration, based on actual expenses incurred.
- d. Upon completion of right of way acquisition and receipt from State of a final itemized statement, Agency shall pay an amount which, when added to said advance deposit, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project shall be refunded to Agency.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

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

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

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

14. This Agreement and attached exhibits and Agreement No. 29968 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

CLACKAMAS COUNTY, by and through
its elected officials

By _____
Chair

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By  _____
Agency Legal Counsel

Date 1st / 23 / 14 _____

Agency Contact:

Stan Monte, Project Manager
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4678
Stanmon@co.clackamas.or.us

State Contact:

Shannon Fish, Region 1
Right of Way Project Manager
123 NW Flanders Street
Portland, OR 97209
(503) 731-8433
shannon.fish@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

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

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

A. Preliminary Phase

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

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, as described in this Section, State shall provide Agency with a status report of the Project monthly.
 - b. Title to properties acquired shall be in the name of the State.
2. Legal Descriptions:
 - a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. Agency shall provide construction plans and cross-section information for the Project.
 - c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in

accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.

- d. State shall specify the degree of title to be acquired (e.g., fee, easement).
3. Real Property and Title Insurance:
 - a. State shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
 - b. State shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
 - c. Agency shall conduct a Level 1 Initial Site Assessment within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
 - d. Agency shall conduct a Level 2 Preliminary Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study indicates the potential presence of contamination that could impact the properties.
 - If contamination is found, a recommendation for remediation will be presented to State.
 - e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
 - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
 4. Appraisal:
 - a. State shall conduct the valuation process of properties to be acquired.
 - b. State shall perform the Appraisal Reviews to set Just Compensation.
 - c. State shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. State shall tender all monetary offers to land-owners in writing at the compensation level shown in the Appraisal Review. State shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. State agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. State shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. State shall make all relocation and moving payments for the Project.
- c. State shall facilitate the relocation appeal process.

C. Closing Phase

1. State shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments
2. State shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

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

E. Condemnation

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

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

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



12

NANCY S. BUSH
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

November 6, 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 FY2014 State Homeland Security Grant Program Agreements between Clackamas County and the State of Oregon for Community Emergency Response Team (CERT) program development, printing of the 2016 Emergency Preparedness Calendar and purchasing of Community Points of Dispensing (CPOD) Supply Caches

Purpose/Outcomes	State Homeland Security Grant Program (SHSP) agreements #14-208, 14-209 and 14-210 provide funding to reimburse Clackamas County Emergency Management for Community Emergency Response Team (CERT) program development, printing of the 2016 Emergency Preparedness Calendar and purchasing of Community Points of Dispensing (CPOD) Supply Caches.
Dollar Amount and Fiscal Impact	The grant agreements total value is \$51,535: \$7,285 for CERT program development, \$20,000 for printing the 2016 Emergency Preparedness Calendar and \$24,250 for purchasing CPOD Supply Caches. The grant is a 100% federal share grant that will reimburse Clackamas County up to the grant agreement value for project costs.
Funding Source	FY 2014 State Homeland Security Grant Program via the State of Oregon Military Department, Office of Emergency Management
Safety Impact	CERT program development will better equip County-wide CERT teams to respond to disasters. Efforts included in the grant project will expand the cadre of qualified CERT trainers, making the program more sustainable for the future. The Emergency Preparedness Calendar outreach project increases public education efforts in topics such as emergency preparedness and personal safety. Partners include local and regional public safety agencies. The CPOD Supply Cache project will place supplies strategically around the county should they be needed to open a CPOD to distribute basic commodities such as food and water.
Duration	Grants 14-208 and 14-209 are effective October 1, 2014 through September 30, 2015. Grant 14-210 is effective October 1, 2014 through May 31, 2015.
Previous Board Action	The Board approved the application for this grant in study session on July 1, 2014.
Contact Person	Nancy Bush, Director – Emergency Management Department, 503-655-8665
Contract No.	Grant numbers: 14-208, 14-209, 14-210

BACKGROUND:

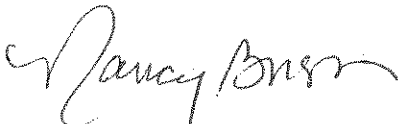
Each year, Clackamas County Emergency Management leads the development of the application for that fiscal year's State Homeland Security Grant Program. The projects are nominated and selected by the Homeland Security Task Force which is a group of Clackamas County public safety stakeholders. The funding provided in the grant awards allows the Emergency Management Department to maintain and enhance important emergency operations capabilities.

County Counsel has approved the agreement as to form.

RECOMMENDATION:

Staff respectfully recommends Board approval of SHSP grant agreements #14-208, 14-209 and 14-210.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy Bush".

Nancy Bush, Director

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
STATE HOMELAND SECURITY PROGRAM GRANT
CFDA # 97.073
CLACKAMAS COUNTY
Ensuring CERTainty in Clackamas County
\$7,285
Grant No: 14-208**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and **Clackamas County**, hereinafter referred to as "Subgrantee," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2014** and ending, unless otherwise terminated or extended, on **September 30, 2015** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**
Exhibit B: **Federal Requirements and Certifications**
Exhibit C: **Subcontractor Insurance**

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: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.
3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subgrantee an amount not to exceed **\$7,285** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2014 State Homeland Security Program (SHSP) Grant.
4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
5. **Reports.** Failure of Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

- i. Subgrantee agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- ii. Reports are due to OEM on or before 30 days following each calendar quarter (March 31, June 30, September 30, and December 31).
- iii. Subgrantee may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

- i. To receive reimbursement, Subgrantee must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant and, if applicable, match expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subgrantee agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

- c. Audit Reports.** Upon request by OEM, Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by Subgrantee, whether or not the audit is required by OMB Circular A-133 as described in Section 8.c.i and ii herein.

6. Disbursement and Recovery of Grant Funds.

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subgrantee for the Project, in accordance with the SHSP Grants guidance and application materials, including without limitation the United States Department of Homeland Security Funding Opportunity Announcement (FOA), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and FOA are available at http://www.oregon.gov/OMD/OEM/Pages/fy2014_shsp_grant_app.aspx.

- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subgrantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subgrantee is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subgrantee's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subgrantee has provided to OEM a RFR in accordance with Section 5.b of this Agreement.
- c. **Recovery of Grant Funds.** Any funds disbursed to Subgrantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subgrantee shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subgrantee shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

7. **Representations and Warranties of Subgrantee.** Subgrantee represents and warrants to OEM as follows:

- a. **Organization and Authority.** Subgrantee is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subgrantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subgrantee of this Agreement (1) have been duly authorized by all necessary action of Subgrantee and (2) 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, (3) 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 Subgrantee is a party or by which Subgrantee or any of its properties 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 Subgrantee of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subgrantee and constitutes a legal, valid and binding obligation of Subgrantee, 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. **No Solicitation.** Subgrantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **NIMS Compliance.** By accepting FY 2014 funds, Subgrantee certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at http://www.oregon.gov/OMD/OEM/Pages/plans_train/NIMS.aspx#Oregon_NIMS_Requirements.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subgrantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subgrantee acknowledges and agrees, and Subgrantee will require its contractors, subcontractors, sub-recipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subgrantee and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- b. Retention of Records.** Subgrantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
- c. Audits.**

 - i. If Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200.21 (OMB Circular A-133). Copies of all audits must be submitted to OEM within 30 days of completion. If Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subgrantee shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subgrantee acknowledges and agrees that any audit costs incurred by Subgrantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subgrantee and the State of Oregon.

9. Subgrantee Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. **Subagreements.** Subgrantee may enter into agreements (hereafter "subagreements") for performance of the Project. Subgrantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C).
- i. Subgrantee shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subgrantee shall include with its RFR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subgrantee. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subgrantee agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. **Purchases and Management of Property and Equipment; Records.** Subgrantee agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subgrantee or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subgrantee's property or equipment inventory system.
 - ii. Subgrantee's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
 - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

- iv. Subgrantee must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subgrantee shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subgrantee must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- vi. If Subgrantee is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
- vii. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- viii. Subgrantee shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- ix. Subgrantee shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subgrantee if Subgrantee provides written certification to OEM that it will use the property and equipment for purposes consistent with the SHSP Grant.

c. Subagreement indemnity; insurance. *Subgrantee's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subgrantee's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subgrantee's subagreement(s) from and against any and all Claims.*

Any such indemnification shall also provide that neither Subgrantee's contractor(s) nor any attorney engaged by Subgrantee's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subgrantee's contractor is prohibited from defending State or that Subgrantee's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subgrantee's contractor if State elects to assume its own defense.

Subgrantee shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subgrantee, or at such later date as may be established by OEM in such written notice, if:
- i. Subgrantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subgrantee is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subgrantee takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subgrantee's application.
- b. **Termination by Subgrantee.** Subgrantee may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subgrantee in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subgrantee; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. GENERAL PROVISIONS

- a. **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 OEM or Subgrantee with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OEM is jointly liable with Subgrantee (or would be if joined in the Third Party Claim), OEM 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 Subgrantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Subgrantee 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 OEM on the one hand and of Subgrantee 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. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OEM had sole liability in the proceeding.

With respect to a Third Party Claim for which Subgrantee is jointly liable with OEM (or would be if joined in the Third Party Claim), Subgrantee 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 OEM in such proportion as is appropriate to reflect the relative fault of Subgrantee on the one hand and of OEM 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 Subgrantee on the one hand and of OEM 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. Subgrantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subgrantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subgrantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to

a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subgrantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subgrantee, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subgrantee or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **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 OEM (or any other agency or department of the State of Oregon) and Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. **Insurance; Workers' Compensation.** All employers, including Subgrantee, 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subgrantee shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- k. Independent Contractor.** Subgrantee shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subgrantee has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subgrantee performs the Project, except as specifically set forth in this Agreement. Subgrantee is responsible for determining the appropriate means and manner of performing the Project. Subgrantee acknowledges and agrees that Subgrantee is not an “officer”, “employee”, or “agent” of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or 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. Subgrantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

Clackamas County

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subgrantee)

By _____
Subgrantee's Legal Counsel

Date 10/28/14

Subgrantee Program Contact:
Sarah Stegmuller-Eckman
Administrative Services Manager
Clackamas County
Emergency Management
2200 Kaen Rd
Oregon City, OR 97045
503-650-3381
sarahste@clackamas.us

Subgrantee Fiscal Contact:
Judy Anderson-Smith
Accountant
Clackamas County
2200 Kaen Rd
Oregon City, OR 97045
503-742-5422
jsmith2@clackamas.us

OEM

By _____

Matthew T. Marheine
Plans and Training Section Manager, OEM

Date _____

APPROVED AS TO FORM

By Keith L. Kutler via email
Assistant Attorney General

Date September 22, 2014

OEM Program Contact:
Sidra Metzger-Hines
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22251
sidra.metzgerhines@state.or.us

OEM Fiscal Contact:
Dan Gwin
Grants Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22290
dan.gwin@state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Project Title: Ensuring CERTainty in Clackamas County

This project is for the expansion of Clackamas County CERT through the development of 10 CERT Trainers who will then deliver the FEMA Basic Course, and then hold the Countywide CERT Summit for 100 participants. The CERT Summit will provide the final exam for the newly trained CERT members and provide functional skill stations to refresh countywide CERT member core competencies.

II. Budget

Medical Equipment	\$195
Other Authorized Equipment	\$1,610
Training	\$4,185
Exercise	\$1,295
Total	\$7,285

EXHIBIT B

Federal Requirements and Certifications

I. General. Subgrantee agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), the Office of Management and Budget (OMB) Circulars, Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (44 CFR Part 13.35). Subgrantee shall establish procedures to provide for effective use and dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying.** Subgrantee is required to comply with 44 CFR Part 18, *New Restrictions on Lobbying*. The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. Subgrantee understands and agrees that no funds provided under this Agreement may be expended in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government. These lobbying prohibitions can be found at 31 USC § 1352.
- C. Compliance with Applicable Law.** Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 44 CFR Part 13, including without limitation:
 - a. Using Grant Funds only as allowed by 44 CFR 13.22 (a) and in accordance with applicable cost principles described in 44 CFR 13.22(b), including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies;
 - b. Actively tracking and monitoring property and equipment purchased by Subgrantee or its contractors in whole or in part with Grant Funds, and 44 CFR Part 13.32(e) when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 2. OMB Circular A-102, Grants and Cooperative Agreements With State and Local Governments.
 3. Audit Requirements set forth in 2 CFR 200.21 (OMB Circular A-133).

4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
5. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.
6. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
7. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
8. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subgrantee may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. **Non-discrimination and Civil Rights Compliance.** Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964, as amended, and related nondiscrimination regulations in 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, as amended.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12189.
 - d. Age Discrimination Act of 1975, 42 USC § 6101.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

If, during the past three years, Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subgrantee must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subgrantee, or Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.

2. **Equal Employment Opportunity Program.** Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subgrantee must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and

resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
 - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
 - b. National Historic Preservation Act, 16 USC § 470 et seq.
 - c. Endangered Species Act, 16 USC § 1531 et seq.
 - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subgrantee shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
3. For any of Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subgrantee, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.

- F. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subgrantee must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

G. Drug Free Workplace Requirements (2 CFR Part 3001). Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC § 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subgrantee must notify this office if an employee of Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

H. Human Trafficking (2 CFR Part 175). Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:

1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
2. Procure a commercial sex act during the period of time the award is in effect; or
3. Use forced labor in the performance of the subgrant or subgrants under the award.

Subgrantee must inform OEM immediately of any information Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. Subgrantee must include these requirements in any subgrant made to public or private entities.

I. Fly America Act of 1974. Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

J Activities Conducted Abroad. Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

K. Acknowledgement of Federal Funding from DHS. Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

L. Copyright (44 CFR Part 13.34). Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. Subgrantee

shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.

- M. Use of DHS Seal, Logo and Flags.** Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- N. Personally Identifiable Information (PII).** Subgrantee, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- O. Federal Debt Status.** Subgrantee shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subgrantee shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. 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 State. Subgrantee shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subgrantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subgrantee shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subgrantee permit work under a subagreement when Subgrantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subgrantee is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate

limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

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

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subgrantee before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subgrantee shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
STATE HOMELAND SECURITY PROGRAM GRANT
CFDA # 97.073
CLACKAMAS COUNTY
2016 Emergency Preparedness Calendar
\$20,000
Grant No: 14-209**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and **Clackamas County**, hereinafter referred to as "Subgrantee," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2014** and ending, unless otherwise terminated or extended, on **September 30, 2015** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

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: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subgrantee an amount not to exceed **\$20,000** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2014 State Homeland Security Program (SHSP) Grant.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. **Reports.** Failure of Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

- i. Subgrantee agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- ii. Reports are due to OEM on or before 30 days following each calendar quarter (March 31, June 30, September 30, and December 31).
- iii. Subgrantee may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

- i. To receive reimbursement, Subgrantee must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant and, if applicable, match expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subgrantee agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

- c. Audit Reports.** Upon request by OEM, Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by Subgrantee, whether or not the audit is required by OMB Circular A-133 as described in Section 8.c.i and ii herein.

6. Disbursement and Recovery of Grant Funds.

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subgrantee for the Project, in accordance with the SHSP Grants guidance and application materials, including without limitation the United States Department of Homeland Security Funding Opportunity Announcement (FOA), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and FOA are available at http://www.oregon.gov/OMD/OEM/Pages/fy2014_shsp_grant_app.aspx.
- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subgrantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subgrantee is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subgrantee's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subgrantee has provided to OEM a RFR in accordance with Section 5.b of this Agreement.
- c. **Recovery of Grant Funds.** Any funds disbursed to Subgrantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subgrantee shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subgrantee shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

7. **Representations and Warranties of Subgrantee.** Subgrantee represents and warrants to OEM as follows:

- a. **Organization and Authority.** Subgrantee is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subgrantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subgrantee of this Agreement (1) have been duly authorized by all necessary action of Subgrantee and (2) 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, (3) 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 Subgrantee is a party or by which Subgrantee or any of its properties 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 Subgrantee of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subgrantee and constitutes a legal, valid and binding obligation of Subgrantee, 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. **No Solicitation.** Subgrantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **NIMS Compliance.** By accepting FY 2014 funds, Subgrantee certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at http://www.oregon.gov/OMD/OEM/Pages/plans_train/NIMS.aspx#Oregon_NIMS_Requirements.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subgrantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subgrantee acknowledges and agrees, and Subgrantee will require its contractors, subcontractors, sub-recipients (collectively hereafter “contractors”), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subgrantee and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- b. Retention of Records.** Subgrantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
- c. Audits.**

 - i. If Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200.21 (OMB Circular A-133). Copies of all audits must be submitted to OEM within 30 days of completion. If Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subgrantee shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subgrantee acknowledges and agrees that any audit costs incurred by Subgrantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subgrantee and the State of Oregon.

9. Subgrantee Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. **Subagreements.** Subgrantee may enter into agreements (hereafter “subagreements”) for performance of the Project. Subgrantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C).
- i. Subgrantee shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subgrantee shall include with its RFR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subgrantee. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subgrantee agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. **Purchases and Management of Property and Equipment; Records.** Subgrantee agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subgrantee or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subgrantee’s property or equipment inventory system.
 - ii. Subgrantee’s property and equipment records shall include: a description of the property or equipment; the manufacturer’s serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
 - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

- iv. Subgrantee must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subgrantee shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
 - v. Subgrantee must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
 - vi. If Subgrantee is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
 - vii. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 - viii. Subgrantee shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
 - ix. Subgrantee shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subgrantee if Subgrantee provides written certification to OEM that it will use the property and equipment for purposes consistent with the SHSP Grant.
- c. **Subagreement indemnity; insurance.** *Subgrantee's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subgrantee's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subgrantee's subagreement(s) from and against any and all Claims.*

Any such indemnification shall also provide that neither Subgrantee's contractor(s) nor any attorney engaged by Subgrantee's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subgrantee's contractor is prohibited from defending State or that Subgrantee's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subgrantee's contractor if State elects to assume its own defense.

Subgrantee shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subgrantee, or at such later date as may be established by OEM in such written notice, if:
- i. Subgrantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subgrantee is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subgrantee takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subgrantee's application.
- b. **Termination by Subgrantee.** Subgrantee may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subgrantee in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subgrantee; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. GENERAL PROVISIONS

- a. **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 OEM or Subgrantee with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OEM is jointly liable with Subgrantee (or would be if joined in the Third Party Claim), OEM 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 Subgrantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Subgrantee 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 OEM on the one hand and of Subgrantee 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. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OEM had sole liability in the proceeding.

With respect to a Third Party Claim for which Subgrantee is jointly liable with OEM (or would be if joined in the Third Party Claim), Subgrantee 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 OEM in such proportion as is appropriate to reflect the relative fault of Subgrantee on the one hand and of OEM 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 Subgrantee on the one hand and of OEM 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. Subgrantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subgrantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subgrantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to

a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subgrantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subgrantee, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subgrantee or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. 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 OEM (or any other agency or department of the State of Oregon) and Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. Compliance with Law.** Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. Insurance; Workers' Compensation.** All employers, including Subgrantee, 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subgrantee shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- k. **Independent Contractor.** Subgrantee shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subgrantee has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subgrantee performs the Project, except as specifically set forth in this Agreement. Subgrantee is responsible for determining the appropriate means and manner of performing the Project. Subgrantee acknowledges and agrees that Subgrantee is not an “officer”, “employee”, or “agent” of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or 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. Subgrantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

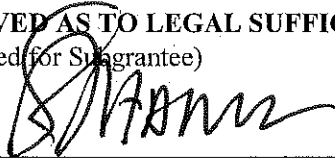
Clackamas County

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subgrantee)

By  _____
Subgrantee's Legal Counsel

Date 10/28/14

Subgrantee Program Contact:

Sarah Stegmuller-Eckman
Administrative Services Manager
Clackamas County
Emergency Management
2200 Kaen Rd
Oregon City, OR 97045
503-650-3381
sarahste@clackamas.us

Subgrantee Fiscal Contact:

Judy Anderson-Smith
Accountant
Clackamas County
2200 Kaen Rd
Oregon City, OR 97045
503-742-5422
jsmith2@clackamas.us

OEM

By _____

Matthew T. Marheine
Plans and Training Section Manager, OEM

Date _____

APPROVED AS TO FORM

By Keith L. Kutler via email
Assistant Attorney General

Date September 22, 2014

OEM Program Contact:

Sidra Metzger-Hines
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22251
sidra.metzgerhines@state.or.us

OEM Fiscal Contact:

Dan Gwin
Grants Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22290
dan.gwin@state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Project Title: 2016 Emergency Preparedness Calendar

This project is for the support of the translation and printing costs of the Clackamas County 2016 Emergency Preparedness Calendar.

II. Budget

Planning	\$20,000
Total	\$20,000

EXHIBIT B

Federal Requirements and Certifications

I. General. Subgrantee agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), the Office of Management and Budget (OMB) Circulars, Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (44 CFR Part 13.35). Subgrantee shall establish procedures to provide for effective use and dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying.** Subgrantee is required to comply with 44 CFR Part 18, *New Restrictions on Lobbying*. The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. Subgrantee understands and agrees that no funds provided under this Agreement may be expended in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government. These lobbying prohibitions can be found at 31 USC § 1352.
- C. Compliance with Applicable Law.** Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 44 CFR Part 13, including without limitation:
 - a. Using Grant Funds only as allowed by 44 CFR 13.22 (a) and in accordance with applicable cost principles described in 44 CFR 13.22(b), including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies;
 - b. Actively tracking and monitoring property and equipment purchased by Subgrantee or its contractors in whole or in part with Grant Funds, and 44 CFR Part 13.32(e) when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 2. OMB Circular A-102, Grants and Cooperative Agreements With State and Local Governments.
 3. Audit Requirements set forth in 2 CFR 200.21 (OMB Circular A-133).

4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
5. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.
6. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
7. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
8. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subgrantee may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. **Non-discrimination and Civil Rights Compliance.** Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964, as amended, and related nondiscrimination regulations in 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, as amended.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12189.
 - d. Age Discrimination Act of 1975, 42 USC § 6101.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

If, during the past three years, Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subgrantee must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subgrantee, or Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.

2. **Equal Employment Opportunity Program.** Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subgrantee must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and

resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
 - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
 - b. National Historic Preservation Act, 16 USC § 470 et seq.
 - c. Endangered Species Act, 16 USC § 1531 et seq.
 - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subgrantee shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
3. For any of Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subgrantee, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.

- F. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subgrantee must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

G. Drug Free Workplace Requirements (2 CFR Part 3001). Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC § 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subgrantee must notify this office if an employee of Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

H. Human Trafficking (2 CFR Part 175). Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:

1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
2. Procure a commercial sex act during the period of time the award is in effect; or
3. Use forced labor in the performance of the subgrant or subgrants under the award.

Subgrantee must inform OEM immediately of any information Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. Subgrantee must include these requirements in any subgrant made to public or private entities.

I. Fly America Act of 1974. Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

J. Activities Conducted Abroad. Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

K. Acknowledgement of Federal Funding from DHS. Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

L. Copyright (44 CFR Part 13.34). Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. Subgrantee

shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.

- M. Use of DHS Seal, Logo and Flags.** Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- N. Personally Identifiable Information (PII).** Subgrantee, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- O. Federal Debt Status.** Subgrantee shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subgrantee shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. 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 State. Subgrantee shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subgrantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subgrantee shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subgrantee permit work under a subagreement when Subgrantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subgrantee is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate

limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:


\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

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

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subgrantee before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subgrantee shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.



**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
STATE HOMELAND SECURITY PROGRAM GRANT
CFDA # 97.073
CLACKAMAS COUNTY
Community Points of Distribution (CPOD) Supply Cache
\$24,250
Grant No: 14-210**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and **Clackamas County**, hereinafter referred to as "Subgrantee," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2014** and ending, unless otherwise terminated or extended, on **May 31, 2015** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

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: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subgrantee an amount not to exceed **\$24,250** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2014 State Homeland Security Program (SHSP) Grant.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. **Reports.** Failure of Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

- i. Subgrantee agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- ii. Reports are due to OEM on or before 30 days following each calendar quarter (March 31, June 30, September 30, and December 31).
- iii. Subgrantee may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

- i. To receive reimbursement, Subgrantee must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant and, if applicable, match expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subgrantee agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

- c. Audit Reports.** Upon request by OEM, Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by Subgrantee, whether or not the audit is required by OMB Circular A-133 as described in Section 8.c.i and ii herein.

6. Disbursement and Recovery of Grant Funds.

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subgrantee for the Project, in accordance with the SHSP Grants guidance and application materials, including without limitation the United States Department of Homeland Security Funding Opportunity Announcement (FOA), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and FOA are available at http://www.oregon.gov/OMD/OEM/Pages/fy2014_shsp_grant_app.aspx.
- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subgrantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subgrantee is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subgrantee's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subgrantee has provided to OEM a RFR in accordance with Section 5.b of this Agreement.
- c. **Recovery of Grant Funds.** Any funds disbursed to Subgrantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subgrantee shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subgrantee shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

7. **Representations and Warranties of Subgrantee.** Subgrantee represents and warrants to OEM as follows:

- a. **Organization and Authority.** Subgrantee is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subgrantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subgrantee of this Agreement (1) have been duly authorized by all necessary action of Subgrantee and (2) 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, (3) 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 Subgrantee is a party or by which Subgrantee or any of its properties 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 Subgrantee of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subgrantee and constitutes a legal, valid and binding obligation of Subgrantee, 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. **No Solicitation.** Subgrantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **NIMS Compliance.** By accepting FY 2014 funds, Subgrantee certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at http://www.oregon.gov/OMD/OEM/Pages/plans_train/NIMS.aspx#Oregon_NIMS_Requirements.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subgrantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subgrantee acknowledges and agrees, and Subgrantee will require its contractors, subcontractors, sub-recipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subgrantee and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- b. Retention of Records.** Subgrantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
- c. Audits.**

 - i. If Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200.21 (OMB Circular A-133). Copies of all audits must be submitted to OEM within 30 days of completion. If Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subgrantee shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subgrantee acknowledges and agrees that any audit costs incurred by Subgrantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subgrantee and the State of Oregon.

9. Subgrantee Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. Subagreements.** Subgrantee may enter into agreements (hereafter "subagreements") for performance of the Project. Subgrantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C).
- i. Subgrantee shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subgrantee shall include with its RFR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subgrantee. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subgrantee agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subgrantee agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subgrantee or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subgrantee's property or equipment inventory system.
 - ii. Subgrantee's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
 - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

- iv. Subgrantee must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subgrantee shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
 - v. Subgrantee must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
 - vi. If Subgrantee is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
 - vii. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 - viii. Subgrantee shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
 - ix. Subgrantee shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subgrantee if Subgrantee provides written certification to OEM that it will use the property and equipment for purposes consistent with the SHSP Grant.
- c. **Subagreement indemnity; insurance.** *Subgrantee's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subgrantee's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subgrantee's subagreement(s) from and against any and all Claims.*

Any such indemnification shall also provide that neither Subgrantee's contractor(s) nor any attorney engaged by Subgrantee's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subgrantee's contractor is prohibited from defending State or that Subgrantee's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subgrantee's contractor if State elects to assume its own defense.

Subgrantee shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subgrantee, or at such later date as may be established by OEM in such written notice, if:
- i. Subgrantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subgrantee is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subgrantee takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subgrantee's application.
- b. **Termination by Subgrantee.** Subgrantee may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subgrantee in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subgrantee; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. GENERAL PROVISIONS

- a. **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 OEM or Subgrantee with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OEM is jointly liable with Subgrantee (or would be if joined in the Third Party Claim), OEM 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 Subgrantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Subgrantee 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 OEM on the one hand and of Subgrantee 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. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OEM had sole liability in the proceeding.

With respect to a Third Party Claim for which Subgrantee is jointly liable with OEM (or would be if joined in the Third Party Claim), Subgrantee 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 OEM in such proportion as is appropriate to reflect the relative fault of Subgrantee on the one hand and of OEM 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 Subgrantee on the one hand and of OEM 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. Subgrantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subgrantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subgrantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to

a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subgrantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subgrantee, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subgrantee or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. 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 OEM (or any other agency or department of the State of Oregon) and Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. Compliance with Law.** Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. Insurance; Workers' Compensation.** All employers, including Subgrantee, 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subgrantee shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- k. **Independent Contractor.** Subgrantee shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subgrantee has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subgrantee performs the Project, except as specifically set forth in this Agreement. Subgrantee is responsible for determining the appropriate means and manner of performing the Project. Subgrantee acknowledges and agrees that Subgrantee is not an “officer”, “employee”, or “agent” of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

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

- m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

- n. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or 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. Subgrantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

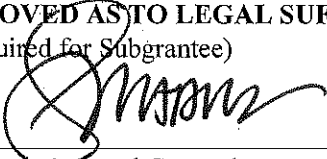
Clackamas County

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subgrantee)

By  _____
Subgrantee's Legal Counsel

Date 10/28/14

Subgrantee Program Contact:
Sarah Stegmuller-Eckman
Administrative Services Manager
Clackamas County
Emergency Management
2200 Kaen Rd
Oregon City, OR 97045
503-650-3381
sarahste@clackamas.us

Subgrantee Fiscal Contact:
Judy Anderson-Smith
Accountant
Clackamas County
2051 Kaen Rd
Oregon City, OR 97045
503-742-5422
jsmith2@clackamas.us

OEM

By _____

Matthew T. Marheine
Plans and Training Section Manager, OEM

Date _____

APPROVED AS TO FORM

By Keith L. Kutler via email
Assistant Attorney General

Date September 22, 2014

OEM Program Contact:
Sidra Metzger-Hines
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22251
sidra.metzgerhines@state.or.us

OEM Fiscal Contact:
Dan Gwin
Grants Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22290
dan.gwin@state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Project Title: Community Points of Distribution (CPOD) Supply Cache

This project is for the purchase of equipment necessary for volunteer operators to run the CPOD. This equipment will create three caches with supplies to open three Type 1 CPODs in a more expeditious manner.

II. Budget

CBRNE Operational Search and Rescue	\$8,303
CBRNE Logistic Support Equipment	\$4,050
Personal Protective Equipment	\$6,663
Power Equipment	\$880
Other Authorized Equipment	\$4,354
Total	\$24,250

EXHIBIT B

Federal Requirements and Certifications

I. General. Subgrantee agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), the Office of Management and Budget (OMB) Circulars, Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (44 CFR Part 13.35). Subgrantee shall establish procedures to provide for effective use and dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying.** Subgrantee is required to comply with 44 CFR Part 18, *New Restrictions on Lobbying*. The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. Subgrantee understands and agrees that no funds provided under this Agreement may be expended in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government. These lobbying prohibitions can be found at 31 USC § 1352.
- C. Compliance with Applicable Law.** Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 44 CFR Part 13, including without limitation:
 - a. Using Grant Funds only as allowed by 44 CFR 13.22 (a) and in accordance with applicable cost principles described in 44 CFR 13.22(b), including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies;
 - b. Actively tracking and monitoring property and equipment purchased by Subgrantee or its contractors in whole or in part with Grant Funds, and 44 CFR Part 13.32(e) when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 2. OMB Circular A-102, Grants and Cooperative Agreements With State and Local Governments.
 3. Audit Requirements set forth in 2 CFR 200.21 (OMB Circular A-133).

4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
5. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.
6. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
7. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
8. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subgrantee may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. **Non-discrimination and Civil Rights Compliance.** Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964, as amended, and related nondiscrimination regulations in 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, as amended.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12189.
 - d. Age Discrimination Act of 1975, 42 USC § 6101.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

If, during the past three years, Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subgrantee must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subgrantee, or Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.

2. **Equal Employment Opportunity Program.** Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subgrantee must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and

resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
 - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
 - b. National Historic Preservation Act, 16 USC § 470 et seq.
 - c. Endangered Species Act, 16 USC § 1531 et seq.
 - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subgrantee shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
3. For any of Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subgrantee, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.

F. SAFECOM. If the Grant Funds are for emergency communication equipment and related activities, Subgrantee must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

G. Drug Free Workplace Requirements (2 CFR Part 3001). Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC § 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subgrantee must notify this office if an employee of Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

H. Human Trafficking (2 CFR Part 175). Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:

1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
2. Procure a commercial sex act during the period of time the award is in effect; or
3. Use forced labor in the performance of the subgrant or subgrants under the award.

Subgrantee must inform OEM immediately of any information Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. Subgrantee must include these requirements in any subgrant made to public or private entities.

I. Fly America Act of 1974. Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

J Activities Conducted Abroad. Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

K. Acknowledgement of Federal Funding from DHS. Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

L. Copyright (44 CFR Part 13.34). Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. Subgrantee

shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.

- M. Use of DHS Seal, Logo and Flags.** Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- N. Personally Identifiable Information (PII).** Subgrantee, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- O. Federal Debt Status.** Subgrantee shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subgrantee shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. 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 State. Subgrantee shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subgrantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subgrantee shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subgrantee permit work under a subagreement when Subgrantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subgrantee is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate

limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

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

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subgrantee before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subgrantee shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Approval of Previous Business Meeting Minutes:

October 16, 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, October 16, 2014 – 6:00 PM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner John Ludlow, Chair
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Tootie Smith

EXCUSED: Commissioner Jim Bernard

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

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

1. Steve Bates, Boring – would like the Board's support for legislation changes to support the County Road funds.

~Board Discussion~

2. Bea Minnear, Boring – spoke in support of Steve Bates proposal.
3. Les Poole, Gladstone – issues with Metro.

~Board Discussion~

4. Eugene Whitley, Milwaukie – Candidate for proposed parks Board.

~Board Discussion~

5. Sonja Pauli, Milwaukie – property taxes should not pay for road fund.
6. Mack Woods, Canby – know what you don't know.

I. PRESENTATION

1. Spotlight: Clackamas County Cable Office and the Clackamas County Government Channel
Debbie McCoy, Cable Communications presented the staff report including a PowerPoint and short video.

II. PUBLIC HEARING

NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. First Reading of Ordinance No. 06-2014, an Amendment to North Clackamas Parks & Recreation District's Parks and Recreation System Development Charge on New Developments

Gary Barth, Business and Community Services and Chris Storey, County Counsel presented the staff report.

~Board Discussion~

Chair Ludlow opened the public hearing and stated there are two folks signed up to speak.

1. Michael Morrell, Happy Valley City Council – spoke in support of the ordinance.
2. Eugene Whitley, Candidate for proposed parks Board.

~Board Discussion~

Chair Ludlow closed the public hearing and asked for a motion to read the Ordinance by title only.

MOTION:

Commissioner Smith: I move we read the ordinance by title only.
Commissioner Schrader: Second.

Clerk calls the poll.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye – the motion passes 4-0.

Chair Ludlow asked the Clerk to assign a number and read the ordinance by title only. He then announced the second reading will be on October 30, 2014 at the Board regular scheduled business meeting at 10 AM.

III. DISCUSSION ITEMS

~NO DISCUSSION ITEMS SCHEDULED

IV. CONSENT AGENDA

Chair Ludlow asked the Clerk to read the consent agenda by title – he then asked for a motion.

MOTION:

Commissioner Bernard: I move we approve the consent agenda.

Commissioner Smith: Second.

Clerk calls the poll.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye – the motion passes 5-0.

A. Health, Housing & Human Services

1. Approval to Apply for a Grant Renewal from the US Department of Housing and Urban Development (HUD), Supportive Housing Program, for the HOPE I Program for the Purpose of Providing Housing and Services for the Homeless – *Social Services*
2. Approval to Apply for a New Grant from the US Department of Housing and Urban Development (HUD), Supportive Housing Program, for the Housing Our Heroes Project for the Purpose of Providing Housing and Services for Homeless Veterans – *Social Services*
3. Approval to Apply for the US Department of Housing and Urban Development Continuum of Care Grant Funding for Homeless Programs and Services in Clackamas County – *Community Development*
4. Approval of an Intergovernmental Agreement #146952 with the State of Oregon, Department of Human Services (DHS), for the Operation of the Food Stamp Employment and Training Program OFSET – *Community Solutions*
5. Approval of an Intergovernmental Agreement with the Multnomah County Department of Community Justice – Safety First – *Children, Youth and Family*

B. Department of Transportation & Development

1. Resolution No. **2014-107** Declaring the Public Necessity and Purpose for Acquisition of Easements for the E. Barlow Trail Road Embankment Reconstruction Project and Authorizing Negotiations and Eminent Domain Actions

2. Approval of an Agreement between Clackamas County Department of Transportation and Development and the North Clackamas Parks & Recreation District regarding Transfer of Maintenance Obligations for the Oak Grove Boulevard Boat Ramp (see agenda V.1)
3. Approval of Intergovernmental Agreement with Metro to Implement the FY 14-15, Year 25 Annual Waste Reduction and Recycle at Work Program

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of an Interagency Agreement between Clackamas County Department of Transportation and Development and the North Clackamas Parks and Recreation District for Transfer of Maintenance Obligations for the Oak Grove Blvd. Boat Ramp (see agenda B.2)

VI. COUNTY ADMINISTRATOR UPDATE

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

VII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 7:45 PM

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



John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

November 6, 2014

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of
Amendment (04) to State of Oregon Intergovernmental Agreement Number 143653

Purpose/Outcomes	Maximum not to exceed amount increased
Dollar Amount and Fiscal Impact	Available Title IV-E Funds have been increased from \$75,000 to \$155,000. However, after applying the DHS Foster Care IV-E Eligibility Rate of 63.50% and the Federal IV-E Administrative Reimbursement Rate of 50%, the actual reimbursement is expected to be \$86,000 or \$11,000 in additional funding. These funds will be used to offset the personal services costs to fill the dependency DDA positions.
Funding Source	DHS Foster Care IV-E funds.
Safety Impact	The District Attorney's Office has two full-time Deputy District Attorneys (DDA) that are dedicated to juvenile dependency cases. Each DDA is focused on the safety, permanency and well-being of the children involved.
Duration	Effective July 1, 2013 through June 30, 2015
Previous Board Action/Review	The Board has approved three amendments to the Juvenile Dependency IGA's since March 2008. The Board approved Amendment (1) on February 1, 2014, Amendment (2) on May 8, 2014, and Amendment (3) on August 21, 2014.
Contact Person	Sarah Brown, Administrative Services Manager for the District Attorney

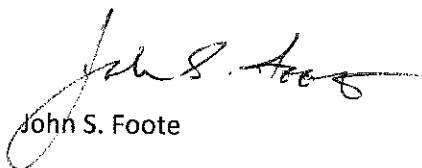
BACKGROUND:

The Board approved the first Intergovernmental Agreement between the District Attorney's Office and the Department of Justice to increase involvement in or otherwise improve the quality of juvenile dependency proceedings on March 13, 2008.

RECOMMENDATION:

I recommend that the Board approve the attached Intergovernmental Agreement between the Department of Human Services and the District Attorney's Office.

Respectfully submitted,


John S. Foote



Agreement Number 143653

**AMENDMENT TO
STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

This is amendment number **04** to Agreement Number **143653** between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and

**Clackamas County
John Ludlow, Commission Chair
2051 Kaen Road
Oregon City, Oregon 97045
Telephone: (503) 655-8581
Facsimile: (503) 742-5919**

hereinafter referred to as "County," and

**Clackamas County District Attorney
John Foote
807 Main Street
Oregon City, Oregon 97045
Telephone: (503) 655-8431
Facsimile: (503) 650-8943
johnfoote@co.clackamas.or.us**

hereinafter referred to as "District Attorney."

1. This amendment shall become effective on the date this amendment has been fully executed by every party and, when required, approved by Department of Justice.
2. The Agreement is hereby amended as follows:
 - a. Section IV Payments, is amended as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.
 - A. The maximum not-to-exceed amount payable to County and District Attorney under this Agreement, which includes allowable expenses, is ~~\$288,985.19~~ **\$368,985.19**. DHS shall not pay County any amount in excess of the not-to-exceed amount for performing the Work, and shall not pay for Work until this Agreement has been signed by all parties.
 - B. DHS shall only pay for performed Work under this Agreement, and may make interim payment as follows:

Designated Funds	Effective Dates	Amount	Quarterly Payment
State General Funds	July 1, 2013 – June 30, 2015	\$213,985.19	NTE \$21,497.50 (first 4 quarters) NTE \$31,998.80 (remaining 4 quarters) per Exhibit A, Part 2
Title IV-E Funds (CFDA #93.658)	July 1, 2013 – June 30, 2015	\$75,000 <u>\$155,000.00</u>	Calculated in accordance with Exhibit A, Part 4

3. **Certification.**

- a. The County and District Attorney 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 or District Attorney and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County and District Attorney certify 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 and District Attorney further acknowledges that in addition to the remedies under this Agreement, if either 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 or District Attorney. Without limiting the generality of the foregoing, by signature on this Agreement, the County and District Attorney hereby certify that:
 - (1) The information shown in County and District Attorney Data and Certification, of original Agreement or as amended is County and District Attorney’s true, accurate and correct information;

- (2) To the best of the undersigned's knowledge, County and District Attorney have 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;
 - (3) County, District Attorney, County's employees, District Attorney'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>;
 - (4) County and District Attorney are not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at:
<https://www.sam.gov/portal/public/SAM/>; and
 - (5) County and District Attorney are not subject to backup withholding because:
 - (a) County and District Attorney are exempt from backup withholding;
 - (b) County and District Attorney have not been notified by the IRS that County or District Attorney is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County and District Attorney that County and District Attorney are no longer subject to backup withholding.
- b. County and District Attorney are required to provide their Federal Employer Identification Number (FEIN). By signature on this Agreement, County and District Attorney hereby certify that the FEIN provided to DHS is true and accurate. If this information changes, County and District Attorney are also required to provide DHS with the new FEIN within 10 days.
- c. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County and District Attorney certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

4. **County Data.** County shall provide current information as required 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 Road

City, state, zip code: Oregon City, OR 97045

Email address: marcg@co.clackamas.or.us

Telephone: (503) 742-5400 Facsimile: (503) 742-5401

Federal Employer Identification Number: 936002286

Proof of Insurance:

Workers' Compensation Insurance Company: Self Insured

Policy #: NA Expiration Date: Ongoing

County shall provide proof of Insurance upon request by DHS or DHS designee.

5. **District Attorney Data.** District Attorney shall provide current information as required below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

District Attorney Name (exactly as filed with the IRS):

Clackamas County District Attorney's Office

Street address: 807 Main Street

City, state, zip code: Oregon City, OR 97045

Email address: JohnFoote@co.clackamas.or.us

Telephone: (503) 655-8431 Facsimile: (503) 650-8943

Federal Employer Identification Number: 936002286

Proof of Insurance:

Workers' Compensation Insurance Company: Clackamas County - Self Insured

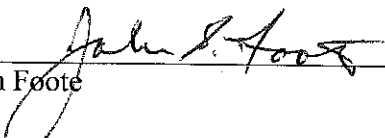
Policy #: NA Expiration Date: Ongoing

District Attorney shall provide proof of Insurance upon request by DHS or DHS designee.

6. Signatures.

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

Clackamas County
By:

Authorized Signature	Title	Date
 John Foote	Clackamas County District Attorney	10/23/14 Date

State of Oregon, acting by and through its Department of Human Services
By:

Authorized Signature	Title	Date
----------------------	-------	------

Approved for Legal Sufficiency

Assistant Attorney General		Date
----------------------------	--	------

Office of Contracts and Procurement

Jewelee Bell, Contract Specialist		Date
-----------------------------------	--	------