

June 10, 2021

Board of Commissioners  
Clackamas County

Dear Board of County Commissioners:

Approval of Amendment #3 to an Agreement with Federal Highway Administration  
under the Federal Lands Access Program for Operations Funding  
for Mt Hood Express Service to Timberline Lodge

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | Approval for a grant amendment with the Federal Highway Administration for the Mt Hood Express bus service. This grant amendment would extend funding for bus service between the City of Sandy, Government Camp and Timberline, and the other communities along Hwy-26 for an additional seven months      |
| <b>Dollar Amount and Fiscal Impact</b> | Amendment #3 extends the agreement for 7 months to 11/30/2021 and increases total agreement by \$18,400 for a total agreement amount of \$1,623,408. No county general fund is involved.  |
| <b>Funding Source</b>                  | Federal Highway Administration, 2016 Oregon Federal Lands Access Program  |
| <b>Duration</b>                        | February 1, 2018 to November 30, 2021   |
| <b>Previous Board Action</b>           | Board order # 082913-A1 and 061115-A6 and 032218-H1   |
| <b>Strategic Plan Alignment</b>        | 1. This funding aligns with the strategic priority to increase self-sufficiency for our clients.<br>2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers. |
| <b>Counsel Review</b>                  | KR reviewed and approved this document originally on 02/20/13.<br>Amendment 3 was reviewed and approved by AN 05/06/21.   |
| <b>Contact Person</b>                  | Brenda Durbin, Director, Social Services Division 503-655-8641  |
| <b>Contract No.</b>                    | H3S#6386  |

The Social Services Division of the Department of Health, Housing and Human Services requests approval for a Federal Lands Access Program Match agreement amendment from the Federal Highway Administration to increase the grant agreement by \$18,400. This increase would fund operations for the Mt Hood Express through November, 2021, and continue an early morning bus run that was added to better meet demand. The total amount of the grant would be increased to \$1,623,408 by this amendment.

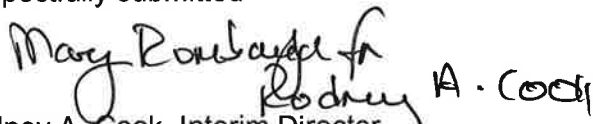
Clackamas County Social Services (CCSS) has operated the Mt Hood Express public transit service since 2007. In October, 2013, bus service expanded to go to Government Camp and Timberline to improve access to employment and recreation, reduce vehicle traffic and improve parking. Currently the bus provides six runs daily between the City of Sandy, Government Camp and Timberline, along with other locations in the Mt. Hood area with additional service during the winter season.

The amendment would have no effect on staffing and the match requirements would be met by the local business partners in a public-private partnership.

**RECOMMENDATION:**

Staff recommend recommends the approval of this agreement, and that the H3S Director; or their designee, be authorized to sign all documents necessary to accomplish this action on behalf of the Board of Commissioners.

Respectfully submitted

Handwritten signature of Rodney A. Cook in black ink. The signature is written in a cursive style and includes the name 'Rodney A. Cook'.

Rodney A. Cook, Interim Director  
Health, Housing and Human Services

|   |   |                                      |   |  |            |
|---|---|--------------------------------------|---|--|------------|
| <b>INTERAGENCY AGREEMENT</b>  |   | 1. IAA NO.<br>DTFH7014E00019L/0003   |   | PAGE OF<br>1 2                                       |            |
| 2. ORDER NO.  |   | 3. REQUISITION NO.<br>HFLWRA210024PR |   | 4. SOLICITATION NO.                                  |            |
| 5. EFFECTIVE DATE<br>See Block 26c  |   | 6. AWARD DATE                        |   | 7. PERIOD OF PERFORMANCE<br>01/01/2014 TO 11/30/2021 |            |
| 8. SERVICING AGENCY<br>CLACKAMAS COUNTY OF<br>DUNS: 096992656<br>2051 KAEN RD<br>OREGON CITY OR 970451819<br><br>POC Teresa Christopherson<br>TELEPHONE NO 503-650-5718   |   |                                      | 9. DELIVER TO<br>Federal Highway Administration<br>Western Federal Lands Highway Div.<br>610 E. 5th St.<br>Vancouver WA 98661-3801<br>USA       |  |            |
| 10. REQUESTING AGENCY<br>Western Federal Lands Highway Div<br>ALC: 69050001<br>DUNS: 139768597<br>Federal Highway Administration<br>Western Federal Lands Highway Div<br>610 East Fifth Street<br>Vancouver WA 98661-3801<br><br>POC Susan Law<br>TELEPHONE NO 360-619-7840 |   |                                      | 11. INVOICE OFFICE<br>Federal Highway Administration<br>Western Federal Lands<br>A/P Branch, AMZ-150<br>PO Box 268865<br>Oklahoma City OK 73125 |  |            |
| 12. ISSUING OFFICE<br>Federal Highway Administration<br>Western Federal Lands Highway Div.<br>610 East Fifth Street<br>Vancouver WA 98661-3801  |   |                                      | 13. LEGISLATIVE AUTHORITY<br>FEDERAL LANDS ACCESS PROGRAM (23 U.S.C.204)  |  |            |
|   |   |                                      | 14. PROJECT ID<br>OR DOT 26(1)  |  |            |
|   |   |                                      | 15. PROJECT TITLE<br>MT. HOOD EXPRESS TRANSIT SERVICE   |  |            |
| 16. ACCOUNTING DATA<br>See Schedule   |   |                                      |   |  |            |
| 17. ITEM NO.  | 18. SUPPLIES/SERVICES   | 19. QUANTITY                         | 20. UNIT  | 21. UNIT PRICE                                       | 22. AMOUNT |
|   | The purpose of Amendment No. 0003 is to add additional funds and extend the ending date for this Agreement.<br><br>1. Section II. Cost Budget: This Agreement is hereby increased by \$18,400.00 from \$1,605,008.00 to amended total of \$1,623,408.00 by reason of this amendment.<br><br>2. Section III. TERM OF AGREEMENT-Period of Performance: This Agreement is hereby extended<br><br>Continued ... |                                      |   |  |            |
| 23. PAYMENT PROVISIONS  |   |                                      | 24. TOTAL AMOUNT<br>\$18,400.00   |  |            |
| 25a. SIGNATURE OF GOVERNMENT REPRESENTATIVE (SERVICING)   |   |                                      | 26a. SIGNATURE OF GOVERNMENT REPRESENTATIVE (REQUESTING)  |  |            |
| 25b. NAME AND TITLE   |   | 25c. DATE                            | 26b. CONTRACTING OFFICER<br>NAMRATA BATTAN  |  | 26c. DATE  |

IAA NO

DTFH7014E00019L/0003

ORDER NO

PAGE

OF

2

2

from May 1, 2021 to November 30, 2021 by reason of this Amendment.

ALL OTHER PROVISIONS OF THE ORIGINAL AGREEMENT REMAIN THE SAME.

Add Item 00004 as follows:

00004

RA Amendment Increase in Funding

18,400.00

Project Data:

1517412013016.531.CN.K200.41.1741000000.25304.04 /1 9/2021

Accounting Info:

15X0G20050.0000.117K200531.1741000000.25304.6100 66

00.0000000000.0000000000.0000000000.0000000000

Funded: \$18,400.00



Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of contract with MTR Western, LLC for the  
Shuttle Operation Services

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | The purpose of this agreement is for MTR Western to provide daily operation services for the Oregon City and Clackamas Industrial Last Mile Shuttles. This contract will be for operations for the Last Mile Shuttles in Clackamas County.  |
| <b>Dollar Amount and Fiscal Impact</b> | The initial term of the Contract is for \$942,504.00.   |
| <b>Funding Source</b>                  | State Transportation Improvement Fund (STIF)  |
| <b>Duration</b>                        | Upon signature of both parties until June 30, 2023, with an option to renew for three (3) additional 1-year terms upon approval of both parties.  |
| <b>Previous Board Action</b>           | None.   |
| <b>Strategic Plan Alignment</b>        | 1. This funding aligns with the strategic priority to increase self-sufficiency for our clients.<br>2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers. |
| <b>Procurement Review</b>              | 1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/>  |
| <b>Counsel Review</b>                  | 1. Date of Counsel Review: 5/24/2021<br>2. Initials of County Counsel performing review: AN   |
| <b>Contact Person</b>                  | Teresa Christopherson 503-650-5718  |
| <b>Contract No.</b>                    | County Contract #10185  |

**BACKGROUND:**

The Social Services Division of the Health, Housing & Human Services Department (H3S) requests the approval of an Agreement with MTR Western, LLC to provide shuttle operation services for the Oregon City and Clackamas Industrial Last Mile Shuttles.

TriMet's HB 2017 Transit Advisory Committee approved \$3 million, annually, in STIF funding for the Regional Coordination Program (RCP) for last mile shuttles within the TriMet District and/or services that help reduce fragmentation between TriMet and communities outside TriMet's service district, but inside Clackamas. As part of the RCP projects, Clackamas County received approval to implement Last Mile Shuttle operations in Oregon City and the Clackamas Industrial area.

Total amount of the agreement is \$942,504.00. No County General Funds are involved.

*Healthy Families. Strong Communities.*

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

www.clackamas.us

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS and LCRB Rules on December 14, 2020. Proposals were opened on January 14, 2021. The evaluation committee comprised of six evaluators. The County received a total of 4 proposals. Two of the four proposals were rejected because the responding firms did not submit all the required documentation. Of the two remaining firms, the evaluation team scored MV Transportation, Inc. the highest and was awarded the Contract. However, County was unable to successfully negotiate a contract with MV Transportation, Inc, therefore negotiations were terminated and the award was given to the next highest scored proposer, MTR Western, LLC.

**RECOMMENDATION:**

Staff recommends approval the Contract with MTR Western, LLC.

Respectfully submitted,

*Mary Beaubien for  
Rodney A. Cook*

Rodney Cook, Interim Director  
Health, Housing and Human Services Department

Placed on the \_\_\_\_\_ agenda by the Procurement Division

# Contract Transmittal Form

## Health, Housing & Human Services Department

|                              |  |  |
|------------------------------|--|--|
| <b>H3S Contract #:</b> 10185 | <b>Division:</b> SS                          | <input type="checkbox"/> Subrecipient                    |
| <b>Board Order #:</b>        | <b>Contact:</b> Christopherson, Teresa       | <input type="checkbox"/> Revenue                         |
|                              | <b>Program Contact:</b><br>Babcock, Kristina | <input type="checkbox"/> Amend # \$                      |
|                              |  | <input checked="" type="checkbox"/> Procurement Verified |
|                              |  | <input type="checkbox"/> Aggregate Total Verified        |

Non BCC Item     BCC Agenda    **Date:** \_\_\_\_\_

**CONTRACT WITH:** MTRWestern, LLC

**CONTRACT AMOUNT:** \$942,504.00

**TYPE OF CONTRACT**

|   |   |
|---|---|
| <input type="checkbox"/> Agency Service Contract        | <input type="checkbox"/> Memo of Understanding/Agreement                        |
| <input type="checkbox"/> Construction Agreement         | <input checked="" type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement    | <input type="checkbox"/> Property/Rental/Lease                                  |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off  |

**DATE RANGE**

|   |   |
|---|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____               | <input type="checkbox"/> 4 or 5 Year _____ - _____          |
| <input checked="" type="checkbox"/> Upon Signature _____ - 06/30/2023 | <input type="checkbox"/> Biennium _____ - _____             |
| <input type="checkbox"/> Other _____ - _____                          | <input type="checkbox"/> Retroactive Request? _____ - _____ |

**INSURANCE** What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Business Automobile Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Professional Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

Approved by Risk Mgr \_\_\_\_\_  
Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Andrew Naylor    Date Approved: Monday, May 24, 2021

OR

This contract is in the format approved by County Counsel.

**SIGNATURE OF DIVISION REPRESENTATIVE:** Brenda Durbin Digitally signed by Brenda Durbin  
Date: 2021.05.24 16:51:51 -07'00'

Date: \_\_\_\_\_

|                       |                      |
|-----------------------|----------------------|
| <b>H3S Admin Only</b> | Date Received: _____ |
|                       | Date Signed: _____   |
|                       | Date Sent: _____     |

## AGREEMENTS/CONTRACTS

|   |  |
|---|--|
| X | New Agreement/Contract                       |
|   | Amendment/Change Order Original Number _____ |

**ORIGINATING COUNTY**

**DEPARTMENT:** Health, Housing Human Services  
Social Services

**PURCHASING FOR:** Contracted Services

**OTHER PARTY TO**

**CONTRACT/AGREEMENT:** MTRWestern, LLC

**BOARD AGENDA ITEM**

**NUMBER/DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PURPOSE OF**

**CONTRACT/AGREEMENT:** Provide operations services for the Oregon City and Clackamas Industrial Last Mile Shuttles

**H3S CONTRACT NUMBER:** 10185



**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
County Contract #4078**

This Personal Services Contract (this "Contract") is entered into between **MTR Western, LLC** ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Health Housing and Human Services Social Services Division.

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2023**. This Contract may be renewed for up to three (3) additional one-year terms, to be exercised by execution of a written amendment on terms and conditions approved by both parties. The optional renewal of this Contract is expressly subject to availability of funds, as determined by County in its sole discretion.
- 2. Scope of Work.** Contractor shall provide the following personal services: Shuttle Operations Services ("Work"), as noted in RFP 2020-83, issued by the Clackamas County on December 14, 2020. The Modified Scope of Work is further described in **Exhibit A**.
- 3. Consideration.** For the initial two-year term of the Contract, the County agrees to pay Contractor, from available and authorized funds, a sum not to exceed nine hundred forty two thousand five hundred and four dollars (**\$942,504.00**) for accomplishing the Work required by this Contract. This amount includes the following: (i) fixed hourly rates for performing the Work (**Exhibit B**); (ii) up to \$80,000 per Contract year for fleet maintenance reimbursements; and (iii) future expansion up to \$100,000 the first year and \$100,000 the second year for changes to the hours and routes described in Exhibit A, Scope of Work. Any change to hours and/or routes shall be made in writing on terms mutually acceptable to the parties.

Consideration rates during the term of this Contract, including any optional renewal period, are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Summary Fee Schedule and **Exhibit D**, Contractors Proposal. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A and Exhibit B.

County's performance under this Contract, including any optional renewal, is contingent upon County receiving funds from the State of Oregon under HB 2017 HB 2017 Keep Oregon Moving State Payroll Tax. – Statewide Transportation Improvement Funds (STIF) Regional Coordination Program, attached hereto as **Exhibit C**. In no event will County be obligated to perform under this Contract if funds are not actually received from the State of Oregon under the Agreement.

- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Kristina Babcock, [kbabcock@clackamas.us](mailto:kbabcock@clackamas.us) and Teresa Christopherson, [teresachr@clackamas.us](mailto:teresachr@clackamas.us).

5. **Travel and Other Expense.** Authorized:  Yes  No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

6. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, Exhibit C, and Exhibit D.

7. **Contractor and County Contacts.**

| <b>Contractor</b>   | <b>County</b>  |
|---|--|
| Administrator: Amanda Emery<br>Phone: 206-687-8549<br>Email: <a href="mailto:amandae@mtrwestern.com">amandae@mtrwestern.com</a> | Administrator: Teresa Christopherson<br>Phone: 503-650-5718<br>Email: <a href="mailto:teresachr@clackamas.us">teresachr@clackamas.us</a> |

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

**ARTICLE II.**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of

Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which is caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property to the extent caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
  
8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
  
9. **INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below and in accordance with Appendix B, Insurance Requirements in the Scope of Work. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

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

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. The parties expressly acknowledge and agree that Contractor will be licensing software and computer programs for its performance under this Contract and in no way shall County acquire ownership to the software as a result of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 16, 17, 20, 21, 25, 27, 29, 30, and 31 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.



**16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

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

**19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon sixty (60) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure; or (C) by Contractor for convenience upon one hundred and eighty (180) days' written notice to County provided, however, that Contractor shall cooperate with County, to the maximum extent practicable, to effectuate a safe and orderly transition of the Work to a new service provider, if applicable.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

**20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

**21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.

**23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this

Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
25. **WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
26. **PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
  - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
  - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
  - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
  - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
  - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
27. **NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
28. **CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.
29. **FURTHER ASSURANCES.** Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.
30. **ADDITIONAL TERMS AND CONDITIONS.** Contractor agrees to comply with the applicable terms and conditions set forth in Agreement, attached hereto as **Attachment C**, Federal Transit Administration Requirements which terms and conditions shall be incorporated herein. Those additional terms and conditions include, but are not necessarily limited to, the following:
  - a) Records: Contractor shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Contract in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. The State of Oregon, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the

Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds provided hereunder, or the project for the purpose of making audits and examinations. In addition, the State of Oregon, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Contractor shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the project, and to inspect all vehicles, real property, facilities and equipment purchased by Contractor as part of the project, and any transportation services rendered by Contractor.

b) Indemnification:

- i) Contractor shall indemnify, defend, save and hold harmless the State of Oregon 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 Contractor or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the parties that the State of Oregon shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State of Oregon, be indemnified by Contractor from and against any and all Claims.
  - ii) Neither Contractor, nor any attorney engaged by Contractor, shall defend any claim in the name of the State of Oregon or any agency 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 any time at its election, assume its own defense and settlement in the event that it determines that Contractor is prohibited from defending State of Oregon or that Contractor is not adequately defending State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Contractor if the State of Oregon elects to assume its own defense.
  - iii) Contractor shall obtain and maintain insurance of the types and in the amounts provided in Exhibit C to the Agreement. Any insurance obtained by Contractor, if any, shall not relieve Contractor of the requirements of this Section of the Contract. Contractor, if it employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C of the Agreement.
- c) Federal certifications and requirements. Contractor must comply with all applicable federal requirements contained in the Certifications and Assurances available at [www.transit.dot.gov](http://www.transit.dot.gov). The Certifications and Assurances, including as they may be changed during the term of this Contract, are by this reference incorporated herein.
- d) Antidiscrimination. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as County deems appropriate.

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

**SIGNATURE PAGE FOLLOWS**

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

MTR Western, LLC

Clackamas County



5-20-21

Authorized Signature

Date

Chair

Jeremy Butzlaff/President

Name / Title (Printed)

Recording Secretary

736157-92 FLLC / Washington  
Oregon Business Registry #

Date

Approved as to Form:

Andrew Naylor

Digitally signed by Andrew  
Naylor  
Date: 2021.05.24 08:26:05  
-07'00'

County Counsel

Date

**EXHIBIT A  
MODIFIED SCOPE OF WORK FOR RFP 2020-86  
SHUTTLE OPERATION SERVICES**

**DEFINITIONS**

|         |  |
|---------|--|
| ODOT    | Oregon Department of Transportation  |
| Project | Clackamas County Shuttle Operation Services for Last Mile Shuttle Operations |
| LMS     | Last Mile Shuttles   |
| SOW     | Statement of Work  |
| County  | Clackamas County   |

**PROJECT DESCRIPTION AND OVERVIEW OF SERVICES:** Clackamas County Social Services currently provides a public transit service, known as the Mt Hood Express (MHX), seven days a week for both commuter routes and point deviated fixed routes through a contractor out of the City of Sandy. The Oregon City Last Mile Shuttle and Clackamas Industrial Shuttle are new services being offered as early May of 2021. These shuttle services are intended to service a variety of needs for passengers in the Oregon City and Clackamas Industrial areas.

The County will operate the Oregon City Last Mile shuttle which is a deviated fixed route service for a total of 10 revenue hours per a day. The selected vendor will assist the County in the development of a final schedule and route map.

The County will operate the Clackamas Industrial shuttle which is a deviated fixed route service for a total of 10 revenue hours per a day and/or Commuter Hours. The selected vendor will assist the County in the development of a final schedule and route map.

**Service Transition**

The Contractor will facilitate an efficient transition of service, which will entail working cooperatively with the County at the beginning of the contract period and, similarly, with County and the incoming selected service provider, if not Contractor, at the end of the contract period. A transition schedule will be established detailing a list of critical tasks, deadline for their completion and person(s) responsible for each.

**Contractor Service Period**

Contractor will begin providing the services under this Contract **July 1, 2021**. The Contractor will ensure that at all times during the term of this Contract vehicle operators and other personnel needed are employed and fully trained (including full understanding of the services to be provided). Full personnel files must be available upon request (training, drug and alcohol testing, Medical Cards, Oregon Drivers Licenses, etc.)

**Hourly Service Rate**

Compensation for operations will be on a revenue hour basis. Contractor will be compensated on a monthly basis following submission of invoice to the County with accompanying documentation, including information required for federal and state reporting.

Clackamas County reserves the right to change the number of hours and routes proposed for the deviated fixed route services. If changes result in more than 15%, Contractor will have the option of requesting a renegotiation of revenue hour rate.

### **Managerial/Supervisory Capacity**

The Contractor will provide a Stations Manager, Disptacher(s), Maintenance Manager, Safety Manager, and Drivers or equivalent position under their hiring structure. The Station Manager will be on-call during all hours of operations. The Station Manager is responsible for the supervision of drivers and other operations personnel, daily work schedules, billing, reporting, accident and incident response, invoicing and other duties as assigned.

Contractor will provide a maintenance management through the use of a Fleet Maintenance Manager or equivalent position under their hiring structure.

### **Scheduling and Dispatch Staffing**

In-office dispatch services shall be maintained during all hours of operation. An automated answering system must be used during non-business hours to provide general information and accept deviations in compliance with ADA requirements.

The Contractor will provide trip reservation scheduling at a minimum between 8:00 am and 5:00 pm weekdays and during service hours on weekends for the point deviated fixed route service.

### **Staff Hiring, Training and Evaluation**

The Contractor will be responsible for hiring dispatchers, drivers and staff, completing an initial orientation and on-going training, and overall supervision. The Contractor shall conduct both a criminal and a driver history background check before hiring drivers. Contractor will provide County with a monthly list of all hiring's and trainings.

The Contractor will ensure compliance with Federal Transit Administration (FTA) regulations as described in 49 CFR Part 655 (as amended), Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations and 49 CFR Part 40, Conducting workplace drug and alcohol testing.

The Contractor will ensure that all drivers operating vehicles requiring a Driver's License in service for the County will possess a current Oregon class C- Driver's License.

The Contractor will provide written policies for safe operating procedures in all conditions including inclement weather, accidents and emergencies. The County will provide policies for customer service, ADA service, non-discrimination, media notification during inclement weather, age restrictions for unaccompanied minors, carry-on items, no-shows, suspension of services, and other policies as developed.

The Contractor will provide dispatch and driver training in at least the following areas:

- Defensive driving including emergency situations
- Passenger Safety
- Blood Borne Pathogens
- Safety Equipment
- Cellular Phones and two-way radio equipment
- Accident procedures
- Customer service
- Passenger behavior problems and security training
- Passenger sensitivity and customer service
- Americans with Disabilities Act (ADA)
- Wheelchair Passenger Securement
- FTA Drug/Alcohol rules & regulations
- Vehicle Orientation for Vehicle Type

The Contractor will provide an outline of its training curriculums with the amount of time committed to each of the training topics with its proposal. The County reserves the right to request additional training in any area it deems necessary.

The Contractor shall conduct, at a minimum, yearly evaluations that will include updated criminal and driver history checks and share annual report with County. The Contractor will consult with the County in developing evaluations regarding any input the County may have received from customers.

The Contractor will ensure that all drivers meet the following minimum criteria to participate in this program:

1. No more than two (2) moving violations in any one-year period. No more than three (3) moving violations in any three (3) year period during the service contract or in the five (5) years prior to application of this program (personal and commercial records inclusive).
2. If license has ever been suspended, applicant must have five (5) full subsequent years with no violations.
3. If license has ever been revoked, must have ten (10) subsequent years with no violations.
4. Under no condition, will an applicant be accepted as a driver for this program if (1) he/she has been convicted of a felony, (2) and/or has been convicted of a drug or alcohol offense including DUII diversion.
5. Contractor will require drivers to inform his/her supervisor of any conviction for a moving traffic violation immediately after such conviction. Failure to provide proper disclosure may be grounds for suspension or dismissal.
6. The Contractor will provide uniforms for all field personnel, as approved by the County. These may include both summer and winter uniforms.
7. The County reserves the right to require the removal of any driver, dispatcher or supervisor it deems is not an asset to the service.

Provide uniforms for all field personnel, as approved by the County. These may include both summer and winter uniforms.

The County reserves the right to require the removal of any driver.

### **Employee Wages, Salaries and Benefits**

The Contractor shall provide wages and salaries commensurate with the responsibilities of the positions offered and in concert with current market labor rates in order to ensure a qualified available work force. The detailed summary should include wages and benefits proposed for the following positions:

- Station Manager Salary Range
- Maintenance Manager Salary Range
- Road Supervisor Salary Range
- Safety Manager Salary Range
- Driver Salary Range
- Differentials for non-traditional hours if applicable
- Dispatch, Schedulers and Control Room Staff
- Bus Wash Staff

Training wages can be reduced by up to \$1.00 per hour during a probation period not to exceed six (6) months.

The Contractor shall not establish work schedules to avoid paying full-time benefits and shall maintain at least 2/3 of staffing as full-time positions.

The Contractor will obtain permission from the County for the use of any sub-contractor used in conjunction with this Contract.

The Contractor will provide the County a monthly wages and benefits statement for verification purposes.

### **Vehicle Maintenance**

Contractor shall assess mechanical condition of vehicle, schedule maintenance services and transport vehicles to the appropriate service and/or repair locations. Contractor shall maintain a vehicle repair and maintenance schedule that provides for excellent safety and maintenance and in compliance with all state and federal law and with vehicle manufacturer's recommendations for service.

The Contractor will bill \$40.00 flat fee for transporting the vehicles to their maintenance facility in Portland. The Contractor will perform all required maintenance and provide the county with a detailed invoice of the maintenance activities performed. County is responsible for repair and maintenance expenses based on actual expenses incurred and the submission original invoices. Repairs in excess of \$1,500 in value require written permission from the County. The Contractor will provide a monthly vehicle maintenance log for all services on each vehicle to the County.

All physical damage should be reported to the County within 24 hours of occurrence. Barring normal wear and tear, vehicles shall be returned in the same condition they were received by contractor.

Contractor is responsible for all vehicle repair costs arising from or related to damage caused by Contractor, subcontractors, agents, or employees.

The Contractor will be responsible for daily cleaning of the inside, regular cleaning of the outside of vehicles, any State mandated COVID cleaning, and any additional cleanings as needed due to requirements set forth by the State as part of the maintenance program. All service records will be kept on all vehicles and will be made available at the end of each month. Contractor shall assist with all warranty claims and Safety Bulletin Certificates of Compliance.

The Contractor will ensure that daily pre-trip and post-trip vehicle inspections are completed on a form approved by the County. The Contractor will promptly report any problems to the County and will not put any vehicle on the road unless it meets agreed safety standards.

Fuel cards shall be provided by County and may only be used at Pacific Pride fueling station. Fuel cards will be used only for fuel used for the Last Mile Shuttle services for the County.

### **Safety**

Contractor shall ensure the safety of riders by any and all means necessary, including, but not limited to: ensuring ability to communicate with vehicle at all times, driver training, retraining and monitoring; alcohol and drug training; mobility assistance training; vehicle maintenance; maintaining order in and around vehicles; providing safety and emergency procedures and training; etc. Contractor shall ensure all vehicles are equipped with emergency equipment. . This shall include at a minimum: fire extinguisher, first aid kit, blood borne pathogen kit, fluids kit and flashlight. All fire extinguishers will be serviced by Contractor as recommended by manufacturer and applicable federal or state regulation. County will be responsible for the cost of the required equipment.



### **Vehicle Storage and Operating Facilities**

The County will provide vehicle storage and a driver breakroom facility in Oregon City for use by the Contractor. Consumables, such as supplies and furnishings are not provided by the County. Contractor is responsible for providing facilities for dispatch and other operations, as well as office supplies and materials for the set-up of office space. Contractor is also responsible for providing dispatch software for use by this program as outlined in their RFP response. Costs associated with any agreement the Contractor may have with other landlords or software companies are included in the revenue hour rate and not subject to direct reimbursement.

### **Insurance**

The Contractor will procure and maintain, at Contractor's sole expense, at all times during the duration of this Contract, the following kinds and forms of insurance, which will include, but are not limited to, General Liability, Worker's Compensation Insurance, and Automobile Liability Insurance (including both owned and non-owned vehicles), and will include Clackamas County, its Elected Officials, Officers, Employees, Agents and Volunteers, as additional insureds on all policies.

Contractor shall further include the Oregon Department of Transportation and Tri County Metropolitan Transportation District as additional insureds on all policies.

Required insurance is detailed in **Appendix B** and includes, but is not limited to:

- Workers Compensation
- Commercial General Liability
- Automobile Liability

### **Accident and Incident Reporting**

The Contractor will notify the County immediately of any vehicle collision.

The Contractor will notify proper law enforcement officers and the County of any vehicle accident, missing, vandalized or stolen vehicles or equipment incidents involving the vehicle and any operations that might result in a claim within twenty-four (24) hours of discovery. Incident reports will include date, time and employee narrative along with the name, address, and phone contact of all parties involved and must be completed within 24 hours. The Contractor will also work with law enforcement officers in any unlawful activity that occurs within the vehicle or as noted in other areas of operation.

### **Data Collection**

The Contractor will collect information on numbers of riders including elderly and disabled ridership and other data as requested by the County. Contractor will maintain and provide daily ridership data for all services including demand-response logs showing name of rider, origin and destination location and times, distance traveled as well as scheduling and dispatch logs showing number of riders per trip.

### **Performance (On-Time)**

The Contractor will provide a minimum of 95% of trips "on-time". A trip will be considered "on-time" if it falls within a window of + or - fifteen (15) minutes deviation from the scheduled pick-up and drop-off times. Contractor will monitor deviated fixed route service for "on-time" performance and assure buses do not leave posted stop points before the time posted on the published schedules.

### **Fare Collections**

The Contractor **shall not collect fares** for either Last Mile Shuttle Services at this time

### **Record Maintenance, Access, and Retention**

The Contractor shall make and retain proper and complete books of record and account and maintain all fiscal records related to the service provided on for the County in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audit of municipal corporations. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Contractor shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Contractor as part of the Project, and any transportation services rendered by Recipient.

The Contractor 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 a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Contractor shall retain the records until the questions are resolved.

### **Other Operating Provisions**

The County and Contractor will collect complaints, compliments and other comments about the service; respond promptly to all complaints (within 24 hours) and establish policies that complement and comply with the County's processes and procedures. The County and Contractor, in the spirit of cooperation, will share this information on a regular basis.

Contractor staff, including the office personnel, will on interact with the public on a consistent basis. Contractor staff will present in a professional manner in accordance to Clackamas County policies in both professionalism and attire.

### **Planning, Administration, Grant Writing and Marketing**

The County will conduct overall program administration, grant application and preparation of grant compliance reports, planning, including route scheduling, design and marketing, developing travel guides and schedules for the public, and service quality monitoring on behalf of LMS services.

The Contractor shall supply on request, any necessary information to complete grant requests and reporting requirements for County services.

### **MISCELLANEOUS PROVISIONS:**

#### **Rider Confidentiality**

Any and all information regarding any individual served by the County is strictly confidential. All Contractor staff are expected to comply with the most current local, state and federal law regarding confidentiality. Information in any form, including in aggregate, shall not be released to any party without the authorization of the individual and/or County.

#### **Contractor's Waiver of Competition**

Contractor understands that the award of contract and subsequent rendition of the service called for by these documents shall in no manner be construed so as to place Contractor in a position to be entitled to the benefits afforded to County employees or private transit operations under Section 3(e) of the Federal Transit Administration Act of 1964 (49 U.S.C., Section 1602(e) or any other comparable provision of federal or state law (or under any regulations promulgated thereunder), as they now exist or hereinafter may be amended. Contractor hereby waives any right it otherwise might have to assert any claim or claims under said provisions of law or that may be based upon principles of unfair competition.

### **Permits to Operate**

At its sole cost and expense, Contractor shall obtain any and all permits, licenses, certificates, insurance, or entitlement to operate as are now or hereafter required by any agency, specifically including the Oregon Department of Transportation, and local building, planning and business license departments, to enable Contractor to perform this Contract, and shall provide copies of all such entitlement to County when received by Contractor. Contractor is liable for any and all taxes due as a result of this Contract.

### **Subcontractors**

The Contractor shall obtain permission from the County for the use of any subcontractor that will be used in conjunction with the Contract.

The Contract shall not be sublet except with written consent of the County. No such consent shall be construed as making the County a party to such subcontract, nor subjecting the County to liability of any kind of to any subcontractor. No subcontract shall, under any circumstances, relieve Contractor of its liability and obligation under the Contract, and all transactions with the County must be through Contractor.

There shall be no assignment/transfer of interest or delegation of Contractor's rights, duties or responsibilities under the Contract without prior written approval of the County.

No custom material produced in whole or in part under the Contract shall be subject to copyright or patent in the United States or in any country. County and the FTA shall have the authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom materials prepared under the Contract.

### **Funding**

This Contract may be funded, in whole or in part, by grant funds provided by the Federal Transit Administration (FTA). This Contract shall be governed by applicable federal laws and regulations relating to third-party contracts. Applicable federal regulations are outlined in **Appendix C** and are hereby incorporated by this reference herein. All terms required under applicable law, regardless of whether specified herein, are hereby incorporated by this reference herein.

### **SERVICE DESCRIPTION:**

#### **Oregon City Last Mile Shuttle**

The County will operate the Oregon City Last Mile shuttle service, which is a deviated fixed route service for a total of 10 revenue hours per a day. The Contractor will assist the County in the development of a final schedule and route map.

- Provide up to, but not limited to, a minimum of 10 hours per a day of weekday deviated fixed route transit service.
- Provide up to, but not limited to, a minimum of 0 hours per a day of weekend deviated fixed route transit service. This is subject to change in year 2, where 10 hours of weekend deviated fixed route transit service may be added.

During County fiscal year July 1, 2021 – June 30, 2022, the Oregon City Last Mile service will have 5 weekdays of operation and 0 weekend days of operation. 2,600 annual vehicle revenue hours on the Oregon City Last Mile shuttle.

During County fiscal year July 1, 2022 – June 30, 2023, the Oregon City Last Mile service may increase to include 1 weekend day of operation.

### **Clackamas Industrial Last Mile Shuttle**

The County will operate the Clackamas Industrial shuttle which is a deviated fixed route service for a total of 10 revenue hours per a day. The Contractor will assist the County in the development of a final schedule and route map.

The Contractor will be required to:

- Provide up to, but not limited to, a minimum of 10 hours per a day of weekday and/or commuter hour deviated fixed route transit service.
- Provide up to, but not limited to, a minimum of 0 hours per a day of weekend deviated fixed route transit service. This is subject to change if commuter hour service is selected. The Contractor may need to provide service 7 days a week at abbreviated hours for commuter service.
- Provide dispatcher and/or supervisory support during all service hours.

During County fiscal year July 1, 2021 – June 30, 2022, the Clackamas Industrial Last Mile service will have 5-7 weekdays of operation and 0-2 weekend days of operation depending on final schedule decisions; hours may be limited to commuter hours only. 2,600 annual vehicle revenue hours on the Clackamas Industrial shuttle.

During County fiscal year July 1, 2022 – June 30, 2023, the Clackamas Industrial Last Mile service may increase to include additional hours of operation.

### **Service Hours**

The Contractor shall operate the Oregon City Last Mile Shuttle service based on the service outlined above., Holidays are as follows: New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day and Christmas Day.

The Contractor shall operate the Clackamas Industrial Last Mile Shuttle service based on the service outlined above. Holidays are as follows: New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day and Christmas Day.

Additional service may be considered in the future and will be negotiated with Contractor on a case-by-case basis.

### **Bus Equipment, Fuel and Maintenance**

County shall provide at least two ADA-compliant vehicles for the Oregon City LMS Service and at least two ADA compliant vehicles for the Clackamas Industrial LMS Service and pay for all related fuel and routine maintenance and repair expenses. A current list of vehicles is set forth in **Appendix A**.

### **Back-up Vehicle**

The County will be responsible for providing a comparable back-up vehicle if the County-provided vehicles are out of service.

**APPENDICES INCLUDE:**

Appendix A – County Fleet Vehicles

Appendix B – Contractor Insurance Requirements

Appendix C – Federal Transit Administration Requirements

**APPENDIX A**

**Clackamas County Vehicle List**

| LAST MILE SHUTTLE VEHICLES |         |                   |        |        |              |      |              |
|----------------------------|---------|-------------------|--------|--------|--------------|------|--------------|
| County Unit #              | License | VIN               | Unit # | Make   | Model        | Year | Service date |
|                            |         | 1FDFE4FS7KDC69082 | 9082   | Glaval | Universal 22 | 2020 |              |
|                            |         | 1FDFE4FS0KDC69067 | 9067   | Glaval | Universal 22 | 2020 |              |
|                            |         | 1FDFE4FS4KDC69027 | 9072   | Glaval | Universal 22 | 2020 |              |
|                            |         | 1FDFE4FS5KDC69100 | 9100   | Glaval | Universal 22 | 2020 |              |

## APPENDIX B

### CONTRACTOR INSURANCE REQUIREMENTS

The Contractor will, at Contractor's sole expense, at all times during the duration of this Contract, maintain the following kinds and forms of insurance, which will include, but are not limited to General Liability, Worker's Compensation Insurance, and Automobile Liability Insurance (including both owned and non-owned vehicle Automobile Liability Insurance), and will include Clackamas County, and its elected officials, officers, employees, agents and volunteers, as additional insureds on all required policies.

#### **GENERAL**

Contractor shall obtain and provide, for Contractor's performance under this Contract i) 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 of this Contract and ii) maintain the insurance in full force throughout the duration of this Contract. 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 Clackamas County. Contractor shall not commence work under this Contract, and shall not authorize work to begin until the insurance is in full force. Thereafter, Contractor shall monitor continued compliance with the insurance requirements on an annual or more frequent basis.

Contractor shall comply with any requirements of Clackamas County with respect to these insurance requirements, including but not limited to the Clackamas County issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

#### **TYPES AND AMOUNTS**

**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). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.

**COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to Clackamas County. 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 Clackamas County:

Bodily Injury, Death and Property Damage:

\$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). Insurance policy shall include Sexual Abuse/Molestation coverage or be provided by a separate policy.

**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:

Bodily Injury, Death and Property Damage:

\$5,000,000 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 Clackamas County, and its respective officers, employees and agents, as additional insureds but only with respect to the Contractor's activities to be performed under the Contract and, with respect to subcontractors, activities to be performed under their sub agreements. 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 this Contract for the Contractor, and the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the Contractor's completion and Clackamas County's acceptance of all services required under this Contract, and the subcontractors completion and Contractors acceptance of all services required under the sub agreement.

**NOTICE OF CANCELLATION OR CHANGE**

The Contractor or its insurer must provide 30 days' written notice to Clackamas County before cancellation of the required insurance coverage(s).

**CERTIFICATE(S) OF INSURANCE**

Contractor shall submit to Clackamas County a certificate(s) of insurance for all required insurance before the commencement of performance of services. The certificate(s) or an attached endorsement must specify: all entities and individuals who are endorsed on the policy as Additional Insured



## APPENDIX C

### FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

#### 1. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.  
49 CFR Part 622

**Applicability to Contracts:** The Energy Conservation requirements are applicable to all contracts.

**Flow down Requirements:** The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

**Energy Conservation** - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

#### 2. LOBBYING

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

**Applicability to Contracts:** The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down Requirements The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Byrd Anti-Lobbying Amendment**, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to North County Transit District (NCTD).

#### 3. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

**18 CFR 18.36(i)**  
**49 CFR 633.17**

**Applicability to Contracts:** Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section. Flow down Requirements FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records** - The following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide NCTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Where NCTD or a sub-grantee of NCTD in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to NCTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
- (5) FTA does not require the inclusion of these requirements in subcontracts.
- (6) Requirements for Access to Records and Reports by Types of Contract Sources of Authority: 1 18 CFR 18.36 (i)

#### **4. FEDERAL CHANGES**

##### **49 CFR Part 18**

**Applicability to Contracts:** The Federal Changes requirement applies to all contracts.

**Flow down Requirements:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NCTD and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **5. RECYCLED PRODUCTS**

**Applicability to Contracts:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during

the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow down Requirements:** These requirements flow down to all contractor and sub-contractor tiers.

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

## 6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

### 29 CFR Part 5 40 U.S.C. 3701 et seq. 40 U.S.C. 3702

**Applicability to Contracts:** The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work" with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12)

Flow down Requirements: Applies to third party contractors and sub-contractors.

**(1) Overtime requirements** - No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**(3) Withholding for unpaid wages and liquidated damages** - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime

## 7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

**Applicability to Contracts:** Applicable to all contracts.

**Flow down Requirements:** This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

**No Obligation by the Federal Government.**

- (1) NCTD and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NCTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

**8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.  
49 CFR Part 31  
18 U.S.C. 1001  
49 U.S.C. 5307**

**Applicability to Contracts:** These requirements are applicable to all contracts.

**Flow down Requirements:** These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements. Program Fraud and False or Fraudulent Statements or Related Acts

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor who will be subject to the provisions.

**9. TERMINATION**

**49 CFR Part 18 FTA Circular 4220.1F  
See Article II, Paragraph 19 of the Contract document.**

## 10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR 18  
2 CFR 1200  
2 CFR 180

Executive Orders 12549 and 12689  
31 U.S.C. 6101

**Background and Applicability:** In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, sub-contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327). These provisions apply to all NCTD contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow down Requirements:** These requirements flow down to contractors and sub-contractors at all levels.

**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by NCTD. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to NCTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 11. PRIVACY ACT

5 U.S.C. 552

**Applicability to Contracts:** When NCTD maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow down Requirements:** The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Contracts Involving Federal Privacy Act Requirements:** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

## **12. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

(1) The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:

- i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
- ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
- iii. 49 U.S.C. § 5325 (k).
- iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.

(2) The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.

(3) The following requirements apply to a contract awarded as a result of this solicitation:

- i. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102,

42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to NCTD programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements the FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.

ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:

a. Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. (4) The Contractor agrees to include these requirements in each

subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **13. ADA ACCESS REQUIREMENTS**

**49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101**

**Applicability to Contracts:** The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

#### **14. PATENT AND RIGHTS IN DATA**

##### **37 CFR Part 401 49 CFR Parts 18 and 19**

**Applicability to Contracts:** Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

**Flow down Requirements:** The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

#### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

**A. Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, NCTD or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may NCTD or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal



Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by NCTD or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, NCTD and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for NCTD or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, NCTD and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by NCTD or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither NCTD nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by NCTD or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that NCTD or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal

Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contract and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, NCTD and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## **15. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 26**

#### **Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)**

(1) NCTD encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor's sub-contractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, NCTD must comply, and insure that its Contractor(s) comply with 49 CFR Part 26, Section 1101(b) of MAP-21 (23 U.S.C. § 101 note).

(2) DBE Requirements/DBE Obligation:

- i.** The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- ii.** The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- iii.** Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA's Guidance (Docket No. FTA-2006-24063; dated

March 23, 2006), NCTD will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation. iv. The Contractor, and any of its sub-contractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of NCTD contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure

that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Contractor signs with a sub-contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

v. MAP-21 §1101(b), 23 U.S.C. Section 101 note, extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding assists FTA in meeting this national goal.

To receive FTA assistance, NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". As NCTD is required to have a DBE program, the third-party contracts that NCTD has included in its DBE program determine whether the NCTD meets the DBE threshold for goal setting, and the goal if the threshold is met.

### (3) DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-contractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

### (4) DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-Contractor Payment Report", which is used by NCTD to verify payments to DBE and non-DBE sub-contractors. When completing this form, the Contractor must designate DBE sub-contractors by placing an asterisk in front of their name. As Federal law requires that NCTD have proof of payment to a DBE sub-contractor, the sub-contractor must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.
- ii. In order for the Contractor to submit a properly executed "Monthly Sub-Contractor Payment Report," the Contractor must verify that Sub-contractors DBE certification is current at time of payment.
- iii. Certified Contractors can be found at the State of California web site: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

### (5) DBE Contract Assurance (49 CFR 26.13)

i. NCTD does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. NCTD takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. NCTD's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.

ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible.

(6) DBE Prompt Payment (49 CFR 26.29)

i. Not later than ten (10) days after receipt of each progress payment from NCTD, the successful Bidder shall pay to any sub-Contractor performing any work, the respective amounts allowed to the successful Bidder for work performed by the sub-Contractor, to the extent of each sub-Contractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Bidder receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107 the successful Bidder shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the successful Bidder shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-Contractors.

ii. Failure to comply with these provisions or delay in payment without prior written approval from NCTD will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

(7) DBE Breach of Contract

i. Failure to carry out the requirements of these provisions constitutes a breach of contract and may result in termination of the contract by NCTD or imposition of other appropriate sanctions pursuant to 49 CFR Part 26.13 (b).

(8) Civil Rights Policy Statements

i. NCTD's DBE Policy Statement for its FTA approved DBE program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-25.pdf>

ii. NCTD's Discrimination Complaint Procedures Policy Statement for its Title VI/Unruh program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-26.pdf>

iii. NCTD's EEO Policy Statement for its EEO program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-27.pdf>

## **16. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

### **FTA Circular 4220.1F**

**Applicability to Contracts:** The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

**Flow Down Requirements** The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

**EXHIBIT B  
FEE SCHEDULE**

| <b>CLACKAMAS COUNTY LAST MILE SHUTTLES COST ESTIMATE</b>                          |                                |  |               |
|---|--------------------------------|--|---------------|
| <b>Service Description</b>  | <b>Estimated Service Hours</b> | <b>Revenue Hour Rate: The hourly rate reflects all fixed and variable costs involved in providing service.</b> |               |
|   |                                | <b>Year 1</b>  | <b>Year 2</b> |
| Oregon City Shuttle<br>(deviated fixed route)                                     | Year 1: 2600<br>Year 2: 2600   | \$56.01  | \$56.01       |
| Clackamas Industrial Shuttle<br>(deviated fixed route)                            | Year 1: 2600<br>Year 2: 2600   | \$56.01  | \$56.01       |
| Total Operation Contract Cost<br>(revenue hour rate * estimated hours of service) |                                | \$291,252.00   | \$291,252.00  |
| Maintenance Reimbursement**   |                                | \$80,000.00  | \$80,000.00   |
| Future Expansion  |                                | \$100,000.00   | \$100,000.00  |
| Total Operations Contract   |                                | \$471,252.00   | \$471,252.00  |

**Total Years 1 & 2:       \$942,504.00**

*\*\*In the event maintenance expenses exceed the allotted budgetary estimate, the parties will negotiate in good faith to address the maintenance issues through a contract amendment or other mutually agreeable solution. Provided, however, that any increase in the Contract amount is subject to availability of funds, as determined by the County in its sole discretion.*

**EXHIBIT C**

**Clackamas County IGA with TriMet for HB 2017  
Statewide Transportation Improvement Funds (STIF)**

## EXHIBIT C

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON  
SUBRECIPIENT AGREEMENT [GP200809EV]  
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION  
SPECIAL TRANSPORTATION IMPROVEMENT FUNDS**

**PARTIES:**

1. Tri-County Metropolitan Transportation District of Oregon (TriMet), a mass transit district organized under ORS Chapter 267. TriMet is acting as a Qualified Entity designated to distribute funds pursuant to ORS Chapter 184.751 *et seq* to authorized entities that provide Public Transportation Services from the State of Oregon Department of Transportation (ODOT), Public Transit Division, Special Transportation Improvement Fund (STIF) for the purposes set forth at ORS 184.758. Pursuant to Resolution No. 18-10-72, TriMet's Board of Directors authorized TriMet to disburse STIF Formula Funds received by TriMet to eligible Subrecipients in accordance with the STIF Plan.
2. Clackamas County (Subrecipient).

**DEFINITIONS:**

As used in this Agreement, which includes all Exhibits:

1. "Americans with Disabilities Act" ("ADA") means section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008.
2. "Capital Asset" means real property or tangible items purchased or leased with STIF moneys, including without limitation vehicles and structures, with a purchase price of \$5,000 or more and a useful life of at least one year.
3. "Commission" means the Oregon Transportation Commission ("OTC") established under ORS 184.612.
4. "Fiscal Year" means the annual period which begins on July 1 and ends on June 30.
5. "Low-Income Household" means a household the total income of which does not exceed 200% of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for the 48 Contiguous States and the District of Columbia.
6. "Project" means a public transportation improvement activity or group of activities that is (i) eligible for STIF moneys; (ii) included in a STIF Plan adopted by the Commission; and (iii) funded by this Agreement.
7. "Project Manager(s)" means the individuals identified in Section 12 of this Agreement who are authorized by TriMet and Subrecipient respectively to send and receive communications regarding this Agreement.
8. "Public Transportation Services" means any form of passenger transportation by car, bus, or other conveyance, either publicly or privately owned, which provides service to the general public (not including charter, sightseeing, or exclusive school bus service) on a regular and continuing basis. Such transportation may be for purposes such as health care, shopping, education, employment, public services, personal business, or recreation.



9. "Public Transportation Service Provider" means a Qualified Entity or a city, county, Special District, Intergovernmental Entity or any other political subdivision or municipal or Public Corporation that provides Public Transportation Services.
10. "Qualified Entity" means, a county in which no part of a Mass Transit District or Transportation District exists, a Mass Transit District, a Transportation District or an Indian Tribe.
11. "Recipient" means a Qualified Entity or Public Transportation Service Provider that has a STIF Plan approved by the Commission or enters into an agreement directly with ODOT to receive STIF Formula Funds.
12. "Representation Letter" means a letter prepared by a Subrecipient's external auditors and sign by Subrecipient's senior management that attests to the accuracy of the statements that the Subrecipient has submitted to the auditors for their analysis.
13. "Satisfactory Continuing Control" means the legal assurance that a Capital Asset will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
14. "STIF" or "Statewide Transportation Improvement Fund" means the fund established under ORS 184.751.
15. "STIF Formula Fund" means up to 90 percent of the Statewide Transportation Improvement funds to be disbursed to Qualified Entities conditioned upon the Commission's approval of a STIF Plan, pursuant to ORS 184.758(1)(a).
16. "STIF Formula Fund Cycle" means the time period between Fiscal Years 2019 through the end of Fiscal Year 2021 (June 30, 2021) that is programmed in the STIF Plan.
17. "STIF Plan" means a public transportation improvement plan that is approved by TriMet's Board of Directors and submitted to the Oregon Department of Transportation for review and approval by the Commission in order for TriMet to receive a share of the STIF Formula Fund.

#### **RECITALS:**

1. ORS 184.751 establishes the Statewide Transportation Improvement Fund, which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
2. The STIF Formula Fund is intended to improve Public Transportation Services for current and potential future Oregon transit users by distributing moneys to Qualified Entities. STIF Formula Funds are not intended to supplant local funding sources to maintain existing services.
3. The Commission has approved TriMet's multi-year Plan for use of STIF Formula Funds through the end of Fiscal Year 2021. TriMet is a Recipient of STIF Formula Funds as it is authorized to receive STIF Formula Funds directly from the Oregon Department of Transportation. TriMet's STIF Plan consists of numerous Projects to provide Public Transportation Services in TriMet's area of responsibility based on anticipated STIF Formula Funds.
4. Subrecipient is authorized to receive STIF Formula Funds and provide Public Transportation Services in and around Clackamas County, Oregon. Subrecipient provides Public Transportation Services in TriMet's Area of Responsibility as defined by OAR 732-040-0005(5).
5. TriMet's STIF Plan anticipates sufficient future STIF Formula Funds for Subrecipient for a Project or Projects that provide Public Transportation Services as specified in this Agreement.

6. Pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 42, TriMet and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STIF Formula Funds to Subrecipient in order for Subrecipient to complete one or more tasks specified in the STIF Plan. **Funds shall be used solely for the Project(s) and shall not be used for any other purpose.**

## AGREEMENTS:

### 1. General

- 1.1. Subrecipient agrees to comply with and use the STIF Formula Funds in accordance with the terms of this Agreement including the terms and conditions of ORS 184.751 through 184.766, the provisions of OAR Chapter 732 Divisions 40 and 42, as may be amended, TriMet's Approved FY2019-2021 STIF Plan, and any ODOT guidance documents pertaining to the Statewide Transportation Improvement Funds program, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, F, and G, which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form: Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, and Exhibit G. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the STIF Formula Funds, and shall be amended to incorporate those changes.
- 1.2. Subrecipient affirms that it has all the necessary policies and procedures in place to ensure compliance with OAR 732 Divisions 40 and 42, and to achieve the goals and outcomes described in the Project, including but not limited to program and project management; financial management; operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.
- 1.3. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of this Agreement. Where provided in this Agreement, Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound as provided in this Agreement and exhibits thereto.
- 1.4. Subrecipient and TriMet agree that the percentages of STIF Formula Funds designated for Subrecipient in Exhibit E represents, to the extent possible and using the best available data, an allocation method that is proportionate to the amount of employee payroll tax revenue generated within the geographic territory of the Subrecipient.
  - 1.4.1. If Subrecipient receives STIF Formula Funds generated within TriMet's geographic district, Subrecipient agrees that the STIF Formula Funds in Exhibit E represent the allocation to Subrecipient approved by the Oregon Transportation Commission.
- 1.5. If the total amount of STIF Formula Funds transferred to Subrecipient pursuant to Section 1.4 exceeds the total amount in Exhibit D, the Subrecipient shall retain all excess funds in a restricted account for a future STIF Plan or for disbursement as otherwise approved by the Oregon Transportation Commission.

- 1.6. If the total amount of STIF Formula Funds received by TriMet from ODOT exceeds the total amount budgeted by Subrecipient for any fiscal year in Exhibit D, then TriMet shall retain all excess funds in a restricted account and will disburse the funds plus interest to Subrecipient for STIF Plan activities to be conducted in the following fiscal year until the maximum amount for the STIF Plan has been reached. A Subrecipient cannot spend more than the amount budgeted for STIF Plan Period, whether from STIF Formula funds or interest earned on those funds.
  - 1.6.1. Any STIF Formula Funds, including interest, accrued at the end of the STIF Plan period in excess of the amount budgeted by Subrecipient for the STIF Plan period in Exhibit D will be retained by TriMet and disbursed in accordance to the subsequent STIF Plan approved by the Oregon Transportation Commission.
- 1.7. If the STIF Formula Funds transferred to Subrecipient pursuant to Section 1.4 are not sufficient to meet the funding schedule in Exhibit D, TriMet will utilize the Subrecipient's percentage of STIF Formula Funds identified in Exhibit E relative to the total STIF Formula Funds received by TriMet, unless the Parties agree otherwise.
- 1.8. TriMet agrees to distribute STIF Formula Funds due to Subrecipient in accordance with the terms of this Agreement, ORS 184.751 *et seq.*, and OAR Chapter 732 Divisions 40 and 42.

## **2. Audit and Compliance Review**

- 2.1. Subrecipient shall conduct an annual financial audit of the STIF Formula Funds received by the Subrecipient pursuant to this Agreement. All financial audit reports shall be submitted to TriMet no later than 30 days after the receipt of the auditor's final report(s).
- 2.2. All audits prepared pursuant to Section 2.1 shall include the agreed-upon procedures (AUP) as set forth in Exhibit F. Those procedures, and related costs, will be included with the Subrecipient's annual financial statement audit as referenced in Section 2.1.
- 2.3. Subrecipient shall be subject to periodic on-site compliance reviews by TriMet. The purpose of the compliance site review is to ensure that Subrecipient has appropriate, adequate internal controls and management procedures to meet the terms and conditions of agreements governing the disbursement of STIF Formula Funds. Compliance reviews may include but not be limited to the following, as applicable: program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.
- 2.4. An on-site compliance review may not be required upon satisfactory completion by Subrecipient of the AUP as required in Exhibit F and the following:
  - 2.4.1 When conducting a financial statement audit in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Government Auditing Standards (GAGAS or the Yellow Book), written representations are provided in Subrecipient's Representation Letter regarding STIF Formula Funds to complement the auditing procedures of the independent auditor. TriMet requires the following language to be included in the Representation Letter to account for STIF Formula Funds regardless of materiality:

“We are responsible for complying, and have complied with, the requirements pursuant to ORS Chapter 184 and OAR 732, Divisions 40 and 42 for the use of STIF Formula funds identified in the approved FY2019-21 STIF Plan. We have all appropriate, adequate internal controls and management procedures to meet the terms

and conditions of agreements governing the disbursement of STIF Formula Funds, including program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.”

- 2.4.2 No later than 30 days after receipt of the auditor’s financial report, Subrecipient will provide an electronic copy of the following documents to TriMet:
  - 2.4.2.1. Audited Financial Statements or Comprehensive Annual Financial Report (CAFR);
  - 2.4.2.2. Report of Independent Auditors on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Oregon Municipal Auditing Standards;
  - 2.4.2.3. Report of Independent Auditors on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.
  - 2.4.2.4. Report of Independent Auditors on Compliance for the Major Federal Program, Report on Internal Control Over Compliance, and Report on the Schedule of Expenditures of Federal Awards Required by the Uniform Guidance;
  - 2.4.2.5. Management Representation Letter with the representation described in 2.4.1;
  - 2.4.2.6. Agreed Upon Procedures Report as required by ODOT and fully described in Appendix F.
  - 2.4.2.7. Written communications describing material weaknesses, significant deficiencies, or other matters, including written comments for opportunities for improvement;
  - 2.4.2.8. The results of any comprehensive review completed by the Federal Transit Administration or the Oregon Department of Transportation within 30 days of receipt, if applicable;
  - 2.4.2.9. The results of any STIF Formula Fund related reviews or audits within 30 days of receipt, if applicable.
- 2.5. If applicable, the asset inventory list as described in the Agreed Upon Procedures. If additional compliance requirements and/or findings are identified by the independent auditor resulting in a corrective action plan, then TriMet will undertake necessary steps to ensure compliance requirements have been met and/or corrective action plans are fully developed and implemented. TriMet will bill Subrecipient for any audit or compliance review services as provided in this Section 2 on a cost reimbursement basis.
- 2.6. TriMet may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws and requirements, and specifically as provided by ORS 184.751 through 184.766 and OAR Chapter 732, Divisions 40 and 42 in addition to the requirements set forth in this Agreement.
- 2.7. Subrecipient shall permit TriMet, ODOT, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to STIF Formula Funds received or disbursed and to inspect the STIF Plans and Projects financed with STIF Formula Funds including, but not limited to, the financial records, physical premises, and Capital Assets used to deliver public transportation services.

- 2.8. Subrecipient shall ensure that its agreements or contracts with subcontractors or vendors include provisions which permit TriMet, ODOT, the Secretary of State of Oregon, or their authorized representatives, access to data and records held by the Subrecipient or vendor as described in this Section.

### **3. Accounting Requirements**

- 3.1. Subrecipient shall account for STIF Formula Funds separately. Any interest accrued must be added to the moneys and must be reported to TriMet at the end of the Fiscal Year in which it was earned.
- 3.2. Subrecipient shall document the expenditure of all STIF Formula Funds disbursed by TriMet under this Agreement. Subrecipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles (GAAP) and in sufficient detail to permit TriMet to verify how the STIF Formula Funds were expended. Subrecipient shall comply with applicable federal, state and local laws for accounting, billing and reporting requirements with STIF Formula Funds.

### **4. Reporting Requirements**

- 4.1. In addition to any other reporting required by this Agreement or by law, Subrecipient shall submit the following electronic documentation to TriMet:
  - 4.1.1. The Subrecipient's adopted annual budget for the upcoming Fiscal Year must be submitted no later than 30 days after adoption. A subcontractor is not required to submit its organization's annual budget.
  - 4.1.2. The results of any relevant financial audits of the Subrecipient or any subcontractor, as required by a local, state or federal oversight agency for the purposes of statewide reporting including, but not limited to:
    - 4.1.2.1. Any other report concerning the financial and administrative activities of Subrecipient as required by law that affects the ability of Subrecipient or a subcontractor to perform the functions or programs funded by this Agreement.
- 4.2. Results of audits described in this Section 4.1.2 must be submitted to TriMet no later than 15 days after receipt of the final results. A copy of information submitted under this Section 4.1.2.1 must be sent to TriMet no later than 15 days after submittal to the requesting agency.
- 4.3. Subrecipient will provide TriMet with any report that documents the benefits and discrete measurable outcomes associated with each Project as outlined in Exhibit G, the ODOT STIF Formula Fund Reporting Requirements Overview.

### **5. Withholding of Funds**

- 5.1. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STIF Formula Funding requirements hereunder by Subrecipient. Upon breach of this Agreement by Subrecipient TriMet may withhold future STIF Formula Fund payments to Subrecipient.
- 5.2. In addition to any other provisions of this Agreement TriMet may withhold payment of STIF Formula Funds, if:
  - 5.2.1. The Subrecipient or its subcontractor is not using STIF Formula Funds in accordance with the STIF Plan, this Agreement, or applicable laws or regulations;
  - 5.2.2. The Subrecipient or its subcontractor has not submitted reporting required by applicable law or this Agreement, subject to a reasonable cure period;

- 5.2.3. TriMet determines that there are any unresolved audit finding relating to the accounting for STIF Formula Funds as provided by Section 2 Audit and Compliance Review of this Agreement;
- 5.2.4. TriMet determines that there is any unresolved compliance review finding relating to the use of STIF moneys as provided by Section 2 Audit and Compliance Review of this Agreement;
- 5.2.5. If an audit or a review of Subrecipient under this Agreement determines that Subrecipient used STIF Formula Funds inconsistently with this Agreement, TriMet may withhold future STIF Formula Funds;
- 5.2.6. 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;
- 5.2.7. The Commission has withdrawn, modified, or limited its approval of Subrecipient's program as described in this Agreement;
- 5.2.8. Subrecipient terminates this Agreement; or
- 5.2.9. TriMet fails to receive funding, appropriations, limitations or other expense authority outside the control of TriMet, sufficient to allow TriMet, in the exercise of its reasonable administrative discretion or to continue to make payments for performance of this Agreement.

## **6. Discrimination Prohibited/Compliance with Laws**

- 6.1. Subrecipient certifies that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STIF Formula Funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.
- 6.2. Subrecipient shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Subrecipient 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.
- 6.3. Subrecipient will include the terms of Sections 6.1-6.2 in any contract with a vendor or subcontractor for the use of STIF Formula Funds.

## **7. Indemnification**

- 7.1. The parties agree that TriMet shall have no liability of any nature in connection with the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising, as between TriMet and Subrecipient, solely out of the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services by Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. If Subrecipient is a public body and the claim, suit, or action subject to indemnification under this section is limited by the Oregon Tort Claims Act (ORS 30.260 *et seq*), then Subrecipient's indemnification will not exceed an amount equal to the applicable tort claim limit for Subrecipient pursuant to the Oregon Tort Claims Act. Any claim, suit, or action not arising solely out of the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services shall be governed by Exhibit A(6), contribution.

7.2. In addition to any other remedies available to TriMet as provided for by law or under this Agreement, any Subrecipient receiving STIF Formula Funds, pursuant to this Agreement shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement. The provisions set forth in this Section and related provisions in Exhibit A shall survive termination or expiration of this Agreement.

## **8. Vehicle/ Operator Requirements**

- 8.1. Subrecipient shall ensure that all drivers of equipment purchased with STIF Formula Funds have a valid Oregon driver's license and shall have passed a defensive driving course or bus driver's training course. Per ORS 820.200, drivers of public passenger-carrying vehicles must be at least 21 years of age. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.
- 8.2. Subrecipient shall require criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers as provided by Subrecipient's own policy or as provided for in a contract with a vendor or contractor.
- 8.3. Subrecipient will include the terms of Sections 8.1-8.2 in any contract with a vendor or subcontractor for the use of STIF Formula Funds.

## **9. Progress Reporting Requirements**

- 9.1. Quarterly Reports: Subrecipient shall prepare a quarterly report for TriMet which details Project progress, outcomes achieved, and expenditures of STIF Formula Fund moneys by itself and any subcontractors. The quarterly report must be submitted no later than 30 days following the end of a quarter.
- 9.1.1. The quarterly reporting periods for each STIF Plan year are:
- 9.1.1.1. January through March
  - 9.1.1.2. April through June
  - 9.1.1.3. July through September
  - 9.1.1.4. October through December
- 9.2. Quarterly progress reports should be remitted via TriMet's established process for posting on its website that meets the requirements of Exhibit A and Exhibit D. Reports must be in a format acceptable to TriMet.
- 9.3. TriMet reserves the right to request additional information as may be necessary to comply with state reporting requirements.
- 9.4. STIF Plan Period Reconciliation: Within 30 days of the end of an approved STIF Plan period, TriMet shall reconcile disbursements made to Subrecipient against the Subrecipient's reported expenditures. If disbursements are found to exceed the expenditures, the amount may be carried forward by the Subrecipient into the next STIF Formula Fund Cycle provided that the Commission approves of the funding plan any funds carried forward.
- 9.5. Capital Asset Reports: If the Subrecipient has acquired, purchased or leased Capital Assets using STIF Formula Fund moneys, Subrecipient shall provide TriMet with a report of the Capital Asset inventory, described in Exhibit C Section 2, including an identification of any sale, transfer or other disposition of the Capital Asset as described in Exhibit C. Capital Asset Reports must be submitted to TriMet on a quarterly schedule in a manner specified by TriMet.

## 10. Funding

- 10.1. Upon execution of this Agreement, TriMet shall disburse to Subrecipient funds quarterly as outlined in the schedule set forth in Exhibits A, D, and E.
- 10.2. Subrecipient shall document eligible use of STIF Formula Funds through the reports submitted to TriMet's Project Manager in accordance with this Agreement and the Exhibits.
- 10.3. The parties acknowledge that the schedule for disbursement of funds in Exhibits D and E are based on anticipated future tax revenue collected by the State of Oregon. The estimated disbursements are not guaranteed. Actual funds received may not be sufficient to provide Subrecipient the full amount of STIF Formula Funds in any quarter as anticipated by this Agreement.

## 11. Term

This Agreement shall be in effect from July 1, 2019 through June 30, 2021, unless the Agreement is terminated earlier as provided in this Agreement.

## 12. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

### TriMet:

#### For Reporting:

Erika Turney, Grants Administrator  
TriMet  
1800 SW 1st Ave., Suite 300  
Portland, OR 97201  
503.962.4832  
[turney@trimet.org](mailto:turney@trimet.org)

#### For STIF Program Questions:

Tom Mills, Service Development Manager  
TriMet  
1800 SW 1st Ave., Suite 300  
Portland, OR 97201  
503.962.4883  
[millst@trimet.org](mailto:millst@trimet.org)

### Subrecipient:

#### For all communications:

Teresa Christopherson  
Administrator  
Clackamas County  
2051 Kaen Rd., #135  
Oregon City, OR 97145  
503-650-5718  
[teresachr@co.clackamas.or.us](mailto:teresachr@co.clackamas.or.us)

If one party finds a need to designate a new Project Manager, it shall immediately notify the other party in writing, electronic mail, or other dated documentation.

## 13. Assignment/Subcontracts

Except with regard to audit requirements, Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and



void, and shall constitute grounds for immediate termination by TriMet. If the delegation to a specific entity has been made in the STIF Plan approved by ODOT, then TriMet consents to the delegation.

**14. Mediation**

Should any dispute arise between the parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties. Notwithstanding the foregoing, either party may seek equitable relief, including, but not limited to, injunctive relief and specific performance, at any time prior to, during, or following mediation.

**15. Entire Agreement/Authority**

15.1. This Agreement, which includes the attached Exhibits A-G 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. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.

15.2. If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

15.3. This Agreement may be executed in two or more counterparts (by facsimile or scanned email PDF), 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.


15.4. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

TRIMET

By: Bernie Bottomly

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

  
7/2/19

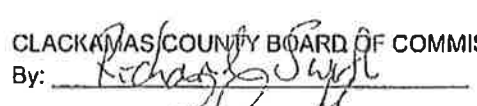
CLACKAMAS COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

  
Name: Richard S. Swift  
Title: H3S Dir.  
Date: 7.2.19

Approved as to form

By: \_\_\_\_\_

Office of County Attorney

6/17/19

## EXHIBIT A

### SPECIFIC AGREEMENT PROVISIONS

Subrecipient shall comply with the provisions as set forth in this Exhibit. Where provided in Exhibit A, Subrecipient shall require each of its subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit.

#### 1. Disbursement and Recovery of STIF Formula Funds.

A. **Disbursement Generally.** TriMet shall promptly disburse STIF Formula Funds to Subrecipient after the Oregon Department of Transportation provides funding to TriMet in accordance with and subject to approval of the STIF Plan, the terms and conditions of this Agreement, and Subrecipient's compliance with this Agreement. As used in this Section, "promptly," means within 5 business days of TriMet's receipt of STIF Formula Funds from ODOT after July 1, 2019, absent a written notification from TriMet to Subrecipient explaining the reason(s) for any delay beyond 5 business days. Subject to the forgoing and based on the current and best available information, TriMet anticipates the following schedule for distribution of STIF Formula funds to Subrecipient:

- i. Provided this Agreement has been executed by Subrecipient at least 7 business days prior to July 1, 2019, and Subrecipient has provided TriMet with payment instructions required by TriMet by June 21, 2019, the first disbursement will take place within 5 business days of July 1, 2019. This disbursement is expected to reflect STIF Formula Funds from ODOT for the first two quarters of Fiscal Year 2019.
- ii. The second disbursement is anticipated for later in July 2019. The second disbursement is anticipated to reflect STIF Formula Funds from ODOT for the third quarter of Fiscal Year 2019.
- iii. After the two disbursement above that are anticipated to occur in July 2019, TriMet will make subsequent disbursements quarterly following receipt from ODOT. ODOT expects to disburse funds to TriMet on January 15, April 15, July 15, and October 15 each year during the STIF Plan Period.
- iv. Following the first to disbursements in this Section 1(A)(i)-(ii), the next disbursement is anticipated to occur after TriMet receives funding on October 15, 2019 and then every quarter thereafter during the STIF Plan Period.

B. **STIF Plan Budget Revisions.** In the event that Subrecipient determines that funds need to be shifted between tasks within that Subrecipient's Project or between that Subrecipient's Projects as allowed under ODOT published guidance, Subrecipient's Project Manager will submit a transfer request to TriMet's Project Manager. TriMet will promptly request approval from ODOT on Subrecipient's behalf.

#### 2. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to TriMet as follows:

- A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the STIF Formula Funds. Subrecipient 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 Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient 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 or any provision of Subrecipient's Charter, Articles of Incorporation or Bylaws, if applicable, (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 Subrecipient is a party or by which Subrecipient 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 Subrecipient of this Agreement.

- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, 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.** Subrecipient'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 sub agreements, except as permitted by applicable law. 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. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- E. **Policies and Procedures.** Subrecipient represents and warrants that it has all of the policies and procedures in place to ensure compliance with OAR 732, Divisions 40 and 42, and to achieve the goals and outcomes specified in the Agreement, including but not limited to program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.

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

### 3. **Retention of Records and Audit Expenses**

- A. **Retention of Records.** Subrecipient shall retain and keep and require its subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STIF Formula Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient and its subcontractors shall retain the records until the questions are resolved.
- B. **Capital Asset Records.** For any Capital Asset purchased with STIF Formula Funds by Subrecipient or a subcontractor, all records relating to such Capital Assets shall be maintained for three years after disposition of the Capital Asset.
- C. **Audit Requirements.** To the fullest extent permitted by law, Subrecipient shall save, protect and hold harmless TriMet from the cost of any audits or special investigations performed with respect to the STIF Formula Funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this Agreement. This section does not apply to regular audit and compliance reviews that are conducted pursuant to Section 2 of this Agreement.

#### 4. Subrecipient Sub agreement and Procurement

A. **Sub agreements.** Subrecipient may enter into agreements with contractors or subcontractors (collectively, "sub agreements") for performance of the Project.

- i. All sub agreements must be in writing executed by Subrecipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the sub agreement(s). Use of a sub agreement does not relieve Subrecipient of its responsibilities under this Agreement. Subrecipient agrees to provide TriMet with a copy of any signed sub agreement upon request by TriMet. Any substantial breach of a term or condition of a sub agreement relating to funds covered by this Agreement must be reported by Subrecipient to TriMet within ten (10) days of its being discovered.

B. **Subrecipient's sub agreement(s) shall require the other party to such sub agreement (s) to indemnify, defend, save and hold harmless TriMet, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including reasonable 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 Subrecipient's sub agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that TriMet shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of TriMet, be indemnified by the other party to Subrecipient's sub agreement(s) from and against any and all Claims.**

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

Subrecipient shall require the other party, or parties, to each of its sub agreements 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 B to this Agreement.

C. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project comply with all applicable procurement laws and policies.

#### 5. Termination

A. **Termination by Subrecipient.** Subrecipient may terminate this Agreement or terminate or suspend any specific Project funded by this Agreement, effective upon delivery of written notice of termination to TriMet within 30 days, or at such later date as may be established by Subrecipient in such written notice, if:

- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; 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.

B. **Effect of Termination.** The expiration or termination of this Agreement or any Project, for any reason, shall not release Subrecipient from any obligation or liability to TriMet, any requirement or obligation that:

- i. Has already accrued hereunder;

- ii. Comes into effect due to the expiration or termination of the Agreement; or
- iii. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement or any Project as provided in this Section, Subrecipient shall promptly identify all unexpended funds and return all unexpended funds to TriMet. Unexpended funds are those funds received by Subrecipient under this Agreement that (i) have not been spent or expended to pay the costs or expenses of the Project or Projects; and (ii) are not required to pay costs or expenses of the terminated Project(s) that will become due and payable as a result of the termination of the Project(s).

Subrecipient's identification and calculation of unexpended funds in this Section is Subject to **Section 2, Audit and Compliance Review**, of this Agreement.

## 6. 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 TriMet or Subrecipient 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 TriMet is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), TriMet 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 Subrecipient in such proportion as is appropriate to reflect the relative fault of TriMet on the one hand and of the Subrecipient 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 TriMet on the one hand and of Subrecipient 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. TriMet'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 TriMet had sole liability in the proceeding.

With respect to a Third Party Claim for which Subrecipient is jointly liable with TriMet (or would be if joined in the Third Party Claim), Subrecipient 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 TriMet in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of TriMet 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 Subrecipient on the one hand and of TriMet 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. If Subrecipient is a public body, Subrecipient'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, and the Oregon Constitution, if Subrecipient had sole liability in the proceeding.

- B. **Duplicate Payment.** Subrecipient 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, TriMet or any other party, organization or individual.

- C. **No Third Party Beneficiaries.** TriMet and Subrecipient 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.
- D. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 12 **Communications** of this Agreement, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice personally delivered 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. Any communication or notice mailed shall be deemed to be given three days after the date of mailing. If email is used for communications pursuant to the following Sections, either mail or personal delivery must also be employed by the sender to the recipient and the later of the delivery dates is the date that will be used to calculate any timeframes for responses or cure periods for the recipient: Section 5.2; Exhibit A, Sections 1(A), 3(C), 5, and 6(A); and Exhibit C, Section 7.
- E. **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 TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. 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.
- F. **Insurance; Workers' Compensation.** All employers, including Subrecipient, 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. Subrecipient shall ensure that each of its contractor(s) and subcontractor(s) complies with these requirements. Subrecipient shall include in any subcontracts to perform services pursuant to this Agreement a provision requiring a subcontractor to comply with this Subsection F, and that failure to do so is a material breach of the subcontract with Subrecipient.
- G. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of TriMet. Subrecipient 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 PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient has no right or authority to incur or create any obligation for or legally bind TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient, its officers, directors, employees, subcontractors or volunteers are not an "officer," "employee," or "agent" of TriMet, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Subrecipient, nor its directors, officers, employees, subcontractors, or volunteers shall hold themselves out either explicitly or implicitly as officers, employees, or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise, or joint venture between the parties.

**EXHIBIT B**  
**SUBRECIPIENT INSURANCE REQUIREMENTS**

GENERAL

Subrecipient shall obtain and provide, and require in its first tier sub agreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the same insurance applicable to Subrecipient for subcontractor's performance under its sub agreement: i) 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 of this Agreement and of any sub agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement and sub agreement. 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 TriMet. Subrecipient shall not commence work under this Agreement, and shall not authorize work to begin under a sub agreement until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements in its sub agreements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the sub agreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a sub agreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a sub agreement in which the Subrecipient is a party.

Subrecipient may be self-insured as long as the amount of insurance are equal to the amounts listed below. Subrecipient shall comply with any requirements of TriMet with respect to these insurance requirements, including but not limited to TriMet issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

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). Employer's 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 TriMet. 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 TriMet:  
  
    Bodily Injury, Death and Property  
    Damage:  
  
    \$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).  
  
    Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
  
- 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 TriMet:

Bodily Injury, Death and Property  
Damage:

\$1,000,000 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 TriMet, and its respective officers, employees and agents as Additional Insureds but only with respect to the Subrecipient's activities to be performed under the Agreement and, with respect to subcontractors, activities to be performed under their sub agreements. 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 Subrecipient and the subcontractor 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 this Agreement for Subrecipient, and the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and TriMet's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under this Agreement with respect to Subrecipient and the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the Subrecipient or subcontractor 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 Subrecipient or subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the Subrecipient or subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

#### NOTICE OF CANCELLATION OR CHANGE

The Subrecipient or its insurer must provide 30 days' written notice to TriMet 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

Subrecipient shall submit to TriMet a certificate(s) of insurance for all required insurance before the commencement of performance of services. 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. In lieu of filing the certificate of insurance required herein, if Subrecipient is a local government as defined under ORS 190.003, Subrecipient may furnish a declaration that Grantee is self-insured for no less than the amounts required by applicable law.



## EXHIBIT C

### CAPITAL ASSET REQUIREMENTS

The terms of this Exhibit C applies to all Capital Assets purchased with STIF Formula Funds.

1. Subrecipient shall ensure Satisfactory Continuing Control of a Capital Asset purchased in whole or part with STIF Formula Funding during the period of its useful life.
2. Subrecipient shall inventory Capital Assets purchased in whole or part with STIF Formula Funds. The inventory will include a description of the Capital Asset, date of purchase, purchase price, amount of STIF Formula Funds contributed to the purchase, the source of other funds, the authorized use, the Subrecipient or subcontractor using the Capital Asset, and the condition of the asset.
  - i. If Capital Asset is a vehicle, the inventory must include the size of vehicle, the total number of passenger seats, the total number of ADA stations, the total number of seats when all ADA stations are deployed, the current mileage, and its current condition.
  - ii. If Capital Asset is an improvement to real property, such as a facility, building, or transit shelter, the inventory must include the location of the Capital Asset and its current condition.
3. Vehicles may be replaced using STIF Formula Funding if:
  - i. Subrecipient holds clear title to the vehicle(s) being replaced. Salvaged titles will not be accepted.
  - ii. The vehicle(s) has met or exceeded the applicable useful life guidelines established by the Oregon Department of Transportation (ODOT), or, if federal funds are used to purchase the vehicle, those established by the Federal Transit Administration (FTA), provided such FTA standards are no less stringent.
  - iii. The vehicle has not been previously replaced.
4. By executing an Agreement that includes the purchase of Capital Assets, Subrecipient commits to continually use the vehicle for the approved purpose for the useful life of the vehicle(s).
5. To be eligible to receive STIF Formula Funds for a real property Capital Asset, such as a transit facility, bus barn, maintenance facility, land, or administration building, Subrecipient shall demonstrate one or more of the following:
  - i. Subrecipient ownership of the property upon which the Capital Asset will be located;
  - ii. Subrecipient possession of an executed lease agreement for the property location that will be in place for the useful life of the Capital Asset;
  - iii. Subrecipient possession of an executed lien on the property for the useful life of the Capital Asset;
  - iv. In the case of a Project which will utilize property owned by a local city, county or government, an executed intergovernmental agreement with the property owner guaranteeing ongoing use for the duration of the useful life of the Capital Asset; or
  - v. In the case of a Project to purchase land, an option to purchase the land identified in the Project.

6. Subrecipient: shall:

- i. Comply with all useful life standards established by TriMet and ODOT for Capital Assets acquired pursuant to their STIF Plans, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
  - ii. Use TriMet's and ODOT's established procedures for the disposition of Capital Assets acquired with STIF Formula Fund moneys, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
  - iii. Retain the net proceeds from a sale or other disposition of a Capital Asset purchased with STIF Formula Funds in a restricted account to allow Subrecipient to propose reinvesting the proceeds in a future STIF Plan or return the net proceeds to ODOT. Net proceeds are the disposal proceeds less original value, less depreciation, less disposal costs. If non-STIF Formula Funds were used in the original purchase, then only the proportion representing STIF Formula Fund contribution to the purchase are subject to this rule.
  - iv. Comply with TriMet's and ODOT's written procedures to ensure that a Capital Asset is maintained in safe operating condition, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA provided such FTA standards are no less stringent.
  - v. Maintain insurance coverage, or require subcontractors to maintain insurance coverage, that meets or exceeds the standards in ORS 806.070.
  - vi. Ensure that vehicles purchased in whole or in part with STIF Formula Fund moneys are titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division pursuant to ORS 803.045 and supporting rules, with the Oregon Department of Transportation listed as a security interest holder, subject to the following additional requirements:
    1. If the vehicle is registered in the name of an entity that is not a Qualified Entity or Public Transportation Service Provider, then TriMet, as the Qualified Entity and as required by OAR 732-042-0040(6), must be listed on the vehicle title as the primary security interest holder.
    2. If the vehicle was purchased with federal funds in addition to STIF Formula Fund moneys, and the federal funding source requires the vehicle to be titled otherwise than provided in this Agreement, then the federal titling requirements prevail.
7. Subrecipient shall notify TriMet of the sale, transfer or other disposition of a Capital Asset purchased with STIF Formula Fund moneys and shall report the use of proceeds, if any, from the sale to TriMet.
8. A Subrecipient may transfer its interest in a Capital Asset to an asset of equal or greater value if the transfer is proposed in a STIF Plan which is approved by the Commission.
9. When TriMet is a security interest holder in a Capital Asset, TriMet may exercise all of the rights provided to a secured lien holder under Oregon law, including without limitation, the ability to take control or possession of the Capital Asset if it determines either:
- i. that the asset is not being used for the purpose described in a STIF Plan under which it was funded in whole or part by STIF Formula Fund moneys; or

- ii. if, during a compliance audit conducted pursuant to **Section 2 Audit and Compliance Review** of this Agreement, TriMet determines the asset is not being maintained in a state of good operational repair.

**EXHIBIT D**  
**CLACKAMAS COUNTY SCOPE OF WORK**

Sub-Recipient Contact Information

- Name of Organization: Clackamas County
- Contact Person: Teresa Christopherson, Administrative Services Manager, Social Services Division
- Address: 2051 Kaen Rd. #135, Oregon City, OR 97045
- Telephone: 503-650-5718
- E-Mail: [teresachr@co.clackamas.or.us](mailto:teresachr@co.clackamas.or.us)
- FAX:

TriMet Contact for Reporting:

- Contact Person: Erika Turney, Grants Administrator
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: 503.962.4832
- E-Mail: [turneye@trimet.org](mailto:turneye@trimet.org)

TriMet Contact about HB2017 Program:

- Contact Person: Tom Mills, Manager, Service Planning
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: 503.962.4883
- E-Mail: [millst@trimet.org](mailto:millst@trimet.org)

Term of Contract:

7/1/2019 thru 6/30/2021

Total FY19-FY21 STIF Formula Funds: \$3,008,011

**DESCRIPTION OF PROJECTS**

Project Description:

Clackamas County will receive Oregon Statewide Transportation Improvement Funds via TriMet to conduct the following activities:

| <b>STIF Plan Project Number</b> | <b>Project Name</b>                             | <b>Project Description</b>  | <b>Task Number &amp; Description</b> |
|---------------------------------|---|---|--------------------------------------|
| 30                              | Clackamas County Transit Development Plan Match | Clackamas County has applied for a TGM grant for a Transit Development Plan. This plan will inform future transit projects throughout Clackamas County, increasing connectivity between our communities and enhancing coordination between providers. | Task 1: Planning                     |
| 31                              | Transit Hub Planning                            | Conduct preliminary planning on a transit hub for coordination of bus services on Mt Hood.  | Task 1: Planning                     |
| 32                              | Mt. Hood Express Expansion                      | Increase public transit service on Mt Hood by adding one run daily to the   | Task 1: Fixed route operations       |

|    |   |   |   |
|----|---|---|---|
|    |   | Express service to Timberline and one run daily to the Villages Shuttle service.  |   |
| 33 | Capital Purchase-Mt. Hood Express (partial match) | Provide partial match for federal funds for the purchase of 3 new vehicles in FY18/19 to address service improvements with STIF funds.  | Task 1: Purchase 3 standard 35' buses   |
| 34 | Capital Purchases-Mt. Hood Express                | Purchase two new buses to stabilize fleet capacity for existing service as well as address service expansion from STIF and future projects from Transit Development Plan/Transit plan for Mt Hood.                                    | Task 1: Purchase 2 standard 35' buses   |
| 35 | STIF Plan Administrative Support and Planning     | Approved STIF category to cover the costs of administering the STIF program, including project and plan development.  | Task 1: Project Administration  |
| 36 | Capital Purchases-Mt. Hood Express (full match)   | Provide full match for federal funds for the purchase of 3 new vehicles in FY18//19 to address service improvements with STIF funds.  | Task 1: Purchase 3 standard 35' buses   |
| 37 | Capital Purchases-Mt. Hood Express (expansion)    | Purchase one additional new bus to stabilize fleet capacity for existing service as well as address service expansion from STIF and future projects from Transit Development Plan/transit plan for Mt Hood.                           | Task 1: Purchase 1 standard 35' bus   |
| 38 | Carryover For Next Planning Cycle                 | Funds to be carried over for next STIF cycle for implementation of projects resulting from Transit Development Plan, Transit Hub plan, or Vision around the Mountain if collections exceed estimates                                  |   |
| 39 | Clackamas County College Shuttle Expansion        | Clackamas Community College (CCC) will expand the free CCC Xpress Shuttle to provide evening service and service during summer term. This shuttle is open to the public and provides a direct link between Oregon City and Clackamas. | Task 1: Fixed route operations  |
| 40 | Oregon City Last Mile Shuttle Service             | Clackamas County and the City of Oregon City propose to implement a last mile shuttle to provide enhanced transit access throughout the community, particularly for transit dependent and low income populations.                     | Task 1: Planning<br>Task 2: Purchase 3 buses <30'<br>Task 3: Fixed route operations |
| 41 | Clackamas Industrial Last Mile Shuttle Services   | Clackamas County proposes to implement a last mile shuttle to provide enhanced transit access in the Clackamas Industrial area located primarily east of Interstate 205 along Highway 212.  | Task 1: Planning<br>Task 2: Purchase 3 buses <30'<br>Task 3: Fixed route operations |

|    |  |  |                  |
|----|--|--|------------------|
| 42 | Tualatin/West Linn/Oregon City Shuttle-Planning  | Planning for future shuttle service between Oregon City, West Linn and Tualatin to provide enhanced transportation access for commuters and college students.  | Task 1: Planning |
| 43 | Milwaukie Industrial Areas Employee Shuttle-Plan | The purpose of the Milwaukie Industrial Area Employee Shuttle Feasibility Study is to evaluate how shuttle service to International Way, the North Milwaukie Industrial Area, and Johnson Creek industrial area businesses could improve transit access. | Task 1: Planning |

**PLAN BUDGET:**

| STIF Plan Project Number | FY19               | FY20               | FY21               |
|--------------------------|--------------------|--------------------|--------------------|
| 30                       | \$24,000           | \$0                | \$0                |
| 31                       | \$25,000           | \$50,000           |                    |
| 32                       | \$45,339           | \$92,944           | \$95,268           |
| 33                       | \$31,730           | \$0                | \$0                |
| 34                       | \$0                | \$167,200          | \$167,200          |
| 35                       | \$14,817           | \$33,651           | \$38,537           |
| 36                       | \$40,767           | \$0                | \$0                |
| 37                       | \$0                | \$0                | \$167,200          |
| 38                       | \$0                | \$0                | \$139,357          |
| 39                       | \$42,691           | \$115,196          | \$115,196          |
| 40                       | \$44,000           | \$407,138          | \$285,821          |
| 41                       | \$44,000           | \$407,138          | \$285,821          |
| 42                       | \$22,000           | \$29,000           | \$0                |
| 43                       | \$0                | \$77,000           | \$0                |
| <b>Subtotal</b>          | <b>\$334,344</b>   | <b>\$1,379,267</b> | <b>\$1,294,400</b> |
| <b>Grand Total:</b>      | <b>\$3,008,011</b> |                    |                    |

**REPORTING:**

| Plan Outcomes   | FY19-21 Plan | Quarterly Report | Annual Report |
|---|--------------|------------------|---------------|
| Revenue Miles   | 113,728      | X                |               |
| Revenue Hours   | 10,609       | X                |               |
| Rides   | 72,978       | X                |               |
| Number of new shared stops with other transit providers                                   | 10           | X                |               |
| Number of students in grades 9-12 served by demand response                               | n/a          | X                |               |
| Number of students in grades 9-12 with free or reduced fares                              | n/a          | X                |               |
| Other outcomes  |              | X                |               |
| Number of individuals within a ½ mile of a transit stop for fixed route transit           | 67,389       |                  | X             |
| Number of low-income households within a ½ mile of a transit stop for fixed route transit | 16,080       |                  | X             |
| Number of students in grades 9-12 attending a school served by transit                    | 4,179        |                  | X             |

|  |     |   |   |
|--|-----|---|---|
| Number of rides to students in grades 9-12   | n/a |   | X |
| <b>Program Criteria</b>  |     |   |   |
| Increased frequency to areas with a high percentage of low-income households   |     |   | X |
| Expanded routes or services to areas with a high percentage of low-income households   |     |   | X |
| Reduced fares in communities with a high percentage of low-income households   |     |   | X |
| Procurements of low or no emission buses for use in areas with a population of 200,000 or more                               |     |   | X |
| Improved frequency and reliability of service between communities in and out of the Qualified Entity's area                  |     |   | X |
| Improved coordination among Public Transportation Service Providers to reduce fragmentation of service                       |     |   | X |
| Implementation of programs to provide student transit service for students in grades 9-12                                    |     |   | X |
| <b>Capital Assets</b>  |     |   |   |
| Acquired, purchased or leased capital assets Qualified Entities and Public Transportation Service Providers using STIF funds |     | X |   |
| <b>Low-Income Tax Mitigation</b>   |     |   |   |
| Report on mitigating the tax on low-income passengers  |     |   | X |
| <b>Audit Reports</b>   |     |   |   |
| Copy of financial audits, including STIF procedures  |     |   | X |

**EXHIBIT E – STIF FUNDING DISBURSEMENT FORMULA  
PORTLAND METRO/TRIMET QUALIFIED ENTITY AREA**

**FY19 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE**

|  | FY19 Projected<br>Total | Adjustment to<br>FY19 Projected<br>Total | Regional<br>Coordination<br>Program | Adjustment to<br>FY19 Projected<br>Total with<br>Regional<br>Coordination | Percent of<br>Adjustment to<br>FY19 Projected<br>Total with<br>Regional<br>Coordination | Not to Exceed<br>FY19 Plan Budget |
|--|-------------------------|--|-------------------------------------|---|---|-----------------------------------|
| TriCounty Total - ODOT Dec. '18 Projection             | \$ 20,027,000           |  |                                     |   |   |                                   |
| TriMet - Service, LIF, Capital, Student Fare, ED, Ebus | \$ 18,740,000           | \$ 18,740,000                            | \$ -                                | \$ 17,569,035   | 0.8772674   | \$ 26,754,708                     |
| Ride Connection - STIF E&D                             | \$ -                    | \$ -                                     | \$ -                                | \$ -  | 0.0000000   | \$ -                              |
| Portland Streetcar                                     | \$ 350,000              | \$ 350,000                               | \$ -                                | \$ 350,000  | 0.0174764   | \$ 350,000                        |
| Canby  | \$ 106,605              | \$ 105,730                               | \$ -                                | \$ 105,730  | 0.0052793   | \$ 64,044                         |
| Sandy  | \$ 49,427               | \$ 49,021                                | \$ -                                | \$ 49,021   | 0.0024477   | \$ 57,709                         |
| SCTD   | \$ 58,683               | \$ 58,201                                | \$ -                                | \$ 58,201   | 0.0029061   | \$ 68,508                         |
| Wilsonville  | \$ 447,238              | \$ 443,563                               | \$ 120,000                          | \$ 563,563  | 0.0281402   | \$ 1,198,516                      |
| Clackamas County                                       | \$ 165,024              | \$ 163,668                               | \$ 152,691                          | \$ 316,359  | 0.0157966   | \$ 334,344                        |
| Multnomah County                                       | \$ 19,000               | \$ 19,000                                | \$ 243,250                          | \$ 262,250  | 0.0130948   | \$ 265,100                        |
| Washington County                                      | \$ 98,628               | \$ 97,817                                | \$ 596,000                          | \$ 693,817  | 0.0346441   | \$ 728,000                        |
| Columbia County CC Rider                               | \$ -                    | \$ -                                     | \$ 59,024                           | \$ 59,024   | 0.0029472   | \$ 59,024                         |
| <b>Total</b>   | <b>\$ 20,034,604</b>    | <b>\$ 20,027,000</b>                     | <b>\$ 1,170,965</b>                 | <b>\$ 20,027,000</b>  |   | <b>\$ 29,879,953</b>              |

**ADJUSTMENT TO FY19 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.**

|  |          |
|--|----------|
| Difference between FY19 Projected Total (\$20,027,000) and Sum of Individual Projected Totals (\$20,034,604) | \$ 7,604 |
|--|----------|

| Proportional Distribution |                   |        |
|---------------------------|-------------------|--------|
| Canby                     | \$ 106,605        | 11.52% |
| Sandy                     | \$ 49,427         | 5.34%  |
| SCTD                      | \$ 58,683         | 6.34%  |
| Clackamas County          | \$ 165,024        | 17.83% |
| Washington County         | \$ 98,628         | 10.66% |
| Wilsonville               | \$ 447,238        | 48.32% |
| <b>Total</b>              | <b>\$ 925,604</b> |        |



**FY20 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE**

|  | FY20 Projected Total | Adjustment to FY20 Projected Total | Regional Coordination Program | Adjustment to FY20 Projected Total with Regional Coordination | Percent of Adjustment to FY20 Projected Total with Regional Coordination | Not to Exceed FY20 Plan Budget |
|--|----------------------|------------------------------------|-------------------------------|---|--|--------------------------------|
| TriCounty Total - ODOT Dec. '18 Projection             | \$ 46,194,000        |                                    |                               |   |  |                                |
| TriMet - Service, LIF, Capital, Student Fare, ED, Ebus | \$ 42,655,346        | \$ 42,655,346                      | \$ -                          | \$ 39,299,367   | 0.8507461  | \$ 36,854,657                  |
| Ride Connection - STIF E&D                             | \$ 677,654           | \$ 677,654                         | \$ -                          | \$ 677,654  | 0.0146697  | \$ 677,654                     |
| Portland Streetcar                                     | \$ 700,000           | \$ 700,000                         | \$ -                          | \$ 700,000  | 0.0151535  | \$ 700,000                     |
| Canby  | \$ 247,585           | \$ 243,958                         | \$ -                          | \$ 243,958  | 0.0052812  | \$ 128,087                     |
| Sandy  | \$ 114,793           | \$ 113,111                         | \$ -                          | \$ 113,111  | 0.0024486  | \$ 131,068                     |
| SCTD   | \$ 136,290           | \$ 134,293                         | \$ -                          | \$ 134,293  | 0.0029071  | \$ 163,890                     |
| Wilsonville  | \$ 1,036,944         | \$ 1,021,751                       | \$ 553,600                    | \$ 1,575,351  | 0.0341029  | \$ 1,587,116                   |
| Clackamas County                                       | \$ 383,261           | \$ 377,646                         | \$ 1,035,472                  | \$ 1,413,118  | 0.0305909  | \$ 1,379,267                   |
| Multnomah County                                       | \$ 46,000            | \$ 46,000                          | \$ 553,050                    | \$ 599,050  | 0.0129681  | \$ 603,110                     |
| Washington County                                      | \$ 227,576           | \$ 224,241                         | \$ 1,160,636                  | \$ 1,384,877  | 0.0299796  | \$ 1,399,136                   |
| Columbia County CC Rider                               | \$ -                 | \$ -                               | \$ 53,221                     | \$ 53,221   | 0.0011521  | \$ 53,221                      |
| <b>Total</b>   | <b>\$ 46,225,449</b> | <b>\$ 46,194,000</b>               | <b>\$ 3,355,979</b>           | <b>\$ 46,194,000</b>  |  | <b>\$ 43,677,206</b>           |

**ADJUSTMENT TO FY20 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.**

|  |           |
|--|-----------|
| Difference between Dec. '18 TriCounty Projected Total (\$46,194,000) and Sum of Individual Projected Totals (\$46,225,449) | \$ 31,449 |
|--|-----------|

| Proportional Distribution |                     |        |
|---------------------------|---------------------|--------|
| Canby                     | \$ 247,585          | 11.53% |
| Sandy                     | \$ 114,793          | 5.35%  |
| SCTD                      | \$ 136,290          | 6.35%  |
| Clackamas County          | \$ 383,261          | 17.86% |
| Washington County         | \$ 227,576          | 10.60% |
| Wilsonville               | \$ 1,036,944        | 48.31% |
| <b>Total</b>              | <b>\$ 2,146,449</b> |        |

**FY21 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE**

|  | FY21 Projected Total | Adjustment to FY21 Projected Total | Regional Coordination Program | Adjustment to FY21 Projected Total with Regional Coordination | Percent of Adjustment to FY21 Projected Total with Regional Coordination | Not to Exceed FY21 Plan Budget |
|--|----------------------|------------------------------------|-------------------------------|---|--|--------------------------------|
| TriCounty Total - ODOT Dec. '18 Projection             | \$ 52,974,000        |                                    |                               |   |  |                                |
| TriMet - Service, LIF, Capital, Student Fare, ED, Ebus | \$ 49,446,709        | \$ 49,446,709                      | \$ -                          | \$ 46,446,709   | 0.8767831  | \$ 44,232,750                  |
| Ride Connection - STIF E&D                             | \$ 328,291           | \$ 328,291                         | \$ -                          | \$ 328,291  | 0.0061972  | \$ 328,291                     |
| Portland Streetcar                                     | \$ 721,000           | \$ 721,000                         | \$ -                          | \$ 721,000  | 0.0136105  | \$ 721,000                     |
| Canby  | \$ 282,102           | \$ 279,433                         | \$ -                          | \$ 279,433  | 0.0052749  | \$ 538,629                     |
| Sandy  | \$ 130,797           | \$ 129,560                         | \$ -                          | \$ 129,560  | 0.0024457  | \$ 150,097                     |
| SCTD   | \$ 155,290           | \$ 153,821                         | \$ -                          | \$ 153,821  | 0.0029037  | \$ 169,891                     |
| Wilsonville  | \$ 1,182,997         | \$ 1,171,805                       | \$ 553,600                    | \$ 1,725,405  | 0.0325708  | \$ 1,344,116                   |
| Clackamas County                                       | \$ 436,694           | \$ 432,562                         | \$ 686,838                    | \$ 1,119,400  | 0.0211311  | \$ 1,294,400                   |
| Multnomah County                                       | \$ 52,000            | \$ 52,000                          | \$ 534,613                    | \$ 586,613  | 0.0110736  | \$ 593,263                     |
| Washington County                                      | \$ 261,291           | \$ 258,819                         | \$ 1,168,349                  | \$ 1,427,168  | 0.0269409  | \$ 1,467,849                   |
| Columbia County CC Rider                               | \$ -                 | \$ -                               | \$ 56,600                     | \$ 56,600   | 0.0010684  | \$ 56,600                      |
| <b>Total</b>   | <b>\$ 52,997,172</b> | <b>\$ 52,974,000</b>               | <b>\$ 3,000,000</b>           | <b>\$ 52,974,000</b>  |  | <b>\$ 50,896,886</b>           |

**ADJUSTMENT TO FY21 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.**

|  |           |
|--|-----------|
| Difference between Dec. '18 TriCounty Projected Total (\$52,974,000) and Sum of Individual Projected Totals (\$52,997,172) | \$ 23,172 |
|--|-----------|

| Proportional Distribution |                     |        |
|---------------------------|---------------------|--------|
| Canby                     | \$ 282,102          | 11.52% |
| Sandy                     | \$ 130,797          | 5.34%  |
| SCTD                      | \$ 155,290          | 6.34%  |
| Clackamas County          | \$ 436,694          | 17.83% |
| Washington County         | \$ 261,291          | 10.67% |
| Wilsonville               | \$ 1,182,997        | 48.30% |
| <b>Total</b>              | <b>\$ 2,449,172</b> |        |

## EXHIBIT F

### Statewide Transportation Improvement Fund Agreed-Upon Audit Procedures

Any Qualified Entity or Public Transportation Service Provider (entity or subrecipient), as defined under OAR 732-040-0005, that receives STIF money is required to be audited on the use of those funds per OAR 732-040-0015. Consistent with guidance provided by the Oregon Secretary of State, the Oregon Department of Transportation developed agreed-upon audit procedures for the program audit of the Statewide Transportation Improvement Fund (STIF). The Agreed-Upon Audit Procedures are established in accordance with Generally Accepted Government Auditing Standards (GAGAS) and American Institute of Certified Public Accountants (AICPA) AT-C Section 215. ODOT set forth the minimum procedures required for an audit of STIF funds. As set forth under Section 2, TriMet has also developed additional audit procedures based on ODOT's Compliance Guide: Monitoring Subrecipient Compliance with STIF Requirements. These agreed Upon Procedures detailed below are to be added to the STIF recipient's annual financial audit process.

#### STIF Funded Services

1. What best describes the STIF-funded services operated by this Subrecipient, identify all that apply?
  - Light rail operating expenses
  - Creation of new systems and services with origins, destinations, or stops in Oregon
  - Maintenance or continuation of systems and services (only after new services has been place in operation)
  - Planning for and development of a Local Plan or future STIF Plan to improve Public Transportation Service
  - Local match for state and federal funds which also provide Public Transportation Service
2. Did the services, funded by STIF, meet eligibility requirements?
3. Did the entity provide school bus or charter services?
4. Note any other observations that may impact the findings from this review, if any: (such as Infrastructure, political, key staff or major funding changes that might alter the landscape at the local level.

#### Financial Management

1. What types of STIF funds did the entity receive?
  - a. Formula
  - b. Discretionary
  - c. Intercommunity
2. Does the entity have a separate account in their accounting system for each type of STIF fund received?  
Yes/No. If no, attach an explanation.
3. How much interest was earned on STIF Formula funds?
  - a. Was interest spent on STIF-approved expenditures?
  - b. If 100% of interest was not expended on STIF approved expenditures, what amount will be carried forward into a future STIF Plan?
4. Did the entity spend STIF Formula funds, including interest, on expenditures NOT included in a STIF Plan?  
If yes, attach a summary of expenditures and narrative explaining the deviation from the STIF Plan.
5. What amount of unspent STIF Formula funds were carried forward to the next Fiscal Year?
6. Does the Subrecipient use the same policies and procedures to account for, and expend, STIF funds as it does for all other Federal and State grant funds? Yes/No. If no, attach an explanation.

7. For each STIF award, does the Subrecipient's accounting system provide for the following?
  - a. Authorizations
  - b. Obligations
  - c. Funds received
  - d. Program income
  - e. Outlays
  - f. Unobligated balances
  
8. Are STIF accounting records supported by source documentation (e.g. canceled checks, paid bills, payrolls, contracts)? Yes/No. If no, attach an explanation.
  
9. Are bank statements reviewed and reconciled at least monthly by someone other than the person who disburses funds from the STIF account? Yes/No. If no, attach an explanation.
  
10. Does the Subrecipient maintain written policies and procedures for documenting personnel compensation regarding employees whose time is charged to the STIF program? Yes/No. If no, attach an explanation.
  
11. Personnel records: Yes/No. If no, attach an explanation
  - a. Are personnel records supported by a system of internal controls that provide reasonable assurance the charges are accurate, allowable, and properly allocated?
  - b. Are personnel records incorporated into the Subrecipient's official records?
  - c. Do personnel records reasonably reflect the total activity for which the employee is compensated?
  - d. Do personnel records encompass state assisted activities, as well as all other activities compensated by the subrecipient?
  - e. Do not rely on estimates as a basis to charge time to STIF activities?
  
12. Did the entity supplant local funding sources earmarked for existing services with STIF funds?

**Internal Controls**

1. Are members of the entity's governing board actively involved in the acceptance of the STIF grant award and oversight of its personnel in the execution of STIF activities? Yes/No?

If no, attach an explanation.

If yes, describe and note the governing board's role in providing oversight of the STIF grant.

2. Do the procedures employed by the Subrecipient in handling cash receipts and disbursements of STIF funds include the following safeguards:
  - a. Receipts are promptly logged, restrictively endorsed and deposited in an insured bank account?
  - b. Bank statements are promptly reconciled to the accounting records and are reconciled by someone other than the individuals handling cash, disbursements and maintaining accounting records?
  - c. All disbursements (except petty cash or electronic funds transfer disbursements) are made by pre-numbered checks?
  - d. Supporting documents (e.g. purchase orders, invoices) accompany the checks submitted for signature, and are marked paid or otherwise prominently noted after the payments are made?
  - e. Checks drawn to "cash" and advance signing of checks are prohibited?
  - f. Multiple signatures are required on checks?

### Eligible use of STIF Funds

1. STIF funds are appropriated to finance investments and improvements in public transportation services, except that monies may not be used for light rail capital expenses. Based on what the Subrecipient indicates during the review, system website, and other public information literature, do the services implemented with STIF eligibility services criteria? Yes/No. If no, attach an explanation.

### Capital Asset Management

Eligible capital assets are defined as real property or tangible items with a purchase price of \$5,000 or more and a useful life of at least one year (consistent with 2 CFR 200.33), with the exception of light rail capital.

1. Did the Subrecipient acquire light rail capital? Yes/No. If yes, provide an explanation as this is an ineligible use of funds.
2. Did the Subrecipient maintain adequate insurance coverage pursuant to ORS 806.080?
  - i. Does the insurance coverage maintained on the asset meet or exceed the standards in ORS 806.070?
3. Did the Subrecipient own or develop any real property using STIF funds? N/A, Yes/No. If yes, then:
  - a. If real property (facilities) was purchased/constructed, is the real property being used in whole or in part for transit purposes consistent with the STIF Plan? N/A, Yes/No. If no, attach an explanation. If yes,
  - b. Is the real property located in a flood zone?
4. If the Subrecipient utilized STIF Formula Funds to purchase or improve real property, is there a written facilities maintenance plan used to ensure the facility is maintained in a state of good repair? Yes/No. If no, attach an explanation.
5. Did the Subrecipient purchase a vehicle? Yes/No. If yes, then:
  - a. What amount and percentage of STIF funding was used to purchase the vehicle(s)?
  - b. Is each vehicle purchased titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division?
  - c. Identify the primary security interest holder on each vehicle purchased?
6. Does the Subrecipient maintain an asset inventory of all STIF acquired capital? N/A, Yes, No. If no, attach an explanation. If yes, does the inventory contain the following elements:
  - i. Equipment:
    1. description of the asset,
    2. date of purchase,
    3. purchase price,
    4. amount of STIF monies contributed to the purchase price,
    5. the ratio of STIF funds to total purchase price,
    6. source of other funds used,
    7. current use of the asset,
    8. condition of the asset, and
    9. name of Subrecipient or recipient using the asset?
  - ii. Vehicles: If rolling stock was purchased, did the asset inventory list include items 1-9 above and:
    10. size of vehicle
    11. total number of passenger seats
    12. total number of ADA stations
    13. total number of seats when all ADA stations are in use, and

14. current mileage
15. useful life benchmark

iii. If real property was purchased, did the asset inventory list include items 1-9 above and:  
15. the location of the asset?

8. Does the Subrecipient have written procedures that ensure that STIF funded assets (including vehicles) are maintained in a state of good repair? Yes/No. If no, attach an explanation.
9. Did the Subrecipient dispose of any STIF-funded assets during the fiscal year under audit? Yes/No. If yes, then:
  - a. Is there evidence that the asset was beyond the useful life?
  - b. Were the disposition proceeds greater than \$5k?
    - b. If yes, were the disposition of proceeds of any such sale returned to QE or ODOT or retained to reinvest in a future STIF Plan Capital Project?

#### **STIF Record Retention**

1. Has the entity established a record retention policy associated with its use of STIF funds? If yes, does the policy meet minimum STIF record requirements of no less than 6 years following the entity's final disbursement under the STIF Plan/or grant agreement?
2. Does Subrecipient have written records that require the entity to maintain all records relating to capital assets for three (3) years following disposition?

#### **Procurement**

1. Does the entity have procurement policies and procedures in place that follow OR 279 requirements and is there evidence that they follow their own agency procurement requirements?
2. Did the entity competitively procure for all services and/or purchases using STIF funding? If no, attach an explanation.
3. Does the agreement between recipient and subcontractor include language that specifically permits the Agency, the Secretary of State of Oregon, or their authorized representative access to data and records held?
4. Did the entity subcontract with lower tier recipients to provide services funded with STIF funds? If yes, then:
  - a. Was all required STIF information as identified in 2.2 included in the agreement??
  - b. Did the entity have an established oversight program to ensure lower tier recipients/subcontractor complied with STIF requirements?

*If the entity received a review/audit from ODOT and FTA in the last year to assess the agency's internal controls and compliance with Federal and state laws, rules, requirements and regulations, then the following additional audit procedures do not apply:*

#### **Civil Rights**

1. Is the Subrecipient required to prepare a Title VI Program pursuant to FTA Circular 4702.1B? If yes, then:
  - a. Has the Subrecipient established a complaint form and a process to resolve complaints? Yes/No. If no, attach an explanation.

2. Does the LEP element of the program identify any LEP populations that need key documents translated to the specified language? If yes,
  - a. Has the subrecipient translated key documents? Yes/No. If no, attach an explanation.
3. Does the Subrecipient provide fixed route service or operate 50 or more fixed route vehicles in peak service located in a UZA with a population of 200k or more? If yes, then:
  - a. Has the Subrecipient adopted the required service policies and elements (ex. distribution of transit amenities, by mode and vehicle assignment, by mode) and standards (ex: vehicle load, by fixed mode, by peak and off peak periods, vehicle headway, on-time performance service availability for each mode)? If no, attach an explanation.
4. Did the Subrecipient track, resolve and respond to Civil Rights complaints?

**Americans with Disabilities ACT (ADA)**

1. Determine the compliance status of the Subrecipient with ADA, by type and service mode.
  - a. For Fixed Modes:
    - i. Non-commuter bus (traditional fixed route)
    - ii. Commuter bus
    - iii. Intercity bus
    - iv. Route/point deviation (with deviations limited to certain riders)
  - b. For Demand Response:
    - i. Complementary paratransit
    - ii. Route/point deviation (deviations provided to all riders)
    - iii. General demand response service
2. Does the Sub recipient engage in any practices that would be discriminatory (such as extra charges, requiring passengers to transfer from their mobility device to a bus seat, requiring a passenger to travel with a PCA, etc.)? Yes/No. If yes, attach an explanation.
3. Has the Subrecipient designated an individual to be responsible for taking requests for reasonable modification of services and policies and to take complaints regarding the ADA? Yes/No. If no, attach an explanation.
4. If the transit system operates fixed route modes, do the drivers announce stops when required? If yes, then:
  - a. Does the Subrecipient operate a complementary paratransit system that meets the required service criteria? If Yes, then:
    - i. Does the Subrecipient manage an eligibility process to determine, unconditional, conditional, temporary, or denied eligibility?
5. If demand response modes are operated, is the demand response fleet 100% accessible? Yes/No If no, then:
  - a. Does Subrecipient operate "equivalent service"?
6. If system information, brochures, rider guides, etc. available in alternative formats upon request? Yes/No. If no, attach an explanation.

7. Does the system offer accessible telecommunication access (e.g., TTY)? Yes/No. If no, attach an explanation.
8. Did the Subrecipient track, resolve and respond to ADA related complaints?

References

1. OAR 732-40 Statewide Transportation Improvement Fund – General Information
2. OAR 732-42 Statewide Transportation Improvement Fund – Formula
3. ORS 184.758 & ORS 184.751
4. Civil Rights Restoration Act of 1987
5. “Sections 503 and 504 of the Rehabilitation Act of 1973, as amended
6. Americans with Disabilities Act of 1990, as amended
7. Title VI of the Civil Rights Act of 1964, as amended
8. Federal Transit Laws, Title 49, U.S.C.
9. Equal Employment Opportunity Act of 1972
10. Civil Rights Act of 1991
11. Equal Pay Act of 1963
12. Age Discrimination in Employment Act of 1967
13. Title IX of the Education Amendments of 1972
14. Uniformed Services Employment & Reemployment Rights Act of 1994
15. Single Audit Act of 1984, as amended
16. ORS 803-045 and 803-070



## EXHIBIT G

### Statewide Transportation Improvement Fund Formula Fund Reporting Requirements Overview FINAL, May 8, 2019

#### STIF REPORTING BACKGROUND

This document provides an overview for both quarterly and annual reporting requirements for the Statewide Transportation Improvement Fund (STIF).

The quarterly reporting requirements are outlined in OAR 732-042-0035(1), which states "Quarterly Reports:

Using a form provided by the Agency, each Qualified Entity [(QE)] shall  
prepare a quarterly report to [ODOT] which details Project progress, outcomes achieved, and  
expenditures of STIF Formula Fund moneys by itself and its Sub-Recipients."

The capital asset reporting requirements outlined in OAR 732-042-0035(3) and OAR 732-044-0040(2) will be completed by recipients in the Agency Periodic Report (APR) on a quarterly basis.

The annual reporting requirements outlined in OAR 732-040-0025 include the following three additional reports: 1) low-income mitigation actions, 2) annual QE budget, and 3) annual audit reports.

The purpose of this document is for QEs and Public Transportation Service Providers (PTSPs) to become familiar with the upcoming quarterly and annual reporting requirements for STIF Formula projects.

ODOT staff will develop separate reporting requirements for STIF Discretionary/Intercommunity funded projects and instructions will be provided to QEs and PTSPs in advance.

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ROLES AND RESPONSIBILITIES

QEs and PTSPs will have different roles and responsibilities for STIF reporting requirements.

The following are the QEs roles and responsibilities:

- Initiate and submit the quarterly report, STIF Periodic Report (SPR)
- Delegate relevant projects in the SPR to their PTSPs so that they can enter updates
- Report on STIF capital assets in the Agency Periodic Report (APR)
- Bundle and submit all low-income mitigation action reports from their PTSPs (including PTSPs that are only receiving STIF discretionary funds)
- Provide a copy of their adopted annual budget to ODOT
- Provide copies of their financial audits to ODOT, including STIF procedures

The following are the PTSPs roles and responsibilities:

- Receive SPR prompt from their QE and enter project updates
- Submit an annual low-income mitigation actions report to their QE
- Provide copies of financial audits to ODOT, including STIF procedures
- Report on STIF capital assets in the Agency Periodic Report (APR)

QUARTERLY VS. ANNUAL REPORTING REQUIREMENTS SUMMARY TABLE

| Type of Reporting | Quarterly Basis   | Annual Basis   | Where to Submit      |
|-------------------|---|--|----------------------|
| Outcomes          | As applicable to individual projects as specified in an approved STIF Plan: <ul style="list-style-type: none"> <li>• revenue miles</li> <li>• revenue hours</li> <li>• rides</li> <li>• number of new stops shared with other providers</li> <li>• number of students in grades 9-12 served by demand response</li> <li>• number of students in grades 9-12 with free or reduced fares</li> </ul> | <ul style="list-style-type: none"> <li>• number of people within a half mile of transit stop</li> <li>• number of Low-Income Households within a half mile of transit stop</li> <li>• number of students in grades 9-12 attending a school served by transit</li> <li>• number of rides provided to students in grades 9-12</li> </ul> | STIF Periodic Report |
| Program Criteria  | N/A   | <ul style="list-style-type: none"> <li>• increased frequency to areas with high-percentage of low income households</li> <li>• expanded routes or services to areas with</li> </ul>  | STIF Periodic Report |

|                           |  |  |   |
|---------------------------|--|--|---|
|                           |  | <p>high-percentage of Low-Income Households</p> <ul style="list-style-type: none"> <li>• reduced fares in communities with high percentage of Low-Income Households</li> <li>• procurements of low-or no-emission buses for use in areas with population of 200,000 or more</li> <li>• improved frequency and reliability of service between communities in and out of QE's service area</li> <li>• improved coordination among PTSPs to reduce fragmentation of service</li> <li>• implementation of programs to provide student transit service for students in grades 9-12</li> </ul> |   |
| Capital Assets            | Acquired, purchased or leased Capital Assets by QEs and PTSPs using STIF funds | N/A  | Agency Periodic Report  |
| Low-Income Tax Mitigation | N/A  | Report on mitigating the impact of the tax on low-income passengers  | Attach to STIF Periodic Report  |
| QE Budget                 | N/A  | Copy of QE's adopted annual budget   | Email hyperlink to <a href="mailto:ODOTPTDreporting@odot.state.or.us">ODOTPTDreporting@odot.state.or.us</a> |
| Audit Reports             | N/A  | Copies of financial audits, including STIF procedures  | <a href="mailto:ODOTPTDreporting@odot.state.or.us">ODOTPTDreporting@odot.state.or.us</a>                    |

## QUARTERLY REPORTING

### *Quarterly Reporting Introduction*

The SPR is for QEs to report on their STIF Plan for a quarterly time period. ODOT staff and OGMA Consulting Corp. are developing the SPR template in the Oregon Public Transit Information System (OPTIS). This quarterly report template will be finalized in July 2019. It will be the responsibility of the QEs to gather all applicable information from their PTSPs and complete the SPR. The SPR template is designed for the QE to initiate the SPR and then delegate the appropriate projects to the PTSPs for reporting. The SPR will be auto-populated from the QE's STIF Plan. There will be fields and text boxes for entering status updates for each project and the associated tasks.

ODOT staff will track the completion of the SPR and whether a QE has substantially complied with its approved STIF Plan (see STIF Guidance for Determining Whether Expenditures are Substantially Compliant and Consistent with STIF Plan). Following ODOT staff review of each submitted SPR, staff will identify any compliance issues and work with the QE toward resolution. After the review, QEs will be notified that they 1) Have complied with the approved STIF Plan or 2) Failed to substantially comply with the approved STIF Plan. If there are three or more SPRs within the past two years that indicate the QE failed to substantially comply with its approved STIF Plan, the QE will be required to include a description of the QE's strategies to ensure that it will substantially comply with the proposed STIF Plan in the next biennium. (Remediation strategy requirements are specified in OAR 732-042-0015(2)(h).) Such a QE is at risk of the OTC rejecting its next proposed STIF Plan.

ODOT staff will review the submitted SPR and follow up with observations that could lead to a QE receiving technical assistance from its regional transit coordinator. For example, ODOT could share a current best practice to aid the QE. The SPR will also enable ODOT to track the QE's STIF Plan outcomes and the overall impact of the STIF formula funds.

### *Quarterly Reporting and Disbursements*

Table 1 shows the general schedule for reporting and disbursement of STIF Formula funds. The transit tax is due from businesses to the Oregon Department of Revenue (DOR) approximately one month after the end of the tax assessment period. The DOR releases the revenues to ODOT approximately one month after they are due to DOR. ODOT then calculates the disbursement amounts and releases the funds to the QEs approximately one month later.

*Table 1. STIF Formula Disbursement Schedule*

| <b>STIF Formula Fund Disbursement and Reporting Schedule</b> |               |               |               |               |
|--|---------------|---------------|---------------|---------------|
| <b>Disbursement to QEs</b>                                   | <b>Jan 15</b> | <b>Apr 15</b> | <b>Jul 15</b> | <b>Oct 15</b> |
| QE STIF Plan reporting period                                | Jan-Mar       | Apr-Jun       | Jul-Sep       | Oct-Dec       |
| QE STIF Plan reports due to ODOT                             | May 15        | Aug 14        | Nov 14        | Feb 14        |

Tables 2 and 3 show the disbursement and reporting schedules for QEs that submitted their STIF Plans in November 2018 and May 2019, respectively. The schedule for these initial disbursements and reporting is different because they are occurring off-cycle as reflected in the tables below.

For QEs that submitted in November 2018 (see Table 2), the first STIF report (FY 2019 Q4) is due on August 14, 2019, and will cover expenditures and outcomes for Q1, Q2, Q3, and Q4 of FY 2019 (July 1, 2018 through June 30, 2019), to the extent the QE made expenditures during these quarters.

For QEs that submitted in May 2019 (see Table 3, below), the first STIF report is due on February 14, 2020, and will cover all of FY 2019 and Q1 and Q2 of FY 2020, to the extent the QE made expenditures during these quarters.

Table 2. Quarterly Reporting Schedule for November 2018 Submissions

| <b>STIF Cycle 1 (November 2018 Submissions)</b> |                     |                     |                     |
|---|---------------------|---------------------|---------------------|
| <b>Disbursement to QEs</b>                      | <b>May 15, 2019</b> | <b>Jul 15, 2019</b> | <b>Oct 15, 2019</b> |
| QE STIF Plan reporting period                   | Jul 2018-Jun 2019   | Jul-Sep 2019        | Oct-Dec 2019        |
| QE STIF Plan reports due to ODOT                | Aug 14, 2019        | Nov 14, 2019        | Feb 14, 2020        |

Table 3. Quarterly Reporting Schedule for May 2019 Submissions

| <b>STIF Cycle 2 (May 2019 Submissions)</b> |                      |
|--|----------------------|
| <b>Disbursement to QEs</b>                 | <b>Oct 15, 2019*</b> |
| QE STIF Plan reporting period              | Jul 2018-Dec 2019    |
| QE STIF Plan reports due to ODOT           | Feb 14, 2020         |

\*Contingent upon STIF Plan approval

*STIF Periodic Report vs. Agency Periodic Report*

The SPR will have a similar design to the existing APR but is being developed to include STIF-specific items. Both the SPR and the APR are quarterly reports. The SPR will not replace the APR, but is a supplemental OPTIS document for reporting the additional information required under STIF. Unlike the APR, the details (e.g., expenditure, capital outcomes) reported on the SPR are at the project task level, not at the agency level. Also, the APR reports all sub-grants (including STIF) and the SPR reports only STIF grants. Currently, the SPR is for the STIF Formula fund only; it may be modified to include reporting for STIF Discretionary/Intercommunity funds. The APR can be downloaded as a PDF whereas the SPR can be downloaded as an Excel spreadsheet.

The SPR includes the following STIF-specific items:

- Project Status (with deliverables)
- Task Level Expenditures
- Measurable Benefits
- Capital Outcomes
- Program Criteria

The SPR does NOT include the following APR-specific items; these will continue to be reported at the agency level through the APR:

- Volunteer and Non-Cash Resources
- Assets
- Accidents
- Civil Rights

Note: STIF capital assets will be added to the asset register in OPTIS by ODOT.

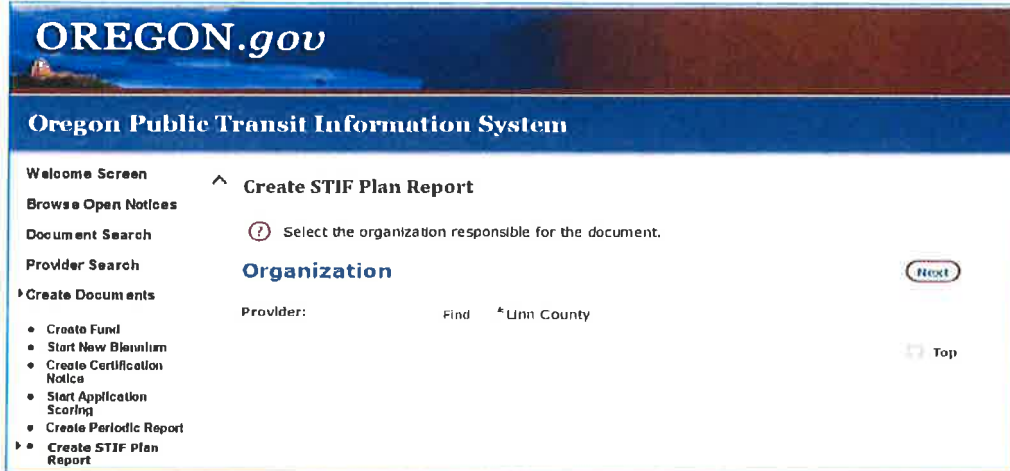
*STIF Periodic Report Template*

Final screenshots for the entire SPR and required information are in process and will be provided at a later date. (Please note the OPTIS and SPR figures included in this document are sample screenshots and are not from the final SPR template.) ODOT staff have provided additional context on what will be displayed and the required information in the next sections. As previously mentioned, the SPR will be auto-populated from the QE's STIF Plan. There will be fields and text boxes for entering status updates for each project and the associated tasks. ODOT will require the QE to report on all projects and associated tasks identified in its STIF Plan. Text boxes will be available for the projects and associated tasks to provide additional context on any changes and/or deviations from the STIF Plan. Rationales for changes or inactivity will be required in the SPR.

*STIF Periodic Report Process*

STIF Periodic Reports will be created from the OPTIS main navigation menu (see Figure 1). The OPTIS user will be prompted to select the QE for which it will be reporting. The QE will only be able to select their own STIF Plan in order to complete the SPR. Once the STIF Plan is selected, the QE is then presented with a page from which they can create the SPR. The QE can select the project tasks and send them to the relevant PTSPs for their completion in OPTIS. Also, if a QE is a PTSP, then it can only complete the report when prompted by its QE. For example, Crook County is a QE but if it is listed in the Confederated Tribes of the Warm Spring Reservation STIF Plan as a PTSP, it will need to enter project updates when the Confederated Tribes of the Warm Spring Reservation delegates the SPR items to Crook County.

*Figure 1. OPTIS Main Menu*



A completed SPR will provide an overview of the entire planned STIF Plan budget and remaining funding (see Figure 2).

Figure 2. SPR Project Task Report

**OPTIS**
Close

Print

Refresh

Help

Complete Step  
(Prepared)

Maintain

Actions

Work Flow  
History

### STIF Project Task Report

Report for: FY2019 Qtr.1: July - September 2018      Number: SPR-19-0502-02

|                                  |          |
|----------------------------------|----------|
| Public Transit Service Provider: |          |
| Mailing Address:                 |          |
| City, State, Zip:                |          |
| Prepared by:                     | E-mail:  |
| Phone No.:                       | Fax No.: |

**Provider**

I have certified that this document is correct to the best of my knowledge and that I am the authorized representative shown below.

|                |       |
|----------------|-------|
| Authorized by: | Date: |
|----------------|-------|

Attachments Exist

**Budget**

|                          | Planned             | Total To Date      | Remaining          |
|--------------------------|---------------------|--------------------|--------------------|
| STIF Funds               | \$160,000.00        | \$82,440.00        | \$77,560.00        |
| Other Funds              | \$20,000.00         | \$7,820.00         | \$12,180.00        |
| <b>Total Expenditure</b> | <b>\$180,000.00</b> | <b>\$90,260.00</b> | <b>\$89,740.00</b> |
| Future Expenditure       | \$32,460.00         |                    |                    |

**Expenditures**

|                          | Previous           | Current            | Total To Date      |
|--------------------------|--------------------|--------------------|--------------------|
| STIF Funds               | \$12,340.00        | \$70,100.00        | \$82,440.00        |
| Other Funds              | \$7,820.00         | \$0.00             | \$7,820.00         |
| <b>Total Expenditure</b> | <b>\$20,160.00</b> | <b>\$70,100.00</b> | <b>\$90,260.00</b> |

**Project Status**

| Project Task # | Title |
|----------------|-------|
|                |       |

As described in OAR 732-042-0035(1), QEs and PTSPs will be required to report project progress, including expenditures and outcome measures. Providers will enter the project status in an update field and enter the amount spent in an expenditures field.

*Outcomes and Reporting Methods*

The outcomes reported in the SPR will be reported either quarterly or annually depending on the type of project and activity included in the STIF Plan. The reported outcomes must reflect the QE's progress on the outcomes and benefits, considering the estimated outcomes listed in the QEs OTC-approved STIF Plan. QEs must report on all estimated outcomes and/or benefits from a STIF Plan.

ODOT staff has developed guidance below to assist in reporting outcomes and identifying what is attributable to STIF for the following: revenue miles, revenue hours, rides, number of new stops shared with other providers, number of students in grades 9-12 served by demand response, and number of students in grades 9-12 with free or reduced fares.

A provider may have a direct charge accounting method with STIF funds to report their revenue miles, revenue hours, and rides. Otherwise, an acceptable method for reporting the following outcomes is to allocate the data by the funding percentage: revenue miles, revenue hours, and rides. The funding percentage is calculated as the actual expenditures for STIF as a percentage of total expenditures from other sources. The provider will also

EXHIBIT G

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calculate the total number of miles, number of hours, and the number of rides in the STIF Plan reporting period, then apply the STIF funding percentage. The provider will need to separate new and existing routes and indicate what is attributable to STIF funding. ODOT staff will be reviewing the fixed route and demand response service separately.

QEs should report when a new shared stop goes into service. A new shared stop may be a stop that was served by one provider and is now served by a second provider or a stop that was served by two or more providers and is now served by the QE.

Reporting methods may vary for reporting on number of students in grades 9-12 served by demand response and the number of students in grades 9-12 with free or reduced fares. The provider should use the most accurate method for counting student ridership such as onboard ridership surveys, passenger counts, and/or requesting age/grade information when scheduling demand response rides.

Figure 3. SPR Outcome Measures

The screenshot shows the OPTIS system interface for reporting outcome measures. At the top, there is a blue header with the OPTIS logo and a 'Close' button. Below the header, the section is titled '3. Outcome Measures' and 'Item 1.1'. The 'Number' is 'SPR-19-0502-02' and the 'Control #' is '10095225'. A navigation bar contains buttons for 'Skip', 'Back', 'Save', 'Next', and 'Finish'. The main content area is titled 'Outcome Measures' and includes a help icon and the instruction: 'Enter the applicable measures for this task in this reporting period.' Below this, there is a list of metrics to be reported, each with an input field:

- Revenue Miles
- Revenue Hours
- Rides
- # of New Stops Shared with Other Providers
- # of Rides to Students in Grades 9-12
- # of Students in Grades 9-12 Served by Demand Response
- # of Students in Grades 9-12 with Free or Reduced Fares
- Other Benefit

*Quarterly STIF Capital Assets*

The capital asset reporting requirements outlined in OAR 732-042-0035(3) and OAR 732-044-0040(2) will be completed by the provider in the APR on a quarterly basis. This reporting includes acquired, purchased, or leased capital assets by providers using STIF Formula fund and/or STIF Discretionary/Intercommunity funds. This capital asset reporting will be completed through the APR to fulfill the STIF requirements. ODOT will enter the STIF capital assets in OPTIS prior to beginning the APR.

The STIF capital assets for STIF Formula and STIF Discretionary/Intercommunity will then be populated when the provider begins the APR.

ANNUAL REPORTING

*SPR Annual Reporting Outcomes*

The following access to public transportation outcomes must be reported in the SPR as **part of the 4<sup>th</sup> quarter** SPR of each year: number of people within a half mile of transit stop, number of Low-Income Households within a half mile of transit stop, number of students in grades 9-12 attending a school served by transit, and number of rides provided to students in grades 9-12 served by fixed route services.

The method for calculating access to transit outcomes, as list above, may vary. QEs should use the same method for reporting as was used to estimate outcomes in the STIF Plan. Methods may have included using transportation tools, such as Remix or TNexT. QEs also may have used U.S. Census data to calculate the number of low-income households within a given geographic area. See the [STIF Methods for Calculating Low-Income Households](#) guidance document for more information.

The method may vary for calculating the number of rides provided to students in grades 9-12, depending on the type of service provided and other factors. The provider should use the most accurate method for counting student ridership such as onboard ridership survey, passenger counts, and requesting age/grade information when scheduling rides.

*Figure 4. Annual Outcome Measures*

The screenshot shows the OPTIS system interface for '4. Annual Measures'. At the top, there is a blue header with 'OPTIS' on the left and 'Close' with a window icon on the right. Below the header, the main content area has a title '4. Annual Measures' and 'Item 1.1' with 'Number: SPR-19-0502-02' and 'Control #: 10095225'. A navigation bar contains five buttons: 'Skip', 'Back', 'Save', 'Next', and 'Finish'. A sidebar on the left lists four menu items: '1. Task Information', '2. Other Funds', '3. Outcome Measures', and '4. Annual Measures', with '4. Annual Measures' being the active selection. The main content area is titled 'Annual Measures' and includes a help icon and text: '? These measures are required at the end of each fiscal year (4th & 8th quarters)'. Below this, there are three rows of labels and input fields: '# of People within a Half Mile of Transit Stop', '# of Low-Income Households within a Half Mile of Transit Stop', and '# of Students In Grades 9-12 Attending a School Served by Transit'. At the bottom left, there is a note '\* Indicates a required field' and at the bottom right, there is a 'Top' button with an upward arrow icon.

#### *SPR Annual Reporting Program Criteria*

The following program criteria must be reported in the SPR as part of the 4<sup>th</sup> quarter of each year. ODOT staff has developed guidance below to assist in reporting program criteria for the following: increased frequency to areas with high-percentage of low income households, expanded routes or services to areas with high percentage of low-income households, reduced fares in communities with high percentage of low-income households, procurements of low-or no-emission buses for use in areas with population of 200,000 or more, improved frequency and reliability of service between communities in and out of QE's service area, improved coordination among PTSPs to reduce fragmentation of service, and implementation of programs to provide student transit service for students in grades 9-12.

The method for reporting each program criterion is to review the percentage allocated in the STIF Plan and enter the same percentage as the STIF Plan allocates, unless there has been a variance. If the percentage has changed, enter the updated percentage and explain in the available text box why the change occurred. If there is STIF match for the procurement of low-or no-emission buses for use in areas with population of 200,000 or more, then the QE will need to update the percentage with what is attributable to STIF funding.

#### *Annual Reporting Outside of the SPR*

The reporting requirements include three additional documents that must be submitted on an annual basis: report on mitigating the impact of the tax on low-income passengers, QE budget, and audit reports. Instructions on how to submit these three documents to ODOT will be provided online and as part of ODOT's upcoming grant management training in July 2019.

#### *Annual STIF Low-Income Tax Mitigation Reports*

The annual low-income reporting requirements are required by statute and the details are outlined in OAR 732-040-0025(1). The report must consist of actions taken by any PTSP located within the area of the QE to mitigate the impact of the STIF tax on passengers who reside in low-income communities.

PTSPs will submit reports to their relevant QE and the QE will bundle the low-income reports from applicable PTSPs for submittal to ODOT. The QE will include reports from PTSPs located within their area of responsibility that receive STIF discretionary funds, even if they do not receive STIF formula funds.

The report must also explain how the QE defines and identifies passengers in low-income communities. The method used must be consistent with the definition of Low-Income Households from the QEs STIF Plan. This report will provide information on the overall dollars spent in improving and expanding transportation services to Low-Income Households. OAR 732-40-0005(17) defines Low-Income Households as those below 200% the federal poverty guidelines. This report is due as **part of the 4<sup>th</sup> quarter** SPR reporting and can be attached to the SPR in OPTIS.

#### *Annual QE Budget*

In accordance with the budget reporting requirements specified in statute and OAR 732-040-0025(2), a copy of the QE's adopted annual budget for the upcoming fiscal year must be submitted to ODOT. The deadline for ODOT receipt of each QEs' budgets is no later than 30 days after adoption.

#### *Annual Audit Reports*

Per the audit requirements articulated in statute and described in detail in OAR 732-040-0025(3), a QE or any PTSP located within the QE's area of responsibility must submit the results of any relevant financial audit, as required by a local, state, or federal oversight agency for the purposes of statewide reporting. ODOT is requesting submittal of any required local, state, federal, or any voluntarily submitted audits. This includes a) the state financial report required under ORS 291.040, b) the results of any comprehensive review completed by the Federal Transit Administration of the Agency; and c) any information submitted by the QE, and their PTSPs, as part of the

requirements of a statewide audit in accordance with the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996. A QE is not expected to audit their PTSPs. The QE's role is limited to compliance oversight.

Per the audit requirements articulated in statute and described in detail in OAR 732-040-0015(1), recipients shall conduct an annual financial audit of the STIF moneys received. See the STIF Agreed-Upon Audit Procedures for a list of audit items that must be included in STIF recipients annual audits. All financial audit reports shall be submitted to ODOT no later than 30 days after the receipt of the auditor's final report(s) per OAR 732-040-0015(2).

#### STIF DISCRETIONARY/INTERCOMMUNITY REPORTING

The STIF Discretionary/Intercommunity reporting requirements are currently being developed by ODOT staff. The reporting requirements will be explicit in the grant agreements. ODOT is exploring options for modifying the existing APR or SPR for reporting purposes. The report template will allow PTSPs to report on STIF Discretionary/Intercommunity funded projects directly to ODOT.

**EXHIBIT D  
CONTRACTOR'S PROPOSAL**



MTRWESTERN RESPONSE TO CLACKAMAS COUNTY  
REQUEST FOR PROPOSAL #2020-83  
SHUTTLE OPERATIONS SERVICES

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PROPOSAL

SUBMITTED:  
JANUARY 14<sup>TH</sup>, 2021



*Amanda Emery; Vice President of Sales*

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[amandae@mtrwestern.com](mailto:amandae@mtrwestern.com)

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## SECTION 5.2

MTRWestern is a locally owned Pacific Northwest based Transportation Company, with locations in Seattle, Spokane, Washington, Portland, and Eugene Oregon. In addition, MTR operates transit services in St Helens Oregon for Columbia County, as well as the City of Corvallis in Corvallis Oregon. Since 2003, MTR has provided transportation services to businesses and organizations along the West Coast. The business initially offered charter services, from Los Angeles and San Francisco to Vancouver, B.C. and Calgary, Alberta. When the company was purchased by H.S. Wright in 2011, he saw an opportunity for MTR to grow deeper roots in the Pacific Northwest and expand its offerings beyond charter to ensure lasting sustainability and to focus its priority geographic areas to the states of Oregon and Washington.

MTR also expanded its product line to include schedule services, outsourced operations for public transit, campus transport for universities and hospitals, and last-mile services for businesses and transit authorities. We also collaborate with companies and public agencies to fill in gaps in transit networks, offering point-to-point and multi-point services and commute solutions that benefit urban and suburban communities, similar to this RFP for Clackamas County. Over the past 10 years, our business has continued to grow steadily because of strong results and customer referrals. We are now the largest private bus operator in the Pacific Northwest. In which many of our clients prefer working with MTR over the larger national operators as we have local roots, understand the day to day challenges that can accrue, yet we are large enough to provide the efficacies of that of a national operator. Our holding company, Seattle Hospitality Group has connections and business affiliations that we work to the advantage of our clients. The Wright family hospitality assets in transportation, hotels, iconic landmarks, events and meeting planning are a powerful force, not only in the Northwest, but across the country and around the world. Across the portfolio, the Wright family name has become synonymous with excellence – excellent service, strong business partnerships, and a commitment to the communities it serves.

Embracing this service mindset, MTR hires the best people in the industry – people with talent, integrity and a commitment to building quality relationships and delivering meaningful results. In addition to being experts in transportation planning, operations management, marketing and service delivery, our people are engaged partners who sincerely care about our clients and their success. If selected as the operator for Clackamas County, we will work seamlessly, as an extension of your team, with full accountability and responsibility to deliver strong results and exceed your expectations across all staged of planning, implementation, operations management, monitoring and reporting.

Based on our prior experience operating both public and private shuttle services with similar objectives, our qualified team is fully prepared to operate shuttle services for Clackamas County. We are confident in our team, service and product; ready to bring our full strength to operate successfully in 2021 and beyond. Our operating plan is contained in the following proposal along with our ***ability to meet the requirements in Section 3 of the RFP outlined within the Scope of Work (Section 5.3 of the proposal)***. This plan follows MTRWestern's guiding principles and philosophy in that service quality need not compromise a direct relation to operating cost. To the contrary, it is created from a strong work environment that supports proactive employee relations and professional development.



## EXPERIENCE

Service excellence requires a commitment from management. MTR has built a safety and service culture, which starts with the guidance of our leadership team and extends through management to every employee. The corporate management team described below will play an important role in managing and guiding the delivery of service through our key staff.

### *Experienced Personnel*

**JEREMY BUTZLAFF, President**, came to MTRWestern after several years working in the motor coach industry. Previously, he was general manager at Gray Line and Holland America, where he managed operations for large coach fleets. Since joining MTR in 2011, Jeremy has helped grow the company into one of the largest transportation operators in the Northwest, providing shuttle operations, commuter services, event and VIP transportation for many of the region's leading organizations.

Jeremy is responsible for overseeing all aspects of the business through management of the following departments and individuals. Jeremy is also responsible for communicating on behalf of the company to the ownership group, board members, any government and public entities. He helps to direct and lead the organization in both short and long term goals.

**ALICIA REINHARD, VP of Operations & Maintenance**, started her career at Seattle Hospitality as a transportation coordinator for large-scale corporate events and meetings. She brings skills in operational planning, time management, analytics and strategic communication that complements our approach now and in the future. A former professional basketball player, Alicia combines her strategic nature with a team-focused leadership style, which propels our operations team forward.

Alicia was hired at MTR in June of 2007. Alicia oversees all aspects of the organization for both operations and vehicle maintenance. Her duties consist of overseeing the day-to-day operations as well as the Station Managers and Maintenance Department at each of our six locations to ensure process and procedures are being followed, that we're in compliance with both federal and state regulations, she supports implementation of operational strategies, and performance to proactively identify efficiency issues and propose solutions.

**AMANDA EMERY, VP of Sales**, started her career at MTR in 2007. She loves the challenge of working with clients with diverse needs, each requiring a personalized solution. A self-proclaimed transportation geek, Amanda has been crucial to the success of the MTR clients and truly cares about the impact she has on their business.

Amanda is responsible to driving and forecasting MTR revenue along with determining additional lines of service that fit within the MTR model, to ensure that MTR is the right fit for incoming customers through similar organizational culture, mission, and values. It is her goal to ensure that we are complementing and providing genuine strength to all the MTR customers.

**JULIE LOVEJOY, Chief Financial Officer & Human Resource**, Julie joined the MTR team in April of 2020 at the peak of COVID-19. Due to Julie's hard work, and over 20 years of experience, in both the financial and HR industry, she was able to help restructure the organization, to ensure its longevity and sustainability, resulting in an overall extremely financially and culturally healthy organization. Julie has worked in both the private, public, and non-profit sectors.

Julie is responsible for managing the organizations finance along with financial reporting to the ownership group, bank, board, and management team. Julie helps to assess financial opportunities, along with creating economies of scale, and overall efficacies resulting in benefits to our clients, employees, and communities. Julie also oversees the HR department providing strategic staffing plans, compensation, benefits, training and development, labor regulations, and all state and federal compliance.

**DOUG PARK, Safety Manager**, started at MTR as a driver in 2012. Doug's years of driving experience, along with his passion for safety, was quickly seen through our driver safety monitoring. He was promoted to a driver trainer role and responsible to training new hires, retraining, and in field supervisor. Through his years of training and working alongside the previous Corporate Safety Manger, when the time came Doug was able to naturally step into his current role. He has enhanced an already strong Safety Culture ensuring compliance with OSHA, DOT, and all local, state, and federal regulations.

Doug is responsible for collaborating with management to uphold and further develop, prepare, and implement safety policies and procedures. Doug conducts safety inspections, driver monitoring, retraining, safety education, and oversight to employee compliance, along with reviewing incidents and accident reports. He oversees driver trainers responsible for new hire training.

**COLIN CARNEY, Operations Manager Portland**, has worked in the transportation industry for over 20 years. He started with Gray Line of Alaska as a driver and quickly developed into an Operations Manager, responsible for managing over 75 drivers and 50 pieces of equipment at one time. Once Colin moved to the Pacific Northwest, he was hired by MTR and has been a tremendous asset to the organization. Colin is our number one driver advocate, working to ensure drivers have the resources they need to be successful resulting in strong driver moral and customer service results.

Colin is responsible for overseeing the day-to-day operations in our Portland based facility. He works to implement processes along with upholding best practices with dispatch, maintenance, safety, driver training, and wash crew. Colin will manage the Clackamas County services and work closely with up to three dispatchers to ensure driver assignments, on time performance, as well as incoming phone calls from the public. Colin will also work alongside the VP of Maintenance to ensure the Fleet Manager, located at our full maintenance facility in Portland, is meeting the expectations of the contract.

#### *Operational Experience*

We have reviewed the requirements and expectation of the Clackamas County service and we are confident that our team is more than capable of providing the full range of service requested in the RFP.

As mentioned previously, in 2011 MTR saw the opportunity to expand the company's shuttle and transit services through investment and acquisition. In 2012, we grew our footprint in the greater Eugene area, assuming management of a 20-year relationship and intercity transit services with the **Oregon Department of Transportation**, which led to us becoming part of the Amtrak Cascade system, which connects 18 cities in the Pacific Northwest. This endeavor propelled us into further public and private contracts.

We have continued to expand our shuttle and transit operations in all markets, through strong results, and customer referrals. We offer a range of services including scheduled services, on-demand and first/last miles transportation, commuter and campus solutions, and outsourced operations for the

businesses. Over the past decade, we have won and/or operated several transit contracts including a just a few listed below:

- Since **July of 2016** MTR has been managing transit operations for **Columbia County Rider**, based in St. Helens, Oregon. The program includes fixed route services, 7 days a week, flex/deviated-route services, and demand response services that includes ADA Paratransit, Medicaid transportation and general public Dial-A-Ride. MTR employs and manages 13 drivers along with overseeing the vehicle maintenance of 15 vehicles, coach cleaning, both state and federal reporting, fare reconciliation, and responsible for managing the public phone and email inquiries.
- In **June 2018**, MTR was awarded the contract for the **City of Corvallis**, and took over the operation from First Transit for the fixed-route transit services for the Corvallis Transit System in Corvallis, Oregon. The current transit service operates approximately 40,000 annual revenue hours and over 500,000 revenue miles per year. Service operates 7 days a week on a fixed route schedule. We currently oversee the management of 32 employees both, administration, drivers, and a safety manager along with management maintenance for 17 vehicles. We are responsible for the management of coach cleaning, onsite fueling, and overseeing the public phone and email inquiries. Since taking over the contract the City of Corvallis has seen great improvements in their offerings such as higher driver moral, overall company culture and driver retention, increase in on time performance, and reduced service interruptions.
- Management of the **Columbia Gorge Express** transit service from Gateway Transit in Portland to Multnomah Falls and Hood River began **May of 2015**. The service operates between cities and attractions along the Columbia River with 3 ODOT owned vehicles and 2 MTR owned vehicles. MTR insurances and maintains along with overseeing a phone line and calls from the public.
- Mult-year contract operations for **Explore Washington Park (EWP) TMA**, in collaboration with ODOT to provide fixed first/last mile shuttle services throughout Washington Park to the public year round began in **March of 2015**. Service varies throughout the seasons operating up to six vehicles and management of up to 10 drivers at one time. MTR works closely with EWP to ensure the drivers feel like an extension of their team, representing their mission statement, over all values, and outstanding customer service.

#### OVERALL APPROACH & ABILITY TO MEET REQUIREMENTS

MTRWestern's vision is to transform the way people move. We believe that transportation services operated thoughtfully and effectively, can impact more than mobility; it can influence local economies, increase productivity of individuals and businesses and amplify the value the public places on community services. If awarded the Clackamas County contract, MTR will work in partnership with the County to provide the employees and community with a high quality, safe, effective, and efficient transit service that supports the county goals, and encourages increased confidence in overall service.

As captured throughout this proposal, MTR is not a standard transit operator. Since 2003, MTR has earned a reputation as one of the leading transportation operators in the Pacific Northwest. We are a leader not only because we provide vital and valuable transit and shuttle experience to the county, but also because

we do things differently. We hold ourselves to the highest standards of safety and service; operate with attention to detail and an eye on results. We believe in building and nurturing strong partnerships with our clients, employees, and the communities we serve. We believe all of these factors are the recipe for success, as evidenced by the following principles:

#### OUR VISION

To transform the way people move.

#### OUR MISSION

To be the best-in-class transportation solutions provider. We value our clients, and we maintain the highest level of innovation, professionalism, safety and performance to support their business goals each and every day.

#### OUR VALUES

Our team shares a common set of values that reinforce our mission and vision and set us apart from other operators. These values reinforce what makes us great:

- Uncompromised safety standards
- Outstanding service
- Supportive and inclusive team and work culture
- High performance standards with accountability for results
- Actively enriching the communities where we live and work

#### *SafetyFirst*

Each year, MTR transports over 3.5 million passengers, while maintaining a top-safety record with the Department of Defense, Transportation Securities Exchange, Utility and Transportation Commission and the Federal Motor Carrier Safety Administration (FMCSA). Safety is a fundamental priority for us, and we invest considerably in proactive safety and compliance management and monitoring.

To ensure potentially negative practices are addressed and corrected before they become issues, MTR's Safety and Compliance Directors assist local Station Managers in continual monitoring of compliance and driver performance.

DriveCam technology is placed on every vehicle, which allows us to regularly evaluate whether drivers are utilizing seatbelts, or if they are driving unsafely at any time. In the event that our review of the footage indicates non-compliance with laws or MTR's policies, we will coach them, provide progressive discipline (if necessary) and/or remove them from service, depending on the offense and its severity. We track all speeding and safety incidents, and hold drivers accountable for improvement, or we remove them from the roster.

Our safety culture is integrated into every aspect of the services we provide. Our clients and their passengers place their trust in us, and we are committed to doing everything possible to keep them safe. Our Corporate Safety Team manages and monitors our safety performance and the training and retraining efforts needed to ensure our drivers make safety their top priority.

#### *Our Great Culture Makes the Difference.*

MTR's exceptional culture enables us to attract the highest quality drivers and staff in the industry. We value our people and treat them well through management excellence, and provide a culture and environment in which team members can thrive. We believe that a culture in which we take care of our own will lead to greater service to our clients and their guests. That means celebrating successes, and creating work environments where team members feel safe to share fresh ideas that have the potential to make our operation even stronger.

#### *Excellent Service*

We know that our performance matters, and we work not just to do our job well, but we also look for ways to improve our service and increase rider satisfaction. We have learned that making small adjustments to appearance standards, training and other operational protocols can have a significant impact on driver morale and performance. We invest in service training, and make service performance a key indicator of driver success by providing incentives to drivers with no service incidents.

This service mindset is deeply rooted in our organization and starts at the top. As mentioned MTR is part of the Wright family hospitality assets in transportation, hotels, iconic landmarks, such as the Space Needle, events and meeting planning which are a powerful force, not only in the Northwest, but across the country and around the world. Across the portfolio, the Wright family name has become synonymous with excellence – excellent service, strong business partnerships, and a commitment to the communities it serves. Each member of our team strives each and every day to maintain and elevate that service bar.

#### *Quality Control*

Quality starts with tone at the top. Our owner, president and executive team plays an active role in the deployment of our services and provides the day-to-day support to our field leadership in order to ensure they have the resources they need to manage their teams to effective results.

A cross-organizational Quality Control Team made up of our VP of Operations, Corporate Safety Manager, VP of Sales, and our Operational leadership in each market and for each major program, such as the Clackamas County operation, meets bi-weekly, every month on enterprise-level quality control measures. The group also works to sets standards, monitor quality control practices, builds on proven practices in shuttle and transit solutions, and ensures consistent quality service across all areas.

Our Vice President of Operations empowers the local teams to target program results, and then evaluates the data on a regular basis to assess how we are doing. One of the great benefits of having real data from a number of sources is that it provides an opportunity for deeper analytics to ensure that the data does its work.

#### *Responsive Communication*

Our operations team will work collaboratively with the Clackamas County, acting as the glue between all aspects of the operation, to ensure we have adequate staffing to manage and monitor all services, technology requirements and provide timely data and analytics, as the basis for improvement.

### *Environmental Sensitivity*

At MTR, we are always looking for new, innovative and sustainable ways to operate services. Our approach to sustainability has garnered attention in the industry, and ultimately lead to MTR being awarded the 2019 Leadership & Environmental Sustainability Award, formerly known as the Green Spirit Award. The award, provided by the American Bus Association (ABA) and is sponsored by Motor Coach Industries (MCI), was created to promote the motor coach and its application as a viable solution to the reduction of carbon emissions, and to encourage industry leadership with a positive impact on our environment. The award is presented to a motor coach operator who demonstrates the greatest commitment to “environmental leadership” in the areas of internal corporate initiative, external corporate stewardship or community and industry-wide environmental leadership.

MTR continues to seek out partnership where electric vehicles could be made possible in the coming years.

### *Insurance*

All insurance requires stated in the proposal have been accounted in the total pricing provided. If awarded the contract MTR will provide Clackamas County will all documentation required prior to the start of service.

## **SECTION 5.3**

### SCHEDULEING & DISPATCHING

Through our expensive experience working with both public and private transit/shuttle services we understand what it takes in order to schedule and dispatch driver and vehicles accurately (please refer to the EXPERIENCE section on Page 4).

In relation to our experience and approach to scheduling, we rely on both “old-school” scheduling techniques and scheduling software through Coach Manager. We have learned that scheduling software is a great tool to get the job done, but it does not replace the scheduler/dispatcher; it only assists in performing the functions of his/her job better. The dispatcher or scheduler needs to understand all aspects of the operation and have a clear goal when creating the schedule. For example, in similar transit operations we have a set amount of hours each day to schedule demand-response service. As a result our team is highly efficient in meeting the demand response service through our strategic scheduling.

Our approach to scheduling is to educate and empower our dispatchers. We observe their work and work with them to evaluate the service they provide at the end of each day. We work closely with dispatchers to identify inefficiencies in the schedule. This is not only educational, but helps the dispatchers to explore how to improve.

Lastly, we work directly with our demand-response riders and we communicate with them openly and transparently. We train our dispatchers to communicate with riders accurately, whether sharing how to navigate the system, offering insight into the services we provide, or evaluating options. We give our riders choices instead of directing them what to do.

### *Staffing & Key Personnel*

Our experience operating similar services allows us the ability to clearly define the roles and responsibilities of our staff. The below outlines information regarding the staff responsible for operating the providing the service. As previously noted the MTR leadership team will play a key role in providing oversight, support, and management of the below employees and available to Clackamas County whenever needed.

**Station Manager, Colin Carney** will be the main point of contact for Clackamas County and will be on call during all hours of operations. Colin's primary responsibility will be to ensure that all items associated with the Scope of Work are met with full transparency and communication to Clackamas County. He will oversee all aspects of the agreement to ensure that we are in compliance and meeting/exceeding the expectations in the Scope of Work.

As service launches, our Operations team will be heavily involved with field supervision and driver support. All changes, updates and concerns will be directed through the communication of Colin and Clackamas County to provide consistency. As the Station Manager, Colin will be responsible for managing and overseeing, dispatchers, fleet manager, drivers, and wash crew. Colin will also be responsible for the following:

- Working directly with HR & Safety regarding driver hiring.
- Ensuring driver-adherence to the designed routes through spot checks, ride-alongs, and stop monitoring.
- Accurate operator log-on and start up
- Operationally responsible for any patterned issues and adjustments/re-training.
- Dispute resolution for all escalated issues from Dispatch and/or Safety.
- Monitoring and reviewing daily system performance and quality assurance functions for service operations
- In field supervision
- Driver discipline
- Approving driver hours and vacation time
- Customer relations point of contact
- Coordinating with Clackamas to address service issues and improvements
- Communicating and reporting any emergencies or service failures directly to Clackamas and submitting service failure reports
- Overseeing accident reports and/or incidents and debriefs.
- Emergency services point of contact for any maintenance or vehicle issues.
- Understanding of data management and analysis
- Submitting and reviewing required ridership, maintenance logs, and/or data reports to Clackamas County.
- In depth understanding of on-time performance through baseline monitoring of Samsara, as well as working alongside dispatch and technology interface.
- Monitoring drivers speeds and safe driving through Samsara
- Response to and reporting of customer issues and/or responses
- Billing/Invoicing

**Dispatcher(s)** duties will be split between three current dispatch employees based on hours of service. Two of the dispatchers will be primary while the other is be fully trained as a back up to the service in the event of vacation or sick leave. Each dispatcher will be fully trained as an extension of Clackamas County, ensuring they have full knowledge of the County services in order to provide route deviation and referral questions. The Dispatchers will be responsible for the following:

- Assign drivers and vehicles to fill daily service schedule
- Confirm assigned work with each of the drivers each day to ensure there are no misses.
- Answering any questions the drivers many have about the service
- Fielding feedback from the drivers to the Station Manager on a daily basis
- Check in drivers who report for service
- In field supervision
- Working with the drivers and maintenance department in the event of a mechanical issue
- Answering customer service phone calls and emails
- Monitoring technology and applications to ensure they are working properly
- Filling out and submitting Incident Reports
- Monitoring drives and vehicles through Samsara technology

**Maintenance Manager**, will oversee all maintenance for Clackamas County vehicles and work alongside both the VP of Maintenance, Safety, and Station Manager to ensure compliance in both FTA/FMCSA, as well as local and state, and MTR Maintenance Plan and standards are met. Our preventative maintenance program ensures all manufacture maintenance schedules are met through our internal RTA/Samsara software in which the Maintenance Manger will utilize in order to provide consistent reporting and manage all maintenance services. The Maintenance manager will also be responsible for the following:

- Ensure all vehicles and equipment up-to-date, properly maintained and in compliance
- Personnel training and certifications
- Fleet maintenance, including Preventive Maintenance Schedules
- Both Fleet and Facility Inspections
- Fleet parts/warranties
- On board communications and security equipment maintenance
- Support independent third-party maintenance auditors
- Vehicle inspections

**Drivers**, assigned to Clackamas County will dedicate to this service to ensure over all consistency of service. In order to operate the Oregon City & Clackamas Industrial routes a total of 5 driver will be needed, of the 5, 3 drivers operating as the primary and 2 as back up during vacations, sick days, and/or training/retraining. Once operations for Clackamas Community College begin, we project 3 to 4 dedicated drivers will be needed along with two back up.

Part of the benefit in working with MTR is that we currently have a large driver pool in which we can pull from in the event that there are special event services and can also respond quickly in the event additional service s are needed.



**Wages and Benefits.** Although our culture is what keeps our drivers long-term, wage is also highly important. Over the years, we have made it a priority to evaluate our driver wage to ensure that we are offering a competitive wage. Unlike most operators, we also offer and schedule our drivers to ensure that they can have full benefits package, including medical, dental and vision, to our drivers. The MTR benefits package is available to Clackamas County upon request.

#### *Facilities & Vehicle Storage*

MTR currently leases a full facility in Portland, Oregon located at 8101 NE 11<sup>th</sup> Ave. The office space holds five primary offices, one for the Station Manager, one for the dispatchers, both of which have private offices for interviewing new drivers, performance reviews, and progressive discipline. The other offices are used for interviewing, driver training, and safety trainings. The space also has dedicated space for a driver break room and lounge area.

If awarded the Clackamas County Service, MTR will utilize this space as the primary location for the office space for the Station Manager, dispatch, maintenance/shop, full washing on a bi-weekly basis, driver training, and postings for all federal and state mandates.

MTR would like to request a restroom available to the drivers in Clackamas. We would operate the service out of the Portland location; however have the drivers report each day to the designated parking facility provided by the County. Vehicles would be driven to the Portland location when maintenance and/or washing/cleaning is required. We have extensive experience operating services this way with little to no service interruptions for large corporations such as Intel in Hillsboro Oregon.

#### *Technology*

Our Operations and Safety teams will monitor program performance on a daily basis. Clackamas County may also have direct access to select performance dashboards, as desired, and we will also provide your team with regular reports on ridership, schedule adherence, events or incidents, maintenance, and any other custom reports as desired by Clackamas County and in concordance with the contract.

We also use the technology, monitoring the performance in the field to gather information and serve as both a training and feedback tool, as one more way to proactively engage and monitor driver performance. Some of our monitoring technologies include:

- **Samsara/GPS:** Samsara telematics platform provides the necessary components to deliver solutions ranging from maintenance, to track and trace software, helps manage fuel efficiencies, and driver safety such as speed reports. This platform keeps our fleet and managers connected to each other in one program through a patented Electronic Verified Inspection Report (EVIR®) system allowing drivers to conduct pre-and post-trip inspections to the 2020®-mobile communications tablet. Other features include a Ground Traffic Control (GTC) fleet tracking software, and an electronic logging device (ELD) allowing the driver and company to have up to the minute “hours of service” updates. This helps with business efficiency and complies with federal regulations, and enables a paperless system.

- **RTA Fleet Maintenance Software:** monitors the maintenance and health of every Clackamas County vehicle in a centralized way, to help our maintenance staff proactively manage routine maintenance schedules, rhythms, warranty's, and parts ordering.
- **Radio's:** Each vehicle will be equipped with a two-way radio connected back to the dispatch office to provide direct communication between drivers and operations. We have found in operating a transit service Radio's are the most effective as it allows for direct communication in the event of an emergency and/or route deviation.
- **Coach Manager:** is the primary software utilized to dispatch driver and vehicles each day. The Station Manager and Dispatchers use Coach Manager to notify drivers of the daily assignments along with their work tickets. All invoices are generated through Coach Manager.

#### *Driver Hiring:*

As mentioned previously, when MTR enters into a contract it is important that we see ourselves as an extension of the organization we are working with. We train each of the employees to know full knowledge of service.

We believe that our drivers are one of the most important aspect of any transit service. They are the face of the organization in the communities daily representing both MTR and most importantly our clients brand and reputation. Because of this we take great steps to ensure we hire the best in class drivers. More on our driver program below:

#### **Driver Eligibility:**

- All drivers must have a Commercial Drivers License (CDL) or be in compliance with state and federal laws for the class of vehicle they operate (no Mexican Commercial Licenses.), Class B with passenger and air brake endorsements.
- All drivers must have at least two years of verifiable professional driving experience.
- All drivers must be in good physical condition. Evidence of insurability must be provided for any driver that has continuing health problems, requires regular medication or is over the age of 65.

**Hiring:** Driver that applies must go through a background ground check for the following:

- Trace of social security
- Criminal country back ground check as well as jurisdiction
- Criminal federal search for each state lived in
- National wide sexual offender
- Drug & Alcohol testing following both State and Federal Regulations. Any positive results the applicant will not be hired by MTR.

#### **Unacceptable Drivers for Hire:**

- Drivers with unverifiable MVRs
- Drivers with any major violations\* in the past 36 months
- Drivers with more than two at-fault accidents in the past 36 months

- Drivers with more than four minor violations. Including Major violations are defined as DUI/DWI, License Suspension, Felonies, Hit and Run Accidents.
- Drivers under the age of 23
- Possession of a Controlled Substance, Eluding Police or Reckless Operation.

All applicants must go through an in-person interview with the Station and Safety Manager along with a driver/ride along test in an MTR vehicles. If the driver is deemed fit and had past all of the above they will be hired and go through the MTR Training process where there will be continual evaluation until fully cleared to go into service.

MTR will notify Clackamas County of new or terminated employees on a monthly basis.

#### *Driver Training:*

We continuously enhance our driver orientation, policies and training programs. Each new hire is put through an intensive training and orientation program designed to address the specifics of safety, services, operations and customer service. This program is conducted by our Safety and Training Department and covers defensive driving, emergency situations, passenger sensitivity, customer service, and knowledge of the operators' responsibilities under the Americans with Disabilities Act (ADA), including use of accessible equipment such as lifts and wheelchair tie-downs, sexual harassment, and diversity and inclusion.

When hired, our drivers go through at least 100 hours of training based on knowledge and skill level, both in classroom setting and behind the wheel, before they start to drive in service. We make sure they are familiar with the different services offered, the geography and particularities of the service area and company communications. Our drivers receive this training when first hired, and through monthly safety training courses. All drivers are provided with a driver handbook, which outlines policies and procedures that are reviewed and taught during their training.

MTR Driver Training Guide can be made available upon Clackamas County's request. Additional driver training and safety can be found under the SAFETY Section of the proposal.

#### ADA

We at MTR take great pride how we treat each one of our guests, driver training, as mentioned above, covers ADA wheelchair lifts. As part of the driver training they are also required to go through an ADA training which covers:

- The American with Disabilities Act (ADA)
- Why we must comply with the motor coach ADA Rules
- Good customer service delivery to customers with disabilities
- Communicating with and assisting customers with disabilities
- Operation and maintenance of accessibility equipment
- Manual boarding of customers who use wheelchairs another mobility aids.

The ADA Training Module can be provided to Clackamas County upon request.

#### FEDERAL & STATE REQUIREMENTS

MTR drivers, supervisors and safety sensitive held positions are trained and certified on the Americans with Disabilities Act upon hire and bi-annually. Our drivers participate in a 60 minute minimum training on physical, behavioral, speech and performance indicators of drug abuse as well as alcohol abuse. Our Drug & Alcohol policy complies with FMCSA and FTA requirements in random testing as well as our internal reasonable suspicion policy. Drug and alcohol testing is preformed upon pre-employment, random (50% annually Drugs and 10% annually Alcohol), post-accident, reasonable suspicion, return to duty and follow-up. In the event of a positive test result we comply with referral to SAP. At MTR we are certified enrolled with JJ Keller to provide D&A testing and reporting to meet all requirements under CFR49 Part 40 and 49 Part 655.

#### SAFETY

As mentioned previously, MTR places the utmost priority on the safety and security of our passengers. Annually, we perform over 25,000 trips, and we drive in excess of 3 million miles. We have been certified as Satisfactory by the Department of Defense, Transportation Securities Exchange, Utility and Transportation Commission and the Federal Motor Carrier Safety Administration (FMCSA). In addition to having the top FMCSA safety rating possible, MTR also has an enviable history of safe vehicle and driver operations based on its roadside performance over the last 24 months as measured by the FMCSA's Carrier Profile on the Safer System. Similarly, MTRW's drivers have been inspected a total of thirty times over the past twenty-four months with no out-of-service violations for an out-of-service rate of 0% which compares very favorably to the national average of 5.5%.

**More on FMCSA:** We continually grade ourselves by reviewing our Compliance Safety Accountability (CSA) scores through the FMCSA that holds motor carriers and drivers accountable for their role in safety. These scores can be viewed online in FMCSA's Safety Measurement System (SMS). FMCSA updates the SMS monthly with data from roadside inspections, including driver and vehicle violations; crash reports from the last two years; and investigation results. The SMS considers:

- The number of safety violations and inspections
- The severity of safety violations or crashes
- When the safety violations occurred, with recent events weighted more heavily
- The number of trucks/buses a carrier operates and the number of vehicle miles traveled
- Acute and critical violations found during investigations
- FMCSA organizes the SMS data into seven Behavior Analysis and Safety Improvement Categories (BASICS):
  - Unsafe driving speeding, reckless driving, improper lane change, inattention, no seatbelts
  - Crash indicator histories of crash involvement (Not Public)
  - Hours-of-service compliance/noncompliance with HOS regulations, including logbooks
  - Vehicle maintenance brakes, lights, defects, failure to make required repairs
  - Controlled substances/alcohol use/possession of controlled substances/alcohol
  - Hazardous materials compliance leaking containers improper packaging and/or placarding (Not Public)
  - Driver fitness invalid license, medically unfit to operate a CMV

The SMS groups compares via BASIC with other carriers that have a similar number of safety events (e.g. crashes, inspections, or violations) and then ranks carriers and assigns a percentile from 0 to 100 (the higher the percentile, the worse the performance) to prioritize them for interventions.

Monthly we review our CSA scores with our driver during our safety meeting to show how we stack up against companies within our rating group, constantly looking for ways to improve. Our company is always below the national average in every category and is in the top 5% in each category of companies within our group.

**Beyond FMCSA:** MTR utilizes an industry-leading training curriculum for all new operators entering into our company. Our safety and operations staff is responsible for the development of best-in-class operator-training programs exceeding most transportation companies, and are constantly searching for ways to improve and innovate new processes.

Our entire employee-training program is centered on safety. Drivers are trained and continually re-trained on classroom, pre-driving skills, behind-the-wheel training (BTW), observation and annual skills and knowledge.

The Company Resource Vault (CRV) is MTR's communication and online training program for all employees. All departments can communicate with each other or get information on a variety of company topics, training, and policies. The CRV contains:

- Inter-company communication
- Links to educational and health websites
- Policies and procedures
- Upcoming events and safety tips
- Educational and compliance sites
- Training and testing
- PowerPoint and video presentations
- Forms and certifications
- Links to company webinars

**DriveCam Vehicle Monitoring:** MTR currently utilizes DriveCam in all vehicles. Based on the information in the RFP, the County will provide camera's for monitoring in the vehicles. We utilize cameras as a behavior-based safety tool focused on a comprehensive solution identifying and prioritizing positive and negative behaviors. This allows us to recognize and reward positive actions, while correcting the causes of poor driving before they lead to a collision. This "programmatic approach" helps our company transform our safety culture and ensures bottom line results, preventing collisions, fraudulent claims and wasted operating expenses while protecting our drivers and our brand.

**Samsara Systems:** As mentioned previously we utilize Samsara telematics platform to provide the necessary components to deliver solutions ranging from maintenance to track and trace software and helps manage fuel efficiencies. This platform keeps our fleet and managers connected to each other in one program through a patented Electronic Verified Inspection Report (EVIR®) system allowing drivers to conduct pre-and post-trip inspections to the 2020®-mobile communications tablet. Other features include a Ground Traffic Control (GTC) fleet tracking software, and an electronic logging device (ELD) allowing the driver and company to have up to the minute “hours of service” updates. This helps with business efficiency and complies with federal regulations, and enables a paperless system.

#### *Handling of Emergencies*

Safety of our riders, employees, and community are the highest priority of our organization. In the event of either a collision, injury, or an incident, there must be an operating procedure for reporting these events to the necessary organizational personnel. The goal is to manage the consequences of these events and to assure that affected parties’ concerns are addressed in a timely and uniform manner, immediate as possible.

In the event of a collisions, injuries, or incidents must be reported to the Station Managers immediately. At which time the Station Manager will notify Clackamas County. Collision, Injury, or Incident reports are to be completed and submitted to Station Manager immediately or by the end of your work shift, depending on severity. The Collision, Injury, or Incident Report forms are located on each vehicle.

An interview will be conducted with the Station & Safety Manager with the intent to collect further information about the event as well as determine the corrective action that should be taken in order to any future potential collisions, injuries, or incidents. All drivers are removed from service after a collision until the collision, debriefing, and corrective action has been taken.

If the Driver fails to call their Station Manager or Safety Department, fails to submit a Collision/Injury/Incident Report within 12 hours of the event, and/or does not schedule a manager interview within 24 hours of the event, will result in immediate disciplinary action. The disciplinary action can result in employee re-training, suspension, or including termination. If a driver is determined unable to perform these requirements by a medical professional because of physical and/or mental conditions after a collision, injury, or incident, consideration will be taken.

At the time of a collision, injury, or incident the MTR Safety Manager is responsible for:

- Post event drug/alcohol testing as required by company policy or industry regulations
- Report the event and its circumstances to the proper organizational personnel
- Address questions by affected parties involved in the event (excluding media sources)
- Disciplinary actions and/or re-training based on root cause to correct driver associated issues.
- Insurance related issues associated with the collision/injury/incident

Executive Management responsibilities include:

- Coordinate activities associated with all collisions, injuries, or incidents to assure timely and appropriate company responses
- Respond to public and media inquiries regarding collisions, injuries, or incidents
- Evaluate, plan and apply necessary company resources to take corrective actions to manage the near- and long-term consequences of collisions, injuries, and incidents

**Maintenance responsibilities include:**

- Document vehicle damage with respect to any collision, injury, or incident
- Get repair estimates for the involved company vehicles (within 48 hrs.)
- Coordinate the maintenance activities with Station Managers and Safety

**Station Manager Responsibilities include:**

- Work with Safety to mitigate any operational impacts
- Drivers will be removed from service and will require re-training as a consequence of a preventable collision
- Safety will work with operations to return a driver to service in a timely manner upon review of any injury or incident
- Coordinate operational and maintenance activities to get the involved company vehicles back into operation

**Forms/Documentation Required:**

- Collision/Injury/Incident Reports
- RLI-Accident Reporting Kit
- Pictures of accident scene to include damages to any vehicles/structures
- Samsara Path Report/Speed Report
- State Required Collision Reports
- Federal or Forensic Drug and Alcohol Testing Documentation
- Driver Qualification Files
- Drug and Alcohol Test Results (Federal or Forensic Chain of Custody)
- Driver ELD Data/Log Book
- Electronic (Driver) Vehicle Inspection Report

We at MTR also follow an internal Incident Response Process (IRP) in the event of a major accident. The IRP outlines the Executive and Management teams responsibilities as well as the drivers responsibilities, notification of emergency services, internal, client, and community notification (if and when applicable). As part of our ongoing safety processes on a bi-annual basis an emergency drill is preformed to ensure all employees are fully prepared and really to respond quickly in the event of a major accident. The IRP can be provided for review upon the request of Clackamas County.

**I-Tracker:** MTR Incident Tracker is an online reporting solution. By providing our organization the ability to log Incident Reports electronically, it allows us to view and query them at any time. Managers can also view detailed analytic reports and trending graphs, create workflows, and even set automatic email alerts. A complete and comprehensive audit trail lists every single action that takes place within the application. MTR would provide any Incident Tracker reports in the key Performance Measurements.

**Emergencies & Mechanical Issues:** MTRWestern works day in and day out to ensure that our vehicles are running at optimal performance to avoid any breakdowns and/or service interruptions. In the event of a breakdown, we will assist drivers, get a replacement vehicle to the site of the breakdown and strive to keep service interruptions to a minimum. Drivers are to call and the Station Manager will work quickly to get a replacement vehicle onsite. The Station Manager will be in contact with the County throughout the situation in order to provide real time information and solutions.

### *Customer Service*

Responsiveness to all complaints, comments, and positive feedback is critical to customer service excellence. Our employees are instructed to exhibit professionalism and kindness when receiving a complaint. MTRW's guidelines to handling a customer complaint are as follows;

- Fully engage, listen, and document all pertinent information.
- Respond graciously and patiently, while continuing to document, and confirm all details of the comment.
- If the comment is a complaint, provide information to the customer that it will be investigated, and that a supervisor may contact them directly as part of the investigation.
- Always show gratitude for taking the time to call, email, or voice their complaints, and for provide constructive feedback in how we can improve.

All complaints must be brought to the attention of the Station Manager. MTR will immediately take the necessary actions and begin to investigate the complaint to determine validity and/or corrective action steps. A formal complaint report will be provided to the County and the complaint will be logged and submitted appropriately with all monthly reports, as required.

Employees who receive repeated valid complaints will follow our progressive discipline policy up to and including termination of employment.

### MAINTENANCE

MTR's strong philosophy in true preventive maintenance helps to ensure the safety of our guests. The only way to effectively minimize mechanical failures and service interruptions is to plan frequent and thorough maintenance with technicians trained to identify potential failures. Our comprehensive inspection and maintenance program assures the fleet is at optimal operating condition to service our customers. MTR utilizes electronic vehicle inspection records (EVIRs). This allows for more efficient inspection and tracking of write-up/repairs. We are very proud of how we manage equipment along with and of being a safety steward of our industry. We are very aware of our customer's image as well as our own. To ensure this is always top of mind, we pay particular attention to the following:

- **Vehicle maintenance/repairs standards.** All vehicles are maintained and comply with all county, state and federal laws, rules and regulations. We make sure all vehicles in our fleet meet or exceed the manufacturer's specifications, are in accordance with state's vehicle maintenance standards and the FTA regulations for Preventative Maintenance. All service records are kept for all vehicles and can be made available to Clackamas at any time. Reports will be provided in conjunction to the Contract. MTRWestern complies with all FTA and ODOT reporting requirements for maintenance and repair, and is certified to maintain ADA lifts.
- **Daily vehicle maintenance expectations.** At MTR, each driver is required to conduct daily pre- and post-trip vehicle inspections electronically through Samsara in all of our vehicles. Any vehicle problems and status of repair are reported through Samsara to the Station Manager and Maintenance Department. We will assess vehicle fleet priorities and mechanics' ability to make the repairs in a timely manner.



Our maintenance department is required to keep record of all preventative maintenance, out-of-service maintenance and warranty work on each and every vehicle they service. All records are kept and tracked electronically through RTA. This also goes for all outsourced vehicles.

#### FINANCIAL VIABILITY

As mentioned throughout the proposal, MTR has a strong ownership group, which is well capitalized and has a strong commitment to the financial success of the organization, along with a commitment to stewardship that ripples throughout the organization. Accountability and transparency are paramount to ensuring a healthy and sustainable organization.

This past year's financial audit, performed in November, by BDO, stated that MTR will remain a Going Concern through December of 2021. This past year has proven to be challenging for the transportation industry. The American Bus Association (ABA) has stated that over 40% of motor coach/shuttle operators will not be able to survive the devastating effects of COVID-19. It is because of our strong company culture, leadership, size, and ability to move quickly, that we have and will continue to remain a strong viable company through a global pandemic. Like the saying goes, "never let a good crisis go to waste," we have spent a considerable amount of time restructuring the organization, including a reduction in head count, reduction in discretionary expenditures, along with streamlining technologies, and efficiencies throughout the organization, without compromising any of our core values. We can confidently say and with 100% assurance that MTR will continue to be the largest operator in the Pacific Northwest for years to come.

#### ABILITY TO START SERVICE

Based on the current infrastructure and robust experience, MTR is established and ready to be able to begin service in February, or early March. We are currently set up with the facilities, technology, operations processes and procedures. Along with a full staff in operations, dispatch, safety, maintenance, drivers, and wash crew.

If awarded the contract MTR will immediately begin working with Clackamas County to provide a work back schedule to ensure a smooth start to service. We would suggest weekly conference video calls and/or in person meetings (dependent on COVID), as we approach the start date. Once service has begun, we would suggest continuing with weekly calls for the first month, move to bi-weekly in the second month, monthly meetings for the following three months, and quarterly meetings thereafter to ensure full transparency, accountability, and client satisfaction.

#### WHAT SETS MTR APART

As captured throughout the proposal, MTR is not your standard operator. Since 2003, MTR has earned a reputation as one of the leading transportation providers in the Pacific Northwest. We are leaders not only because we have importation and valuable transit, shuttle and event operation experience to bring to Clackamas County, but because we do things differently. We hold ourselves to the highest standard of safety and service, operate with attention to detail and an eye on the results, and we believe in building and nurturing strong partnerships with our employees and with agencies we serve. It is because of these reasons, along with the following, that make us unique and result in our client satisfaction.

- **Culture:** We at MTR have built a company culture that far exceeds our competitors. When making organizational decisions the first questions we ask ourselves is how will it affect the company culture. A number of our employees have sought out MTR because of our reputation around culture. It is both our culture that attracts and keeps our employees. Our employees have expressed how MTR “feels like family.” We have built an organization with large company benefits, yet we continue to maintain a family owned and intimate atmosphere.
  
- **Local Operator:** Part of the benefit in working with MTR is that we are not a national company, we are specific to the Pacific Northwest, meaning that we have roots here; we know the areas of operation and the challenges that can present themselves. Our ownership, board members, executive and management team, driver, dispatch, and operation live in both the greater Portland and Seattle area and are familiar with the services along with the area and communities. We have a deeply vested interest because we are local and take great pride in servicing our neighbors and community. Being local also allows us to understand the nuances of our services resulting in the ability to make any quickly needed adjustments, provide educated feedback, find additional efficiencies, and benefits.
  
- **Maintenance & Facility:** Unlike our competitors, we have a full maintenance and facilities location established in Portland Oregon. An established facility means a number of things;
  - The ability to start service quickly and with full-trained staff prepared and ready to begin service.
  - Set up office space for driver training, fielding community phone calls, and dispatching.
  - A full maintenance facility with highly trained and experienced mechanics, along with established partnerships with outside maintenance and Creative Bus for management of warranties.
  - Bus washing station and wash crew
  
- **Longevity & Sustainability:** As mentioned throughout the proposal MTR has taken great strides to ensuring our longevity and sustainability for years to come. Unlike some of the national operators, we are not currently a For Sale Company nor looking to make large structural changes. Contracting with a For Sale Company or a company looking to make any large structural changes can result in a high amount of disruption and lack of operational support.
  
- **Insurance:** As clear throughout the proposal, safety is our number one priority. It is because our dedication to safety that has resulted in the ability to continue to be fully insured to the requirements of the RFP. By contrast, to our competitive partners what are either self-insured or struggle to find insurance providers based on their past violations.

#### DIVERSITY & INCLUSION

At the core of our business, we value people and safety first. We feel that it is our duty and great responsibility to provide a safe workplace in which our employees feel comfortable and are not judged based on their race, religion, gender and/or sexual orientation. Our goal is to be an inclusive and to ensure we have created a safe work environment of diversity and inclusion so that all employees feel accepted, valued, and heard. To ensure that we are an organization with the appreciation and knowing that diversity is what makes us great, providing different viewpoints and ways to approach the business.

In environments where employees feel accepted and valued, they are also happier in their workplace and stay longer with a company. As a result, companies with greater diversity in the workplace have a lower turnover rates along with many additional benefits.

All MTR Employees are required to go through Sexual Harassment and Diversity & Inclusion training annually. We have a no tolerance policy when it comes to these matters. In the event that an allegation or complaint is made, weather in the company or from outside, the employee is immediately suspended pending investigation. Depending on the results and/or outcome of the investigation either further training will be required or termination of the employee.

#### SECTION 5.4

##### FEES

MTR Proposes operating the service at an hourly rate of \$56.01 per revenue hour over the length of the three-year term of the contract for all three services. Please refer to the below Bid Form for pricing breakdown.

MTR agrees to the term of the contract, stating that the hourly rate will remain the same if changes result in more than 15% of the contract hours, contract costs will be negotiated to neutralize impact.

Clackamas County - Request for Proposals #2020-83  
 BID FORM

**COST PROPOSAL OREGON CITY / CLACKAMS INDUSTRIAL SHUTTLES**

| Service Description                                | Approx. Service Hours per year | Total contract cost, per revenue hour:<br>The hourly cost should reflect all fixed and variable costs involved in providing service. |                 | Total Annual Cost per Service (cost/hour x revenue hours) |                      |
|--|--------------------------------|--|-----------------|---|----------------------|
|  |                                | Year 1   | Year 2          | Year 1  | Year 2               |
| Deviated Fixed Route - Oregon City Shuttle         | 2600                           | \$ 56.01   | \$ 56.01        | \$ 145,626.00   | \$ 145,626.00        |
| Deviated Fixed Route - Clackams Industrial Shuttle | 2600                           | \$ 56.01   | \$ 56.01        | \$ 145,626.00   | \$ 145,626.00        |
| <b>Total Operation Contract Cost/Year</b>          | <b>5200</b>                    | <b>\$ 56.01</b>  | <b>\$ 56.01</b> | <b>\$ 291,252.00</b>                                      | <b>\$ 291,252.00</b> |

**COST PROPOSAL CCC XPRESS SHUTTLE**

| Service Description                            | Approx. Service Hours per year | Total contract cost, per revenue hour:<br>The hourly cost should reflect all fixed and variable costs involved in providing service. |                 | Total Annual Cost per Service (cost/hour x revenue hours) |                      |
|--|--------------------------------|--|-----------------|---|----------------------|
|  |                                | Year 1   | Year 2          | Year 1  | Year 2               |
| Fixed Route - CCC Xpress Shuttle (Mon - Thurs) | 4368                           | \$ 56.01   | \$ 56.01        | \$ 244,651.68   | \$ 244,651.68        |
| Fixed Route - CCC Xpress Shuttle (Friday)      | 208                            | \$ 56.01   | \$ 56.01        | \$ 11,650.08  | \$ 11,650.08         |
| <b>Total Operation Contract Cost/Year</b>      | <b>4576</b>                    | <b>\$ 56.01</b>  | <b>\$ 56.01</b> | <b>\$ 256,301.76</b>                                      | <b>\$ 256,301.76</b> |

## **SECTION 5.4**

### **REFERENCES**

1. City of Corvallis Oregon (CTS)  
Tim Bates, *Transit Coordinator*  
[Timothy.bates@corvallisoregon.gov](mailto:Timothy.bates@corvallisoregon.gov)  
541.754.1761  
Contract Term: 2016 – Present
  
2. Columbia County Rider  
John Dreeszen, *Transit Director*  
[john.dreeszen@columbiacountyor.gov](mailto:john.dreeszen@columbiacountyor.gov)  
503-366-8503  
Contract Term: 2016 – Present
  
3. Explore Washington Park  
Heather McCarey, *Executive Director*  
[heather@explorewashingtonpark.org](mailto:heather@explorewashingtonpark.org)  
503.416.2410  
Contract Term: 2015 - Present
  
4. Downtown Seattle Association & Commute Seattle  
Kevin Futhey, *Executive Director at Commute Seattle*  
[kevinf@commuteseattle.com](mailto:kevinf@commuteseattle.com)  
206.613.3230  
Contract Term: 2018-2019

**PROPOSAL CERTIFICATION**  
**RFP #2020-83 Shuttle Operations Services**

Submitted by: MTRWestern, LLC  
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Proposer, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agent or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
  3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer fully understands and submits its Proposal with the specific knowledge that:
1. The selected Proposal must be approved by the Board of Commissioners.
  2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i) That the Proposer is legally qualified to contract with the County.
- (j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

(k) The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

Resident Bidder, as defined in ORS 279A.120

Non-Resident Proposer, Resident State

Oregon Business Registry Number 736015792

Contractor's Authorized Representative:

Signature: 

Date: 1/14/2021

Name: Jeremy Butzlaff

Title: President

Firm: MTRWestern

Address: 720 South Forest Street

City/State/Zip: Seattle, WA 98134

Phone: (206) 838-8143

e-mail: jeremyb@mtrwestern.com

Fax: (206) 621-9750

Contract Manager:

Name Amanda Emery

Title: VP of Sales

Phone number: (206) 687-8549

Email Address: amandae@mtrwestern.com

Clackamas County - Request for Proposals #2020-83  
 BID FORM

**COST PROPOSAL OREGON CITY / CLACKAMS INDUSTRIAL SHUTTLES**

| Service Description                                | Approx. Service Hours per year | Total contract cost, per revenue hour:<br>The hourly cost should reflect all fixed and variable costs involved in providing service. |          | Total Annual Cost per Service (cost/hour x revenue hours) |               |
|--|--------------------------------|--|----------|---|---------------|
|  |                                | Year 1   | Year 2   | Year 1  | Year 2        |
| Deviated Fixed Route - Oregon City Shuttle         | 2600                           | \$ 56.01   | \$ 56.01 | \$ 145,626.00   | \$ 145,626.00 |
| Deviated Fixed Route - Clackams Industrial Shuttle | 2600                           | \$ 56.01   | \$ 56.01 | \$ 145,626.00   | \$ 145,626.00 |
| <b>Total Operation Contract Cost/Year</b>          | 5200                           | \$ 56.01   | \$ 56.01 | \$ 291,252.00   | \$ 291,252.00 |

**COST PROPOSAL CCC XPRESS SHUTTLE**

| Service Description | Approx. Service Hours per year | Total contract cost, per revenue hour:<br>The hourly cost should reflect all fixed and variable costs involved in providing service. |        | Total Annual Cost per Service (cost/hour x revenue hours) |        |
|---------------------|--------------------------------|--|--------|---|--------|
|                     |                                | Year 1   | Year 2 | Year 1  | Year 2 |
|                     |                                |  |        |   |        |



|   |      |    |       |    |       |    |            |    |            |
|---|------|----|-------|----|-------|----|------------|----|------------|
| <b>Fixed Route - CCC Xpress Shuttle (Mon - Thurs)</b> | 4368 | \$ | 56.01 | \$ | 56.01 | \$ | 244,651.68 | \$ | 244,651.68 |
| <b>Fixed Route - CCC Xpress Shuttle (Friday)</b>      | 208  | \$ | 56.01 | \$ | 56.01 | \$ | 11,650.08  | \$ | 11,650.08  |
| <b>Total Operation Contract Cost/Year</b>             | 4576 | \$ | 56.01 | \$ | 56.01 | \$ | 256,301.76 | \$ | 256,301.76 |

June 10, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #159475, Amendment 02 with the State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of the Oregon Money Management Program in Clackamas County

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | Social Services-Money Management Program will continue to provide money management services to seniors and people with disabilities.  |
| <b>Dollar Amount and Fiscal Impact</b> | The total agreement is \$458,050. Funded by State General Funds designated for the Oregon Money Management Program (OMMP).  |
| <b>Funding Source</b>                  | State of Oregon. No County General Funds are involved   |
| <b>Duration</b>                        | July 31, 2019 through June 30, 2021   |
| <b>Previous Board Action</b>           | 071119-A3   |
| <b>Strategic Plan Alignment</b>        | 1. This funding aligns with the strategic priority to increase self-sufficiency for our clients.<br>2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community: |
| <b>County Council</b>                  | Original agreement approved by County Council on 6/20/19. This amendment approved 5/12/21   |
| <b>Contact Person</b>                  | Brenda Durbin, Director, Social Services Division 503-655-8641  |
| <b>Contract No.</b>                    | 9351  |

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services requests the approval of Agreement #159475, Amendment 02 with the State of Oregon, Department of Human Services, Aging and People with Disabilities for Oregon Money Management Program services. The Oregon Money Management Program (OMMP) is a protective service for seniors and disabled adults who need help managing their finances. This promotes independent living, and helps prevent homelessness and unnecessary institutionalization or guardianship. This service is offered free of charge to eligible individuals. OMMP staff train community volunteers to become Representative Payees and Bill Payers to support the financial needs of clients enrolled in other programs, including Mental Health and Developmental Disabilities. These volunteers work to ensure that the client's public benefits, such as Social Security and Supplemental Security Income (SSI), are used for high priority client needs like shelter, health and food. OMMP clients are referred by their case managers to receive money management services.

This agreement increases the rate as of March 1, 2021 for fiscal year 2020-21 and moving forward. This amendment increases the maximum funding from \$454,400 to \$458,050 and the term of the agreement remains June 30, 2021. The original agreement was reviewed and approved by County Council on June 20, 2019 and this amendment was approved on 5/12/21. This amendment is effective March 1, 2021 and terminates on June 30, 2021.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and that Tootie Smith, Board Chair or her designee; be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

Mary Rumbayn for Rodney A. Cook

Rodney A. Cook, Interim Director  
Health, Housing and Human Services Dept.

# Contract Transmittal Form

## Health, Housing & Human Services Department

|                             |  |   |
|-----------------------------|--|---|
| <b>H3S Contract #:</b> 9351 | <b>Division:</b> SS                    | <input type="checkbox"/> Subrecipient                     |
| <b>Board Order #:</b>       | <b>Contact:</b> Reid, Stefanie         | <input checked="" type="checkbox"/> Revenue               |
|                             | <b>Program Contact:</b><br>Orner, Lois | <input checked="" type="checkbox"/> Amend # 2 \$ 3,610.00 |
|                             |  | <input type="checkbox"/> Procurement Verified             |
|                             |  | <input type="checkbox"/> Aggregate Total Verified         |

Non BCC Item     BCC Agenda    **Date:** Thursday, June 10, 2021

**CONTRACT WITH:** 19-21 State of Oregon, #159475-0 DHS-APD

**CONTRACT AMOUNT:** \$458,050.00

**TYPE OF CONTRACT**

- |   |  |
|---|--|
| <input type="checkbox"/> Agency Service Contract                | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement                 | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input checked="" type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease                       |
| <input type="checkbox"/> Interagency Services Agreement         | <input type="checkbox"/> One Off                                     |

**DATE RANGE**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____                            |
| <input type="checkbox"/> Upon Signature _____ - _____              | <input type="checkbox"/> Biennium _____ - _____                               |
| <input type="checkbox"/> Other _____ - _____                       | <input checked="" type="checkbox"/> Retroactive Request? 3/1/2021 - 6/30/2021 |

**INSURANCE** What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Business Automobile Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Professional Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Rastetter, Kathleen    Date Approved: Wednesday, May 12, 2021

OR

This contract is in the format approved by County Counsel.

**SIGNATURE OF DIVISION REPRESENTATIVE:** Brenda Durbin: approved via email 5/12/21

Date: \_\_\_\_\_

|                       |                      |
|-----------------------|----------------------|
| <b>H3S Admin Only</b> | Date Received: _____ |
|                       | Date Signed: _____   |
|                       | Date Sent: _____     |

## AGREEMENTS/CONTRACTS

|   |  |
|---|--|
|   | New Agreement/Contract                       |
| X | Amendment/Change Order Original Number _____ |

**ORIGINATING COUNTY**

**DEPARTMENT:** Health, Housing Human Services  
Social Services

**PURCHASING FOR:** Contracted Services

**OTHER PARTY TO**

**CONTRACT/AGREEMENT:** 19-21 State of Oregon, #159475-0 DHS-APD

**BOARD AGENDA ITEM**

**NUMBER/DATE:** \_\_\_\_\_ **DATE:** 6/10/2021

**PURPOSE OF**

**CONTRACT/AGREEMENT:** This is the funding agreement for the Oregon Money Management Program.

This amendment is a rate change for Money Management Service

**H3S CONTRACT NUMBER:** 9351



Agreement Number 159475

**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](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This is amendment number **02** to Agreement Number **159475** between the State of Oregon, acting by and through its Oregon Department of Human Services, hereinafter referred to as “ODHS” and

**Clackamas County  
by and through its Social Services Division  
Attn: Brenda Durbin  
2051 Kaen Road, POB 2950  
Oregon City, Oregon 97045  
503.655.8640  
brendadur@clackamas.us and stefanierei@clackamas.us**

hereinafter referred to as “County.”

1. Once fully executed, this amendment shall become effective on March 1, 2021, regardless of the date this amendment has been fully executed by every party.
2. The Agreement is hereby amended as follows:
  - a. The parties acknowledge and agree that, effective August 7, 2020, all references to Department of Human Services shall mean Oregon Department of Human Services and all references to DHS shall mean ODHS.
  - b. Section 3. Consideration, subsection a only as follows; language to be deleted is ~~struck through~~ and new language is shown **underlined and bold**:
    - a. The maximum, not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$458,050.00** ~~\$454,440.00~~.

ODHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work until this Agreement has been signed by all parties.

- c. For services provided on or after the effective date of this amendment. Exhibit A, Part 2, Payment and Financial Reporting, Section 1e is hereby amended as follows. Language to be deleted is ~~struck through~~ and language to be added is shown **underlined and bold**

- e. Consumer Service Incentive Payments

ODHS will pay County a monthly Consumer service incentive payment calculated, as described below: The monthly incentive payment is calculated based upon how many Consumers receive MMP services in a subject month.

Consumer Service Incentive Payment shall be paid at **\$45.00** ~~\$40.00~~ per month per Consumer. Not to be paired with any other Consumer incentive.

- d. For services provided on and after the effective date of this amendment, Exhibit A, Part 2, Payment and Financial Reporting, Section 1f is hereby amended as follows. Language to be deleted is ~~struck through~~ and language to be added is shown **underlined and bold:**

- f. Complex Case Consumer Incentive

To qualify as a Complex Case the case must meet at least one of the following:

- 1) Income Cap trusts
- 2) APS cases that have regular ongoing involvement of four times or more per month.
- 3) Crisis case management: Cases requiring regular ongoing involvement of the coordinator, four times or more per month to mitigate the Consumer's crisis situation.

Complex Case Consumer Incentive Payment shall be paid at **\$85.00** ~~\$80.00~~ per month per Consumer. Not to exceed 25% of total Consumer caseload. This is a stand-alone incentive. Not to be paired with any other Consumer incentive.

An exception to the 25% of total caseload limit may be requested. If the exception is granted, a monthly report must be submitted with invoice. The report must include for each complex case a brief synopsis of the need, areas being addressed, barriers, time spent, progress to date, and the intended outcome for the Consumer.

- 3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the

same effect as though made at the time of this amendment.

4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement amendment, County hereby certifies under penalty of perjury that:
- a. County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against County;
  - b. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
  - c. To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  - d. County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
  - e. County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Nonprocurement Programs” found at: <https://www.sam.gov/SAM/>;
  - f. County is not subject to backup withholding because:
    - (1) County is exempt from backup withholding;
    - (2) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (3) The IRS has notified County that County is no longer subject to backup withholding.
  - g. County hereby certifies that the FEIN provided to ODHS is true and accurate. If this information changes, County is required to provide ODHS with the new FEIN within 10 days.



**5. County Data.** 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 of

Street address: 2051 Kaen Rd.; POBox 2950

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

Email address: stefanierci@clackamas.us

Telephone: ( 503 ) 650-8330 Facsimile: ( 503 ) 650-8889

**Proof of Insurance:** County shall provide the following information upon submission of the signed Agreement Amendment. All insurance listed herein must be in effect prior to amendment execution. If County is self-insured for any of the Insurance Requirements specified in Exhibit C of this Agreement, County may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C.

General Commercial Insurance Company: Self-Insured Pool

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Workers' Compensation Insurance Company: Self-Insured Pool

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**6. Signatures.**

**Clackamas County**  
**by and through its Social Services Division**

\_\_\_\_\_  
Authorized Signature Tootie Smith  
Printed Name

Chair, Clackamas County Board of Commissioners  
Title \_\_\_\_\_  
Date

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

\_\_\_\_\_  
Authorized Signature \_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title \_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Exempt per OAR 137-045-0050(2)  
Department of Justice \_\_\_\_\_ Date

June 10, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval for the Children, Family & Community Connections (CFCC) Division of H3S to Apply to Housing Authority of Clackamas County for Supportive Housing Services

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | The Supportive Housing Services program is intended to end chronic homelessness in Clackamas County. CFCC would propose a flexible, multi-component approach to scale up and strengthen connections between existing support services to prevent homelessness. This would include employment services, housing repairs, family navigation and outreach to extremely low income Clackamas County residents and culturally-specific communities to address issues directly related to homelessness. |
| <b>Dollar Amount and Fiscal Impact</b> | Grant application max award \$2,500,000<br>There is no match requirement. No County General Funds would be used.  |
| <b>Funding Source</b>                  | Housing Authority of Clackamas County – Supportive Housing Services Program. <i>The RFP process is contingent upon available funds.</i>   |
| <b>Duration</b>                        | Effective July 1, 2021 – June 30, 2022 (renewable up to 4 years)  |
| <b>Previous Board Action</b>           | n/a   |
| <b>Strategic Plan Alignment</b>        | 1. Individuals and families in need are healthy and safe<br>2. Ensure safe, healthy and secure communities.   |
| <b>Counsel Review</b>                  | This Grant Award has been reviewed and approved by County Counsel: n/a  |
| <b>Procurement Review</b>              | Was the item processed through Procurement? No<br>Grant Application   |
| <b>Contact Person</b>                  | Adam Freer 971-533-4929   |
| <b>Contract No.</b>                    |   |

**BACKGROUND:**

The Children, Family and Community Connections Division (CFCC) of the Health, Housing, and Human Services (H3S) Department requests approval to apply for the Supporting Housing Services Program funded through Clackamas County Housing Authority. CFCC works collaboratively and coordinates a broad range of public, private and Clackamas County partners to provide high-quality programs to meet the wrap-around needs of the individual, family and community. The proposed program would strengthen connections across services and systems and scale up capacity of vital services, including Employment & Training Services, Weatherization, Family Resource Coordinators, Public Health Community Health Workers, Youth Substance Prevention programs and the Youth Advisory Board.

The Supportive Housing Services program is intended to end chronic homelessness in Clackamas County. Programs work in coordination to ensure housing options are safe, stable, and provide housing choice to meet the needs of each individual. All services focus on building relationships and service engagement through person-centered, culturally-responsive, trauma-informed, strengths-based practices. *The RFP process is contingent upon available funds.*

**RECOMMENDATION:**

Staff recommends Board approval request to apply for funding award.

Respectfully submitted,

*Mary Rumburg for Rodney A. Cook*

Rodney E. Cook, Interim Director  
Health, Housing & Human Services

# Financial Assistance Applicant Lifecycle Form

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

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

## \*\* CONCEPTION \*\*

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

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

Lead Department:

H3S Children, Family & Community Connections (CFCC)

Application for:  Subrecipient Assistance  Direct Assistance

Grant Renewal?  Yes  No

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

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

Name of Funding Opportunity:

Housing Authority of Clackamas County, Supportive Housing Services Program (RFP #014-2021)

Funding Source: Federal  State  Local

Requestor Information (Name of staff person initiating form):

Adam Freer

Requestor Contact Information:

afreer@clackamas.us; 971 533 4929

Department Fiscal Representative:

Ed Johnson

Program Name or Number (please specify):

Children, Family & Community Connections (CFCC) - Fund 246

Brief Description of Project:

Stable Homes is a flexible, multi-component approach that will scale up and strengthen connections between existing supportive services to prevent homelessness by keeping people safely housed and addressing a wide range of factors directly related to homelessness, including economic stability, health, basic needs and the integrity and safety of the physical home. The approach would include scaling up of certain critical services, such as employment services, housing repairs, family navigation and outreach to extremely low income and culturally-specific communities.

Name of Funding Agency:

Housing Authority of Clackamas County

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

<https://dochub.clackamas.us/documents/drupal/f68c4702-1fca-40fa-b556-bb2b2aa955bc>

OR

Application Packet Attached:  Yes  No

Completed By:

Adam Freer

5.5.21

Date

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

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

Competitive Application

Non-Competing Application

Other

CFDA(s), if applicable:

N/A

Funding Agency Award Notification Date:

June 10, 2021

Announcement Date:

April 15, 2021

Announcement/Opportunity #:

#04-2021

Grant Category/Title:

Supportive Housing Services Program

Max Award Value:

2,500,000 per year

Allows Indirect/Rate:

Yes - no limit mentioned

Match Requirement:

None

Application Deadline:

May 17, 2021

Other Deadlines:

None

Award Start Date:

July 1, 2021

Other Deadline Description:

None

Award End Date:

June 30, 2022 (renewable up to 4 years)

Completed By:

Adam Freer

Program Income Requirement:

None

Pre-Application Meeting Schedule:

Information Session 5/5/21 4-5:30 Discussed at CFCC Mgmt Team weekly meetings - Mondays 3:30-5 pm

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

**Mission/Purpose:**

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

The funding would allow the division to address more needs and in a more streamlined manner.

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

The approach would entail strengthening connections across many providers and services - each doing what they do best and in close coordination.

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

Reduce homelessness. This will be done by addressing a broad range of underlying factors that lead to homelessness including degradation of existing homes (that leads to condemning), health, mental health, lack of ~~basic needs, unemployment, etc.~~

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

Yes. It would enhance several programs including: CFCC Employment & Training Services, CFCC Weatherization Services, Family Resource Coordinators (subcontracted), Community Health Workers (PH), Youth Advisory Board

**Organizational Capacity:**

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

No. Additional staff would need to be hired, which is necessary to meet more of the existing need for the proposed services.

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

Yes. Public Health Division - Community Health Workers; DHS - referrals and case coordination; HACC - referrals; Northwest Family Services & Metropolitan Family Services - Family Resource Coordinators (assessment services) and case management

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

N/A

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

The grant is renewable up to 4 years. During that time, the viability of the program will be continually assessed and additional funding will be sought as appropriate to sustain or expand the services.

**Collaboration**

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

H3S - Public Health, Housing Authority (beyond funding)

**Reporting Requirements**

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

Not stated in the RFP.

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

We would use the Homeless Management Information System (HMIS) to track data as required by the funder.

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

Not stated in the RFP.

**Fiscal**

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

Yes.

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

No.

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

N/A

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

Yes

Program Approval:

Adam Freer

5.5.21

Name (Typed/Printed)

Date

Signature

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

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

**Section IV: Approvals**

|   |        |           |
|---|--------|-----------|
| <b>DIVISION DIRECTOR (or designee, if applicable)</b> |        |           |
| Adam Freer  | 5.5.21 |           |
| Name (Typed/Printed)                                  | Date   | Signature |

|   |          |   |
|---|----------|---|
| <b>DEPARTMENT DIRECTOR (or designee, if applicable)</b> |          |   |
| Mary Rumbaugh for Rodney A Cook                         | 5-5-2021 | Mary Rumbaugh   |
| Name (Typed/Printed)                                    | Date     | Signature <small>Digitally signed by Mary Rumbaugh<br/>Date: 2021.05.06 09:19:58 -0700'</small> |

|   |          |   |
|---|----------|---|
| <b>FINANCE SENIOR COMPLIANCE SPECIALIST</b> |          |   |
| Elizabeth Comfort                           | 5.6.2021 | Elizabeth Comfort   |
| Name (Typed/Printed)                        | Date     | Signature <small>Digitally signed by Elizabeth Comfort<br/>Date: 2021.05.06 16:43:26 -0700'</small> |

|  |      |           |
|--|------|-----------|
| <b>EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)</b> |      |           |
|  |      |           |
| Name (Typed/Printed)   | Date | Signature |

**Section V: Board of County Commissioners/County Administration**

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

**For applications less than \$150,000:**

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

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

BCC Agenda item #:  Date:

OR

Policy Session Date:

---

County Administration Attestation

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

June 10, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Construction Contract between Clackamas County and  
Banlin Construction LLC for the Sandy Health Center Project

|  |  |
|--|--|
| <b>Purpose/ Outcome</b>                | This request is for the approval of a Construction Contract through Health, Housing and Human Services Department, and Health Centers Division, to build a new Health Center within the City of Sandy. |
| <b>Dollar Amount and Fiscal Impact</b> | Health Centers Division funds for \$4,738,515 dollars.<br>No County General Funds will be used for this project.   |
| <b>Funding Source</b>                  | Health Centers Division funds  |
| <b>Duration</b>                        | June 2021 – February 2022, Planned Construction Schedule.  |
| <b>Previous Board Action/ Review</b>   | No prior Board Action  |
| <b>Strategic Plan Alignment</b>        | 1. Ensure safe, healthy and secure communities.<br>2. Building a strong infrastructure.  |
| <b>County Review</b>                   | This Construction Contract was reviewed and approved by County Counsel AN on May 17, 2021  |
| <b>Procurement Review</b>              | 1. Was the item processed through Procurement? Yes<br>2. Procurement and H3S worked together for review and advertisement of this publicly bid project.  |
| <b>Contact Person</b>                  | Deborah Cockrell – Health Centers Division, Director: 503-756-9674   |
| <b>Contract No.</b>                    | H3S 10157  |

**BACKGROUND:** The Health Centers Division of the Health, Housing and Human Services Department requests the approval of this Construction Contract with Banlin Construction LLC for the Sandy Health Center Project. The Construction Contract determines the roles of Banlin Construction LLC and the County regarding contract administration, project management, as well as interaction with the Health Center’s hired architect (Ankrom Moisan) during project construction. Banlin Construction LLC was determined the lowest responsive bidder of a total of nine (9) construction companies submitted bids for this project on May 6, 2021.

**PROJECT OVERVIEW:** The new Sandy Health Center Project is a 9,500 square foot one-level facility that will provide behavioral care, dental care, health care, and a modest pharmacy. This new building will service the City of Sandy, and rural Clackamas County. The new building address is 39740 Pleasant Street, Sandy Oregon, 97055. The property is located at the corner of Ten Eyck Road and Highway 26, the east side of Sandy.

**RECOMMENDATION:** We recommend the approval of this Construction Contract and that Tootie Smith, Chair of the Board of County Commissioners be authorized to sign on behalf of the Board of County Commissioners.

*Healthy Families. Strong Communities.*

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

[www.clackamas.us](http://www.clackamas.us)



Respectfully submitted,

*Mary Rombard for  
Rodney A. Cook*  
Rodney A. Cook, Interim Director  
Health, Housing and Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

H3S Contract #: 10157

Division: CD

Subrecipient

Board Order #:

Contact: Kelly, Steve

Revenue

Program Contact:

Amend # \$

Sirois, Mark

Procurement Verified

Aggregate Total Verified

Non BCC Item  BCC Agenda

Date: Friday, June 18, 2021

**CONTRACT WITH:** Banlin Construction, LLC - Sandy Health Center Project

**CONTRACT AMOUNT:** \$4,738,515.00

### TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

### DATE RANGE

Full Fiscal Year

4 or 5 Year

Upon Signature

Biennium

Other 6/22/2021

Retroactive Request?

### INSURANCE What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**

Yes  No, not applicable  No, waived

If no, explain why:

**Business Automobile Liability:**

Yes  No, not applicable  No, waived

If no, explain why:

**Professional Liability:**

Yes  No, not applicable  No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No  Yes (must have CC approval-next box)

N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by: Andrew Naylor

Date Approved: Monday, May 17, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE:

Date: \_\_\_\_\_

*Mark Sirois*  
5/18/2021

H3S Admin  
Only

Date Received: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Sent: \_\_\_\_\_

## **AGREEMENTS/CONTRACTS**

X **New Agreement/Contract**  
**Amendment/Change Order Original Number** \_\_\_\_\_

**ORIGINATING COUNTY**

**DEPARTMENT: Health, Housing Human Services**  
**Community Development**

**PURCHASING FOR: Contracted Services**

**OTHER PARTY TO**

**CONTRACT/AGREEMENT: Banlin Construction, LLC - Sandy Health Center Projec**

**BOARD AGENDA ITEM**

**NUMBER/DATE:**

**DATE: 6/18/2021**

**PURPOSE OF**

**CONTRACT/AGREEMENT: New Construction - for the New Sandy Health Center**  
**Project/ Site Address: 39740 Pleasant Street, Sandy,**  
**Oregon 97055**

**H3S CONTRACT NUMBER: 10157**



**CLACKAMAS COUNTY  
PUBLIC IMPROVEMENT CONTRACT**

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and Banlin Construction, LLC hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name/ H3S Contract Number: Sandy Health Center / #10157

Project Address: 39740 Pleasant Street, Sandy, Oregon 97055

**1. Contract Price, Contract Documents and Work.**

The Contractor, in consideration of the sum of **Four Million Seven Hundred Thirty Eight Thousand Five Hundred Fifteen Dollars (\$4,738,515.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid, as indicated in the accepted Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addendums: 3
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions (dated Jan. 1, 2020)
- Prevailing Wage Rates
- Plans, Specifications and Drawings

**2. Representatives.**

Contractor has named Larry Brooks as its' Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Steve Kelly as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

**3. Key Persons.**

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be

working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

**Project Executive:** Larry Brooks/ 360-839-4944 shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

**Project Manager:** Larry Brooks/ 360-839-4944 shall be the Contractor's project manager and will participate in all meetings throughout the project term.

**Job Superintendent:** Mike Sliwinski/ 360-852-1949 shall be the Contractor's on-site job superintendent throughout the project term.

**Project Engineer:** Riley Ollero/ 509-586-2000 shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

#### **4. Contract Dates.**

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed (Tuesday, June 22, 2021)

SUBSTANTIAL COMPLETION DATE: 210 Days from Notice to Proceed (Tuesday, January 25, 2022)

FINAL COMPLETION DATE: 225 Days from Notice to Proceed (Wednesday, February 9, 2022)

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

#### **5. Insurance Certificates.**

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County Health Centers Division as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Project Coordinator, Steve Kelly at [stevekel@clackamas.us](mailto:stevekel@clackamas.us).

#### **6. Tax Compliance.**

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political

subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**7. Confidential Information.**

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

**8. Counterparts.**

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**9. Integration.**

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

**10. Liquidated Damages.**

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. Liquidated Damages shall be \$1,500 per Calendar day if the actual Substantial Completion exceeds the required date of Substantial Completion, and \$ 1,500 per Calendar day if the actual Final Completion exceeds the required date of Final Completion.

**11. Compliance with Applicable Law.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

**12. Compliance with Applicable Funding Source Requirements.** Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein. Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional

documentation necessary for County to comply with applicable State or Federal funding requirements, together with all documentation necessary to deposit withheld retainage into an escrow account in accordance with Section 14, below.

**13. Use of an Escrow Account.** Pursuant to ORS 279C.570, amounts deducted by County for retainage shall be kept in an escrow account under the terms and conditions of that certain escrow agreement executed by and between the County and U.S. Bank N.A. ("Escrow Agreement"), a copy of which is attached hereto as Exhibit A and incorporated by this reference herein. Contractor expressly agrees that the terms and conditions of the Escrow Agreement, together with the General Conditions, shall govern the deposit of withheld retainage into an escrow account.

**14. Responsibility for Taxes.** Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

**In witness whereof,** Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:  
**Banlin Construction, LLC**  
320 W Columbia Drive  
Kennewick, WA, 99336

Oregon Contractor CCB#: 217136      Expiration Date: September 7, 2021  
Oregon Business Registry#: 1358564-90      Entity Type: DLLC  
State of Formation: Washington

*Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.*

**Banlin Construction, LLC**  
320 W Columbia Drive  
Kennewick, WA 99336

**Clackamas County**

Chair Tootie Smith  
Commissioner Sonya Fischer  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Mark Shull

Jasen Banta      5-17-2021  
Signature      Date

Jasen, Banta, Owner

Tootie Smith, Chair      Date  
Board of County Commissioners

90-0810742  
Federal Tax I.D. No. or Last Four SSN

APPROVED AS TO FORM

217136  
Oregon Commercial Contractor's Board No.

Andrew Naylor      May 17, 2021  
County Counsel      Date

June 10, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval to Accept a Grant Award with Tides Foundation, in partnership with Kaiser Permanente for participation in the Virtual Care Innovation Network – Clinic Connection Track

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | Participation in this program will allow Health Centers to learn from others in how to most effectively provide translation services in alternate care settings. Health Centers hopes to learn how to more effectively provide RN Triage and leverage all members of the care team. |
| <b>Dollar Amount and Fiscal Impact</b> | The maximum agreement value is \$12,000.  |
| <b>Funding Source</b>                  | Tides Foundation. No County General Funds are involved.   |
| <b>Duration</b>                        | Effective March 2, 2021 and terminates on May 31, 2022  |
| <b>Previous Board Action</b>           | No Previous Board Actions have been taken.  |
| <b>Strategic Plan Alignment</b>        | 1. Improve Community Safety and Health<br>2. Ensure safe, healthy and secure communities  |
| <b>Counsel Review</b>                  | 1. May 18, 2021<br>2. KR  |
| <b>Procurement Review</b>              | 1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/><br>2. This is a direct procurement of a grant.   |
| <b>Contact Person</b>                  | Deborah Cockrell, Health Center Director – 503-742-5495   |
| <b>Contract No.</b>                    | 10164   |

**BACKGROUND:**

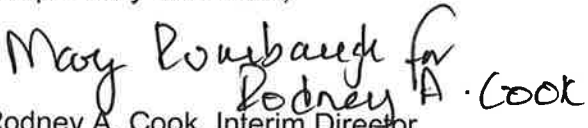
Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with Tides Foundation to participate in the Virtual Care Innovation Network (VCIN), a community health collaborative funded by Kaiser Permanente. Funding will allow Health Centers to engage with peers to discuss and solve challenges related to providing and sustaining virtual care.

This Agreement has a maximum value of \$12,000. It is effective March 2, 2021 and terminates on May 31, 2022.

**RECOMMENDATION:**

Staff recommends approval of this agreement and authorizes the Director of Health, Housing and Human Services to sign this agreement.

Respectfully submitted,

  
Rodney A. Cook, Interim Director  
Health, Housing & Human Services Department

*Healthy Families. Strong Communities.*



# Contract Transmittal Form

## Health, Housing & Human Services Department

|                              |   |   |
|------------------------------|---|---|
| <b>H3S Contract #:</b> 10164 | <b>Division:</b> HC                         | <input type="checkbox"/> Subrecipient             |
| <b>Board Order #:</b>        | <b>Contact:</b> Howard, Rebecca             | <input checked="" type="checkbox"/> Revenue       |
|                              | <b>Program Contact:</b><br>Suchocki, Andrew | <input type="checkbox"/> Amend # \$               |
|                              |   | <input type="checkbox"/> Procurement Verified     |
|                              |   | <input type="checkbox"/> Aggregate Total Verified |

**Non BCC Item**     **BCC Agenda**    **Date:** Thursday, June 10, 2021

**CONTRACT WITH:** Tides Foundation

**CONTRACT AMOUNT:** \$12,000.00

**TYPE OF CONTRACT**

|   |  |
|---|--|
| <input type="checkbox"/> Agency Service Contract        | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement         | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement    | <input type="checkbox"/> Property/Rental/Lease                       |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off                                     |

**DATE RANGE**

|   |   |
|---|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____                            |
| <input type="checkbox"/> Upon Signature _____ - _____   | <input type="checkbox"/> Biennium _____ - _____                               |
| <input type="checkbox"/> Other _____ - _____            | <input checked="" type="checkbox"/> Retroactive Request? 3/2/2021 - 5/31/2022 |

**INSURANCE** What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Business Automobile Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Professional Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

Approved by Risk Mgr \_\_\_\_\_  
Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Rastetter, Kathleen    Date Approved: Tuesday, May 18, 2021

OR

This contract is in the format approved by County Counsel.

**SIGNATURE OF DIVISION REPRESENTATIVE:** \_\_\_\_\_

Date: \_\_\_\_\_

|                       |                      |
|-----------------------|----------------------|
| <b>H3S Admin Only</b> | Date Received: _____ |
|                       | Date Signed: _____   |
|                       | Date Sent: _____     |

## Financial Assistance Application Lifecycle Form

Use this form to track your potential grant from conception to submission.  
Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**\*\* CONCEPTION \*\***

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

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

Lead Department: H3S-Health Centers Division

Application for:  Subrecipient Assistance  Direct Assistance  
Grant Renewal?  Yes  No

If renewal, complete sections 1, 2, & 4 only  
If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity: Virtual Care Innovation Network

Funding Source: Federal  State  Local

Requestor Information (Name of staff person initiating form): Dr. Andrew Suchocki

Requestor Contact Information: asuchocki@clackamas.us or 503-650-3932

Department Fiscal Representative: Sarah Jacobson: sjacobson@clackamas.us or 503-742-5303

Program Name or Number (please specify): MFR Program: 400502 - Primary Care Clinics

Brief Description of Project:

Participation in this program will allow us to learn from others in how to most effectively provide translation services in alternate care settings. We hope to learn how to more effectively provide RN triage and leverage all members of the care team.

Name of Funding Agency: Tides Foundation

Agency's Web Address for funding agency Guidelines and Contact Information:  
https://www.careinnovations.org/programs/virtual-care-innovation-network/

**OR**

Application Packet Attached:  Yes  No

Completed By: Jennifer Stone 4/14/2021  
Date

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

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

|  |  |   |
|--|--|---|
| Competitive Application <input type="checkbox"/> | Non-Competing Application <input type="checkbox"/> | Other <input checked="" type="checkbox"/>                                   |
| CFDA(s), if applicable:                          | <u>N/A</u>   | Funding Agency Award Notification Date: <u>N/A</u>                          |
| Announcement Date:                               | <u>November 2020</u>                               | Announcement/Opportunity #: <u>TF2102-097981</u>                            |
| Grant Category/Title:                            | <u>Care Innovations Fund</u>                       | Max Award Value: <u>12,000.00</u>   |
| Allows Indirect/Rate:                            | <u>Yes</u>   | Match Requirement: <u>N/A</u>   |
| Application Deadline:                            | <u>11/25/2020</u>                                  | Other Deadlines: <u>6/15/2021, 12/15/2021, 6/15/2022</u>                    |
| Award Start Date:                                | <u>3/2/2021</u>                                    | Other Deadline Description: <u>Initial Data, Mid-Point Data, Final Data</u> |
| Award End Date:                                  | <u>5/31/2022</u>                                   |   |
| Completed By:                                    | <u>Jennifer Stone</u>                              | Program Income Requirement: <u>N/A</u>                                      |
| Pre-Application Meeting Schedule:                | <u>N/A</u>   |   |

**Collaboration**

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

N/A

**Reporting Requirements**

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

Initial data 6/15/2021, mid-point data 12/15/2021 and final data 6/15/2022

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

Participation in learning collaborative.

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

Final narrative and expenditures report due 6/15/2022.

**Fiscal**

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

We will realize more benefit than cost. Much of the cost incurred by these services are already budget for and will be covered by this grant.

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

No other revenue sources are required.

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

N/A

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

No, the grant/financial assistance does not cover indirect costs.

Program Approval:

Andrew Suchocki

5-4-2021

Andrew Suchocki

Digitally signed by Andrew Suchocki  
Date: 2021.05.04 14:25:29 -0700

Name (Typed/Printed)

Date

Signature

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

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



April 6, 2021

Gary Schmidt  
County Administrator  
County of Clackamas, Oregon  
Clackamas Health Centers  
2501 Kaen Road, Suite 367  
Oregon City, Oregon 97045

**Grant Reference #: TF2102-097981**

Dear Gary Schmidt,

I am happy to inform you that Tides Foundation, on the recommendation of Center for Care Innovations Fund, in partnership with Kaiser Permanente, has decided to give your organization a grant in the amount of \$12,000.00. This grant is for your organization's Clackamas Health Centers' participation in the Virtual Care Innovation Network - Clinic Connection Track. The grant period is from March 2, 2021 to May 31, 2022. On behalf of the Tides community, I would like to thank you for your important work in this field.

Your payment schedule is reflected in the table below:

| Payment Number | Scheduled Payment Date   | Payment Amount | Payment Method | Payment Delivery  |
|----------------|--|----------------|----------------|---|
| 1 of 2         | April 6, 2021  | \$10,000.00    | Check          | Checks are sent separately via first-class mail to the address on this award letter and should arrive within 5-7 business days from the scheduled payment date. |
| 2 of 2         | June 15, 2022<br>(upon receipt of final data submission and narrative and expenditures report) | \$2,000.00     | Check          | Checks are sent separately via first-class mail to the address on this award letter and should arrive within 5-7 business days from the scheduled payment date. |

By accepting payment, you agree to all the terms and conditions set forth in this letter.

The conditions of this grant are as follows:

Please refer to Appendix A.

Your organization agrees to submit reports following the report schedule below:

| Report Due Date  | Report Type                    |
|------------------|--------------------------------|
| By June 15, 2022 | Narrative and Financial Report |

**TIDES FOUNDATION**

**SAN FRANCISCO** 1012 Torney Avenue / San Francisco, California 94129 / T 415.561.6400 F 415.561.6401  
**NEW YORK** 55 Exchange Place, Suite 402 / New York, New York 10005 / T 212.509.1049 F 212.509.1059

discontinue funding associated with this grant if your organization fails to comply with the terms of this Grant Award Letter, or if Tides determines that any statements, representations or documents provided by your organization, including in any grant reports, is false or materially misleading. In such an event, your organization agrees, at Tides' request, to repay grant funds and/or redirect them to another organization selected by Tides to carry out the purposes of this grant. Your organization will indemnify, defend and hold Tides harmless from any costs or damages incurred by Tides related to any misrepresentation in or failure to comply with this Grant Award Letter.

Your organization certifies that it is legally authorized to receive this grant under its own policies, as well as any other applicable laws and regulations. Your organization certifies that the person accepting payment has the authority and has obtained all necessary approvals to accept the grant award.

If the Donor or Fund Advisor is known to you, your organization agrees that it shall not use any portion of this grant to make any grant or loan, pay compensation, reimburse expenses, or make any other similar payment to: (i) any Donor to this Fund, (ii) any Fund Advisor to this Fund, (iii) any Relative of a Donor or Fund Advisor to this Fund, or (iv) any Controlled Entity.

If you have occasion to announce or acknowledge this grant publicly, please indicate that support was provided by Center for Care Innovations Fund, in partnership with Kaiser Permanente at Tides Foundation.

Should you have questions regarding your grants, please refer to the contact information in Appendix A.

Tides envisions a world of shared prosperity and social justice founded on equality and human rights, sustainable environment, quality education, and healthy individuals and communities. Since 1976, Tides has partnered with innovative organizations to accelerate the pace of social change and solve society's toughest problems. We are proud to include your organization in that history.

Sincerely,



Janiece Evans-Page  
Chief Executive Officer

**TIDESFOUNDATION**

**SAN FRANCISCO** 1012 Torney Avenue / San Francisco, California 94129 / T 415.561.6400 F 415.561.6401

**NEW YORK** 55 Exchange Place, Suite 402 / New York, New York 10005 / T 212.509.1049 F 212.509.1059

June 10, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a HOME Loan Documents with  
Webster Road Housing Limited Partnership  
for the Webster Road Redevelopment in Gladstone, Oregon**

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | HOME program funds will assist in the development of 48 affordable rental housing units in the Webster Road Redevelopment project.  |
| <b>Dollar Amount and Fiscal Impact</b> | Total HOME funds is \$400,000 long-term loan, 0.0% interest deferred<br>No County General Funds are involved.   |
| <b>Funding Source</b>                  | The fund source is the FY19 and FY20 HOME Investment Partnerships Program allocations which the County receives annually from the US Department of Housing and Urban Development (HUD). No County General Funds are involved.   |
| <b>Duration</b>                        | The term of the loan is 55 years, beginning at Effective Date (agreement signed by both parties) and ending in June 2076. The Period of Affordability is 60 years from date of project completion (HOME initial period of affordability is 15 years and an extended period of affordability of 45 years). |
| <b>Previous Board Action</b>           | No previous Board action. This is a new HOME project.   |
| <b>Strategic Plan Alignment</b>        | Increasing housing choice and housing opportunity for low to moderate income households.  |
| <b>Contact Person</b>                  | Pamela Anderson, Manager, Community Development (971) 804-3464  |
| <b>Contract No.</b>                    | 10158   |

**BACKGROUND:**

Clackamas County receives HOME funds annually from the U.S. Department of Housing and Urban Development (HUD) as an entitlement jurisdiction. The HOME Program provides funds to non-profit and for-profit entities to develop, preserve and expand the affordable housing stock in Clackamas County. HOME funds are allocated to this project as a 0% interest deferred loan, and will be secured by a Trust Deed and Promissory Note. HOME assisted units are required to be affordable for an extended period of time (period of affordability) which is enforced by a written HOME Agreement and Declaration of Land Use and restrictive Covenants.

This application was received by Clackamas County H3S Community Development Division in March 2020 and is located at 18000 Webster Road in Gladstone, Oregon. It is a HOME eligible project.

The Housing Authority of Clackamas County is proposing to enter into a lease-hold agreement with Webster Road Housing Limited Partnership for the rehabilitation of a single-story wood-framed building

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www.clackamas.us



originally constructed in the mid 1960's. The 24,000 square foot building has been vacant since 2017. This project will redevelop a former congregate care facility into a mix of forty-eight studios (40) and SRO (8) units; which includes 4 HOME-assisted floating units. The rehabilitated building will provide subsidized rent in all units allowing low income residents to have affordable rents that don't exceed 30% of their income. This project will, at initial occupancy of all HOME assisted units, be rented to tenants whose incomes are less than or equal to 50% of the Median Income. Submitted invoices will be reviewed for HOME eligible expenses prior to approval.

The loan term, as presented in the Loan Agreement; is 55 years, beginning at Effective Date (agreement signed by both parties) and ending in June 2076. The Period of Affordability is 60 years from date of project completion (HOME initial period of affordability is 15 years and an extended period of affordability of 45 years).

The Housing Authority of Clackamas County provided detailed project information and discussion at the May 18th Housing Authority Board Issues meeting.

**RECOMMENDATION:**

We recommend the approval of this HOME Loan Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants. Please be aware that Exhibit B to D is subject to minor changes prior to closing.

In addition, due to closing constraints, some documents may not be ready for approval until on or immediately before closing. To H3S's knowledge, this would include a priority and subordination agreement to be executed between all the lenders to the project. The priority and subordination agreement simply details the agreed-upon priority of all lenders financing the Webster Road project and is standard for this kind of transaction. Unfortunately, this document is not yet complete and likely won't be finalized until close to closing. Given this, H3S requests that the Chair of the Board of Clackamas County Commissioners, or her delegate, or the Clackamas County Administrator, be delegated authority to execute the HOME Loan Agreement, the Promissory Note, the Trust Deed, the Declaration of Land Use Restrictive Covenants, together with all related documentation, including a priority and subordination agreement, necessary to complete this transaction. This delegation is requested solely for documents that do not make any substantive or material change to this transaction.

Respectfully submitted,



Rodney A. Cook, H3S Interim Director

**Attachments:**

- Contract Transmittal Form H3S
- Policy Session Request form / worksheet
- HOME Loan Agreement
- HOME Promissory Note
- HOME Declaration of Land Use Restrictive Covenants
- Trust Deed

**Contract Transmittal Form**  
**Health, Housing & Human Services Department**

H3S Contract #: 10158

Division: CD

Subrecipient

Board Order #:

Contact: Anderson, Pamela

Revenue

Program Contact:

Amend # \$

Anderson, Pamela

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

Date: Thursday, June 10, 2021

**CONTRACT WITH:** WEBSTER ROAD HOUSING LIMITED PARTHERSHIP

**CONTRACT AMOUNT:** \$400,000.00

**TYPE OF CONTRACT**

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

**DATE RANGE**

Full Fiscal Year -

4 or 5 Year -

Upon Signature -

Biennium -

Other -

Retroactive Request? -

**INSURANCE** What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Business Automobile Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Professional Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No

Yes (must have CC approval-next box)

N/A

(Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Andrew Naylor

Date Approved: Monday, May 17, 2021

OR

This contract is in the format approved by County Counsel.

**SIGNATURE OF DIVISION REPRESENTATIVE:**

*Pamela Anderson*

Date: *May 18, 2021*

H3S Admin  
Only

Date Received: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Sent: \_\_\_\_\_



# AGREEMENTS/CONTRACTS

X **New Agreement/Contract**  
Amendment/Change Order Original Number \_\_\_\_\_

**ORIGINATING COUNTY**

**DEPARTMENT: Health, Housing Human Services  
Community Development**

**PURCHASING FOR: Contracted Services** \_\_\_\_\_

**OTHER PARTY TO**

**CONTRACT/AGREEMENT: WEBSTER ROAD HOUSING LIMITED PARTHERSHIP** \_\_\_\_\_

**BOARD AGENDA ITEM**

**NUMBER/DATE: \_\_\_\_\_ DATE: 6/10/2021** \_\_\_\_\_

**PURPOSE OF**

**CONTRACT/AGREEMENT:** HOME funds will be provided as a 0% loan to assist in the rehabilitation of a former congregate care facility into a mix of forty-eight studios (40) and SRO (8) units in Gladstone, OR. 4 units are designated HOME units. The development will be located at 18000 Webster Road in Gladstone, Oregon.

**H3S CONTRACT NUMBER: 10158** \_\_\_\_\_

**LOAN AGREEMENT**  
**CLACKAMAS COUNTY HOME PROGRAM**

**Name of Project: Webster Road Redevelopment Project**

This Loan Agreement ("**Agreement**") is entered into between the **Webster Road Housing Limited Partnership**, an Oregon limited partnership, ("**Owner**") and CLACKAMAS COUNTY, a political subdivision of the State of Oregon ("**County**"), a Participating Jurisdiction under the HOME Investment Partnerships Program ("**HOME**").

This Agreement includes the following attachments:

- |                             |  |
|-----------------------------|--|
| A. Legal Description        | E. HOME Affordability Requirements                         |
| B. Sources and Uses         | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| C. Schedule of Tasks        | G. Project Completion documentation                        |
| D. HOME Match Contributions | H. VAWA Notification and Certification                     |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
- a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
  - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
  - c. **CHDO.** Community Housing Development Organization. This is a HOME specific designation. There is no CHDO designated for this Project.
  - d. **Effective Date.** Effective Date has the meaning set forth in Section 35 of this Agreement.
  - e. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units ("HOME units") are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
  - f. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
  - g. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD's regulations and requirements for the HOME Program are located in 24 CFR Part 92. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
  - h. **HUD.** The United States Department of Housing and Urban Development
  - i. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
  - j. **Low-Income, Very Low-Income & Extremely Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County's Median Income. A Very Low-Income household is one whose total income does not exceed 50% of the County's Median Income. A Extremely Low-Income household is one whose total income does not exceed 30% of the County's Median Income.
  - k. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
  - l. **Owner.** The initial Owner and any subsequent Project owner

- m. **Period of Affordability.** See Section 9 below.
- n. **Project.** The project consists of Owner's leasehold interest in the real property located at 18000 Webster Rd., Gladstone, OR 97027 (the "**Property**"), upon which Owner will rehabilitate a former multi-family housing facility into a 48-unit affordable housing development. Housing and parking will be contained in a single structure. The legal description for the Property is set forth in **Attachment A**.
- o. **Project Completion Date.** The later of the date when (a) the construction is completed, (b) the final HOME drawdown has been disbursed to the Project, or (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown. This date will start the HOME Period of Affordability (see Section 9 below).

## **2. HOME FUNDS; LOAN TERMS**

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$400,000** to the **Owner** for the Project. The HOME funds will be used for the development of the Project as specified in **Attachment B**. Use of the HOME funds for any other purpose, without the expressed written consent of the County is prohibited and may constitute a breach of this agreement. Pursuant to 24 CFR 92.504, Owner may not request disbursement of funds until funds are needed for payment of eligible costs and documentation to substantiate costs is provided to County.
- b. **Loan Terms:**
  - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of 55 years from the Effective Date**. Loan repayment, satisfaction, or conveyance shall not relieve Owner of any performance, affordability or programmatic obligations and requirements of the HOME program.
  - ii. Notwithstanding the loan terms described above, and subject to available sale or refinance proceeds, the entire amount of the loan (\$400,000) together with any accrued interest, if any, or fees, shall be paid in full upon the refinance, sale, assignment or other transfer of title to the Project, except as provided in the Declaration of Land Use Restrictive Covenants; or the date Owner or its agents or subcontractors is in default under any of the Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Sections 9 & 10 below, failure to acquire title to the Project, or failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents) and such default continues beyond any applicable notice, grace or cure periods.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, and a Declaration of Land Use Restrictive Covenants, and secured by a Trust Deed executed by Owner in favor of the County all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."
- d. **Recording Requirement:** The Owner agrees to execute and record, or cause to be recorded, on the Project, the Trust Deed and the Declaration of Land Use Restrictive Covenants, within 30 days after signing the Loan Documents.

## **3. PAYMENT OF OBLIGATION.**

- a. The outstanding principal balance of the loan shall be repaid in full on the maturity date set forth in Section 2(b)(i) above. Except as provided in Section 2(b)(i) above, payment of principal shall not be required prior to such maturity date. No late fees will be charged.
- b. Payments shall be made at such place as County may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

## **4. HOME-ASSISTED UNITS**

- a. Four (4) units in the Project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the Project, including, but not limited to, this loan. The HOME units are as follows:

| <b>Bedroom Size</b> | <b>TOTAL UNITS</b> | <b>Non Home assisted Units</b> | <b>Total Units HOME-Assisted</b> |
|---------------------|--------------------|--------------------------------|----------------------------------|
| 0-bedroom units:    | 48                 | 44                             | 4                                |
| 1-bedroom unit:     | 0                  | 0                              | 0                                |
| 2-bedroom unit:     | 0                  | 0                              | 0                                |
| <b>TOTALS</b>       | <b>48</b>          | <b>44</b>                      | <b>4</b>                         |

- b. Fixed/Floating: The HOME-Assisted units are designated as **FLOATING HOME** units as defined at 24 CFR 92.252 (j).
- c. Rent income limits: Rent income limits for the HOME-Assisted Units are set forth in Section 10 below, and **Attachment E**.
- d. Special Needs Set-aside. A minimum of 5% of the units in the Project (but not less than one) must be accessible to individuals with mobility impairment, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. 5 units will be accessible to individuals with physical/mobility impairment; and 2 units will be accessible to individuals with sensory impairments.

**5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS**

- a. All sources and uses of funds for the acquisition phase of the Project are set forth in **Attachment B**. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the Project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

**6. MATCH REQUIREMENT**

**Attachment D** documents the Project-related eligible sources of matching contributions as allowed by 24 CFR 92.218 through 92.222.

**7. HOME REGULATIONS**

The Owner agrees to comply with the HOME Regulations and with the other requirements of the Loan Documents.

**8. ENVIRONMENTAL REVIEW (§92.352)**

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

**9. PERIOD OF AFFORDABILITY**

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. This shall be 15 years for all rehabilitated HOME units**, without regard to the term of the loan or the transfer of

ownership, except as noted in subsection d below. The Initial Period of Affordability begins on the Project Completion Date entered into HUD IDIS.

- b. The **Extended Period of Affordability**, begins at the end of the INITIAL Period of Affordability and continues for an additional 45 years or until such time as the loan is deemed paid in full.
- c. The Period of Affordability includes both the Initial and the Extended Periods of Affordability, for a total Period of Affordability of 60 years, without regard to 55 year term of the loan.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the Owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former Owner or any partner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the Project.

**10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES (\$92.252))**

- a. Owner shall ensure that the Project is occupied by households that are eligible as low-income families meeting the requirements of 24 C.F.R. 95.252 within six months of the date of the Project Completion Date.
- b. To ensure compliance with the HOME "Program Rule", at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 50% of the Median Income.
- c. **Very Low-HOME Units.** The HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- d. Increases in Tenant's Income:
  - i. Low-HOME rent units
    - 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of Median Income, but does not exceed 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income so increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") increase beyond the maximum applicable LIHTC rent for such unit.
    - 2. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
  - ii. High-HOME rent units
    - 1. The income of a tenant in a High-HOME rent unit can increase to 80% of Median Income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
    - 2. If the income of a tenant in a High-HOME rent unit rises above 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of Median Income.
    - 3. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
  - iii. Project-based Rent Subsidy In accordance with 24 CFR 92.252 (a) (1,2) & (b)(1,2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
  - iv. Over-income Tenants In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:



1. In no event shall the tenant of a HOME-assisted unit that has been allocated LIHTCs be charged rent in excess of the maximum applicable LIHTC rent for such unit.
  2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.
- e. Certification and Recertification of Tenant Income: Owner must certify each tenant's household income initially, and must recertify such income annually in accordance with HOME regulations using the Section 8 (Part 5) income calculation.
  - f. The maximum monthly allowances for utilities and services, excluding telephone, are attached hereto as Exhibit E. These maximum monthly allowances are updated annually, and Owner is responsible for contacting County to ensure compliance with the maximum monthly allowance amounts.

**11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS (§92.253)**

- a. Owner shall adopt written tenant selection policies and criteria, which must be pre-approved by the County. The criteria must: (i) be consistent with the purpose of providing housing for very-low-income and low-income households, (ii) be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, (iii) provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and (iv) give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. Owner shall comply with all terms and conditions of 24 CFR 92.253, regardless of whether specified herein.
- d. In compliance with 24 CFR 92.253(d), neither the Owner nor General Partner may discriminate against rental assistance subsidy holders.
- e. Tenant leases may not contain any of the prohibited provisions set forth in 24 CFR 92.253 including, but not limited to:
  - i. Agreement by the tenant to be sued, to admit guilt, or to have a judgment entered in favor of Owner in a lawsuit brought in connection with the lease;
  - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties;
  - iii. Agreement by the tenant not to hold Owner or its agents legally responsible for any action or failure to act;
  - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant;
  - v. Agreement by the tenant that Owner may evict tenant or household members without instituting a civil court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
  - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
  - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may, however, be obligated to pay costs and attorney fees if the tenant loses.
  - viii. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must

serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

## **12. Labor (§92.354)**

If the Project involves construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds, Owner shall comply with the Davis–Bacon Act (40 U.S.C. 3141) and all regulations related to the same, and shall pay all laborers and mechanics employed in the development of any part of the housing not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis–Bacon Act (40 U.S.C. 3141). Owner shall further comply with the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

Owner shall comply with the Copeland “Anti-Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States), which are incorporated by reference into this Agreement. Owner shall include this clause in any contract with a contractor or subcontractor. A breach of the contract clause above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

## **13. Construction**

If the Project involves construction such that it meets the definition of a federally assisted construction contract, the following shall apply:

During performance of this Agreement, Owner agrees as follows:

- a. Owner hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:  
During the performance of this contract, the contractor agrees as follows:
  - (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
  - (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Owner agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **14. PROPERTY STANDARDS (§92.251)**

- a. Owner shall comply with, and the Project must meet, all applicable property standards set forth in 24 CFR 92.251. Pursuant to 24 CFR 92.504(d), County staff will periodically inspect the Project during construction and after completion to assure compliance with the property standards set forth in 24 CFR 92.251.



- b. Upon Project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251.

#### **15. INDEMNIFICATION AND INSURANCE**

Owner agrees to indemnify, defend and hold harmless the County and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the County's sole negligence or intentional misconduct, arising from performance of this Agreement. This includes, but is not limited to, any and all claims by HUD for repayment as result of the funds dispersed hereunder being used for an ineligible purpose under the HOME Program, HOME Regulations, or applicable law, or because the Project does not meet requirements of the HOME Program, HOME Regulations, or other applicable law.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$2,000,000 per occurrence, \$4,000,000 aggregate, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this Agreement, and again upon request of the County. Owner shall give County no less than 30 days' notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

Owner shall diligently undertake to repair or restore the Project if damaged or destroyed, with such work commencing no later than 120 days after the damage or 30 days following receipt of the insurance proceeds and completed within one-year of the damage, and that the Owner is responsible to make up any insufficiency in insurance proceeds.

Article II of the Trust Deed shall control in the event that any part of or interest in the Project is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation")

#### **16. EVENTS OF DEFAULT**

An event of default under the Loan Documents includes, but is not limited to, the following; provided that the party declaring a default has first provided to the other party thirty days written notice at the address set forth in the Declaration (including a copy to U.S. Bancorp Community Development Corporation, a Minnesota corporation, and its successors and assigns (the "Limited Partner") and U.S. Bank National Association, a national banking association, and its successors and assigns (the "Senior Lender") , and Citibank, N.A., a national banking association, and its successors and assigns (the "Funding Lender") at the addresses set forth therein) specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30 day period, or during such longer period as is agreed to by the non-defaulting party in writing; provided that, in the event the Owner is diligently and continuously pursuing cure in good faith, the Owner shall be provided such length of time as is necessary to cure such default; except that such extended period shall not exceed ninety (90) days:

- Noncompliance with the term and conditions of the Loan Documents
- Bankruptcy
- Non-payment of judgments within 30 days
- Suspension of business
- Dissolution or liquidation of Owner
- Liens against the Project not paid in 60 days
- Construction abandoned for more than 15 days for cause not beyond reasonable control of developer
- Construction stopped by governmental authority or entitlement withdrawn or suspended
- Prohibited transfer, except as provided in the Declaration of Land Use Restrictive Covenants
- Material misrepresentation
- Noncompliance with the Affordability Requirements at any time during the Period of Affordability
- Default under other secured loans, foreclosure, bankruptcy, receivership and non-payment.
- Failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents.

The following shall also be an event of default under the Loan Documents:

- a. Securing all Funding. The Owner must secure all fund sources identified in **Attachment B**, as evidenced by a commitment letter or similar agreement, within 12 months from the Effective Date identified in Section 32.
  - b. Full Occupancy requirement. Within 18 months from the Project Completion Date, the Project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.
  - c. Noncompliance with the Affordability Requirements at any time during the term of this Agreement.
17. County agrees that any cure of any default made or tendered by Limited Partner, Funding Lender, and/or Senior Lender shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

**18. REMEDIES FOR DEFAULT**

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed, (iii) in accordance with 2 CFR 200.339, suspend or terminate this Agreement if Owner fails to materially comply with any term of this Agreement, (iv) permit the Agreement to be terminated in whole or in part in accordance with 2 CFR 200.339, (v) pursue any other remedy available at law, under contract, or in equity.
- b. The County and any tenant or applicant who meets the income limitation applicable under 24 CFR 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner and/or Recipient of its obligations under this Agreement in state court.

**19. AFFIRMATIVE MARKETING (§92.351)**

If the Project contains five or more HOME-Assisted Units, the Owner must comply with 24 CFR 92.351 and 24 CFR 253, and must implement and follow the adopted Affirmative Marketing Plan of the County, **Attachment F** (the "Plan"). Owner shall maintain records evidencing compliance with the Plan.

**20. MINORITY/WOMEN'S BUSINESS**

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment F**.

**21. NON-DISCRIMINATION (§92.350)**

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in -
  - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
  - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
  - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
  - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
  - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
  - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
  - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
  - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
  - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).

- b. Owner shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

## **22. DISBURSEMENT OF FUNDS**

- a. County will disburse HOME funds when the following conditions are satisfied:
  - i. All the Loan Documents are signed;
  - ii. The Trust Deed and Declaration of Land Use Restrictive Covenants are signed and recorded; and
  - iii. The Owner has provided the County with the most recently available documentation that all sources of financing for the Project are committed or in the process of being committed. With the understanding that if leveraged dollars do not come through and HOME funds are used for pre-development expenses, the HOME funds must still be repaid.
- b. Draw Request
  - i. Owner agrees to complete and return a new vendor packet to set up payment location. This will be provided by the County, once the Loan Documents have been signed.
  - ii. Owner agrees to request funds under this Agreement only when they are needed for payment by Owner of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
  - iii. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
  - iv. Draw Documentation: Borrower shall initiate each request for a disbursement of HOME funds by delivering the following documentation to the County. Completed HOME disbursement Request Form (**Attachment H**) must be accompanied by detailed source documentation for actual expenses that reflected on payment request section of Disbursement Request Form.
  - v. Review of Draw Requests by County. The County will review each HOME disbursement Request Form packet that will be funded in whole or in part with HOME dollars. In the event that the County has any objection to any such draw request, County will provided notice via email to Owner within eight (8) business days after the date on which the County received the draw documentation with respect to such draw request and shall specify in detail the basis for each of the objections and requirements for correction of each such objection.
- c. Other Submittals and Approvals
  - i. Cost certification audit (this item should be submitted within 30 days of completion of construction and lease up, and is required to receive IRS Form 8609)
  - ii. Annual operating budget 60 days prior to beginning of the fiscal year for the Project
  - iii. Replacement reserve withdrawals within 30 days of such withdrawals.
  - iv. Operating reserve withdrawals within 30 days of such withdrawals.
  - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year
  - vi. Owner financial statements/audit, within 90 days of the end of their fiscal year (June 1st to July 30th).
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.
- f. HOME funds may be used for architectural, engineering, or related professional services to prepare plans, drawings, specifications, or work write-up. These costs are eligible if they were incurred not more than 24 months before the date that HOME funds are committed to the project.

## **23. CONTRACTOR DEBARMENT AND SUSPENSION**

In order to comply with the requirements of 24 CFR Part 24, the Owner must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

#### **24. SECTION 3 REQUIREMENTS**

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

#### **25. LEAD BASED PAINT AND HAZARDOUS MATERIALS (§92.355)**

- a. For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner shall comply with the HUD Lead-Based Paint Regulations (24 C.F.R. 92.355, 24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821 et. seq.) as amended requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.
- b. For purposes of this Section 23, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC ̄9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC ̄6901-6992. For the purposes of this Section 23, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law
- c. If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Project, the Property, or any improvements thereon in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property, the Project, or improvements thereon, County may require Owner to obtain or may itself obtain, at Owner's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Owner shall promptly provide to County a complete copy of any environmental assessment obtained by Owner.
- d. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Owner shall, within 30 days after written demand by County for Owner's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Owner including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Owner shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by the Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- e. Owner shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Owner's warranties in this Section 23, or the use, generation, manufacture, production,



storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, the Project, or any improvements thereon, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the Project, or any improvements thereon, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

- f. To the best of Owner's knowledge, Owner represents and warrants to County that:
- i. Neither the Property (including the Project and any other improvement thereon) nor Owner is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
  - ii. Owner has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
  - iii. To the best of Owner's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.

All representations, warranties, and covenants in this Section 25 shall survive the satisfaction of Owner's payment obligations under the Loan Documents, the re-conveyance of the Property, or the foreclosure of the Trust Deed by any means.

**26. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT (§92.353)**

Owner shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-4655).

**27. CONFLICT OF INTEREST (§92.356)**

Owner shall comply with all requirements set forth in 24 CFR 92.356. Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the Owner, developer or sponsor, may occupy a HOME-Assisted Unit in the Project. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

**28. VAWA REQUIREMENTS (§ 92.359)**

Owner shall comply with all requirements of the Violence Against Women Act (VAWA) set forth in 24 CFR part 5, subpart L and all other requirements set forth in 24 CFR § 92.359. VAWA notice and certification form is located in **Attachment I**.

**29. FAITH BASED ACTIVITIES**

- a. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

**30. RECORDS**

1. Owner must keep such records described in 24 CFR 92.508 and any additional records as are necessary to demonstrate compliance with all parts of this Agreement including, but not limited to, the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination,

Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension, unit substitution and filling vacancies, financial and intergovernmental review.

2. Owner must annually provide tenant eligibility records to the County.

3. **Record Retention Periods**

- ii. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
  - iii. Owner shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
  - iv. Written agreements must be retained for five years after the Agreement terminates.
  - v. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Project and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
  - vi. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- b. **Access to Records.** HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Recipient's and/or Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, Owner must assist, or must cause Owner to assist, the County by serving notice to affected tenants, as required under Oregon Law.

**31. MONITORING**

- a. Within 60 days of project completion and subject to the application of Section 27(d) above, the County staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor Project performance to ensure compliance with the requirements of this Agreement. During the initial Period of Affordability, the monitoring will be conducted in accordance with applicable law including, but not limited to, 24 CFR 92.251 and 24 CFR 92.504(d), and will include on-site inspections and a review of all records required in accordance with Section 30 above.

**32. WAIVER**

Failure by either party to enforce any right under this Agreement or any of the Loan Documents shall not be deemed to be a waiver of that right or of any other right.

**33. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party.

**34. AUTHORITY TO SIGN**

Each party signing this Agreement, and the other Loan Documents, represents that it has full power and authority to enter into this Agreement and all other documents contemplated thereby, and the persons signing this Agreement for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this Agreement, and to sell, transfer and convey all right, title, and interest in and to the Project in accordance with the Loan Documents. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

**35. EFFECTIVE DATE AND TERM**

The Effective Date of this Agreement is signed by both parties. This Agreement is effective through the Period of Affordability required under Section 9 of this Agreement.

**36. ADDITIONAL TERMS AND CONDITIONS**

- a. Program income: "program income," as defined under 24 CFR 92.2, shall be remitted to the County.
- b. Owner must comply with all applicable uniform administrative requirements as described in 24 CFR 92.505 or other applicable law.
- c. Owner shall carry out each activity under this Agreement in compliance with all applicable Federal laws and regulations described in subpart H of 24 CFR Part 92.
- d. Reversion of assets: upon expiration of this Agreement, Owner must transfer to County any HOME funds on hand at the time of expiration and any accounts receivable attributable to use of HOME funds.
- e. Repayment: any repayment or recapture of HOME funds must be remitted to the County.
- f. Fees: Owner shall not charge service, origination, or other fees for the costs of administering the HOME program, except as permitted by 24 CFR 92.214(b)(1).
- g. Owner shall comply with the project requirements of 24 CFR Part 92, Subpart F.
- h. Owner shall comply with all other applicable requirements and restrictions set forth in 24 CFR Part 92, whether or not specifically described herein.

**37. COMPLIANCE AND FURTHER ASSURANCES.** Owner shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Owner agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement and the other Loan Documents including, but not limited to, executing all additional documentation necessary for County to comply with applicable Federal requirements. All terms and conditions required under applicable federal law regarding the HOME Program and HOME Regulations are hereby incorporated by this reference herein.

**38. GOVERNING LAW.** This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Owner that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Owner, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

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

**40. TIME IS OF THE ESSENCE.** Owner agrees that time is of the essence in the performance this Agreement.

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

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

**43. LIMITATION OF LIABILITIES.** This Agreement and the other Loan Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and are contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**44. MERGER.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING

THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. OWNER, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT, AND OWNER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.



**PROJECT OWNER:**

**WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: HACC Webster Road, LLC  
an Oregon limited liability company  
Its: General Partner

By: Housing Authority of Clackamas County,  
a public body corporate and politic of the  
State of Oregon  
Its: Member

**CLACKAMAS COUNTY**

Chair: Tootie Smith  
Commissioner: Sonya Fischer  
Commissioner: Mark Shull  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

Date of Board of County Commissions meeting:

Signing on Behalf of BCC:

\_\_\_\_\_  
(signature)

Printed Name: Mr. Gary Schmidt  
Title: County Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
(signature)

Printed Name:  
Title:

\_\_\_\_\_  
Date

## Attachment A. Legal Description

Real property in the County of Clackamas , State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GLADSTONE, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING A PART OF THE FEN DAL CASON DONATION LAND CLAIM NO. 50, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, AT THE RE-ENTRANT CORNER BEING MARKED BY A 4 INCH DIAMETER BRASS DISK MARKED CLACKAMAS COUNTY SURVEYOR IN WEBSTER ROAD AS SHOWN ON SURVEY NUMBER 2006-454, CLACKAMAS COUNTY SURVEY RECORDS;

THENCE, ALONG SAID NORTH LINE OF SAID FENDAL CASON DONATION LAND CLAIM, SOUTH 87° 02'43" EAST, 253.32 FEET;

THENCE, LEAVING SAID NORTH LINE, SOUTH 04° 13'31" WEST, 28.32 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 85° 46'29" EAST, 20.00 FEET TO A 5/8 INCH IRON ROD; THENCE,

SOUTH 04° 13'37" WEST, 223.03 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 32°

00'73" WEST, 30.62 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 64° 01'4 6"

WEST, 35.71 FEET;

THENCE SOUTH 76° 53'57" WEST, 95.53 FEET TO A 5/8 INCH IRON ROD; THENCE

NORTH 77° 48 '24 " WEST, 58.22 FEET TO A 5/8 INCH IRON ROD;

THENCE, ON A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 38° 00 '36" (CHORD BEARS SOUTH 83° 11'18 " WEST 32.57 FEET) 33.17 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY LINE OF THE TRACT OF LAND CONVEYED TO CARL CAMPBELL, ET AL, RECORDED IN BOOK 680, PAGE 774, DEED RECORDS;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 64° 77'0 0 " WEST, 73.42 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 87° 32'34" WEST, 776.54 FEET TO THE CENTERLINE OF WEBSTER ROAD, AS EXISTING ON MARCH 23, 1966, FROM WHICH POINT A 7/2 INCH IRON ROD BEARS NORTH 87° 32'34" EAST 33.46 FEET;

THENCE, ALONG THE CENTERLINE OF SAID WEBSTER RD, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 776.76 FEET THROUGH A CENTRAL ANGLE OF 06° 02'78" {CHORD BEARS SOUTH 27° 70'07" WEST 75.44 FEET) 75.47 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, NORTH 24° 77'76" 275.64 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, ON A CURVE TO THE LEFT HAVING A RADIUS OF 337.04 FEET THROUGH A CENTRAL ANGLE OF 08° 34'48" (CHORD BEARS NORTH 79° 53'52" EAST 50.42 FEET) 50.47 FEET TO THE POINT OF BEGINNING.

**Attachment B. Sources and Uses of Funds**

**Sources** of funding for project: as of pro-forma data provided on 05/10/21

| <b>Source of Funding</b>               | <b>Amount</b>       | <b>Use of Funds summary (list proforma line item details for use and timing)</b> |
|--|---------------------|--|
| HOME                                   | \$400,000           | Development & Construction Costs   |
| OHCS 4% LIHTC (Equity)                 | \$6,414,750         | Development & Construction Costs & Const Loan Pay off                            |
| Metro Bond Funds (HACC)                | \$2,939,209         | Development & Construction Costs   |
| PSH Capital Funds                      | \$2,400,000         | Development & Construction Costs   |
| TE Permanent loan                      | \$4,700,000         | Post-construction  |
| Seller Loan                            | \$1,770,056         | Post-construction  |
| GP/SLP Equity                          | \$100               | Post-construction  |
| Deferred Developer Fee                 | \$758,029           |  |
| <b>Total Proposed Development Cost</b> | <b>\$19,382,143</b> |  |

**Attachment C. Schedule of Tasks**

|   | <b>PROPOSED<br/>DATE<br/>(month/year)*</b> | <b>REVISED<br/>DATE<br/>(month/year)*</b> | <b>COMPLETED<br/>DATE<br/>(month/year)*</b> |
|---|--|---|---|
| <b>SITE</b>   |  |   |   |
| Option/Contract executed  |  |   | 8/3/2018                                    |
| Site Acquisition  |  |   | 6/12/2019                                   |
| Zoning Approval   |  |   | 5/19/2020                                   |
| Site Analysis   |  | 5/2021                                    |   |
| Building Permits & Fees   |  | 5/2021                                    |   |
| Off-site Improvements   |  | 5/2021                                    |   |
| <b>PRE-DEVELOPMENT</b>  |  |   |   |
| Plans Completed (permit)  |  |   | 7/29/2020                                   |
| Final Bids  |  |   | 4/8/2021                                    |
| Contractor Selected   |  |   | 07/24/2020                                  |
| <b>FINANCING</b>  |  |   |   |
| <b>CONSTRUCTION LOAN:</b>   |  |   |   |
| Proposal  |  |   | 11/2020                                     |
| Firm Commitment (submittal)   |  |   | 12/17/2020                                  |
| Closing/Funding of Loan   |  | 6/17/2021                                 |   |
| <b>PERMANENT LOAN</b>   |  |   |   |
| Proposal  |  |   | 12/2020                                     |
| Firm Commitment   |  |   | 1/6/2021                                    |
| Closing/funding of Loan   |  | 6/17/2021                                 |   |
| <b>DEVELOPMENT</b>  |  |   |   |
| Syndication Agreement   |  |   |   |
| ** Construction Begins  |  | 6/18/2021                                 |   |
| Construction Completed  |  | 6/24/22                                   |   |
| Certificate Of Occupancy  |  | 6/23/22                                   |   |
| <b>MARKETING</b>  |  |   |   |
| Lease up begins   |  | 7/1/2022                                  |   |
| Lease up completed  |  | 10/1/2022                                 |   |
| Absorption (units per month)  |  | 24  |   |
| ** Construction to start within twelve months of the agreement date |  |   |   |

**Attachment D. Home Match Contribution Form**

**PROJECT: Webster Redevelopment**

**Total number of units in project: 48**  
**Number of HOME-assisted units: 4**  
**Applicable match credit percentage\*: 12%**

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| <b>MATCH SOURCE*</b>          | <b>ELIGIBLE MATCH TYPE</b> | <b>ELIGIBLE MATCH AMOUNT</b> | <b>MATCH CREDIT</b> |
|-------------------------------|----------------------------|------------------------------|---------------------|
| METRO Affordable Housing Bond | 5                          | \$4.3 million                | 21%                 |
| OHCS 4% LIHTC (Equity)        | 1                          | \$6.9 million                | 34%                 |
| TE Perm loan                  | 1                          | \$5 million                  | 25%                 |
| PSH Capital funds             | 1                          | \$2.4 million                | 11%                 |
|                               |                            |                              |                     |
|                               | Total match:               | \$18.7 million               | 91%                 |

**Eligible forms of match as defined in 24 CFR 92.220(a):**

- (1) Cash Contribution from Non-federal Source
- (2) Foregone Taxes, Fees and Charges
- (3) Donated Land or Other Real Property
- (4) On-site or Off-site Infrastructure
- (5) Proceeds from Affordable Housing Bonds
- (6) Donated Site Preparation and Construction Materials
- (7) Donated Site Preparation and Construction Equipment
- (8) Donated or Voluntary Labor or Professional Services
- (9) Sweat Equity (homeownership only)
- (10) Supportive Services (for rental projects only)

\*24 CFR 92.219 states that 100% of the matching contribution can be recognized if "...at least 50 percent of the housing units in the project are HOME-assisted."

## **Attachment E. HOME Affordability Requirements**

### **1. HOME Rent Schedule & Utility Allowance**

#### **Rent Schedule -**

US Department of Housing and Urban Development  
PMSA: Portland-Vancouver-Hillsboro, OR-WA MSA  
Effective: June 1, 2021

|           | <b>Low HOME</b> | <b>High HOME</b> |
|-----------|-----------------|------------------|
| 0 Bedroom | \$846           | \$1,080          |

#### **Utility Allowance-**

- Tenants do not pay utility allowances at the building as per their initial application.

**Notes** – throughout the Period of Affordability rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

### **2. HOME Tenant Income Limits**

US Department of Housing and Urban Development  
Effective: June 1, 2021

| <b>HOUSEHOLD SIZE</b> | <b>50% OF MEDIAN</b> | <b>60% OF MEDIAN</b> | <b>80% OF MEDIAN</b> |
|-----------------------|----------------------|----------------------|----------------------|
| 1 Person              | \$33,850             | \$40,620             | \$54,150             |
| 2 Person              | \$38,700             | \$46,440             | \$61,900             |
| 3 Person              | \$43,550             | \$52,260             | \$69,650             |
| 4 Person              | \$48,350             | \$58,020             | \$77,350             |
| 5 Person              | \$52,250             | \$62,700             | \$83,550             |
| 6 Person              | \$56,100             | \$67,320             | \$89,750             |
| 7 Person              | \$60,000             | \$72,000             | \$95,950             |
| 8 Person              | \$63,850             | \$76,620             | \$102,150            |

**All HUD data included in these tables are updated from time to time and Developer will need to make HUD adjustments.**

## ATTACHMENT F.

### AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owner to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project Owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

*In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.*

*For outreach purposes, the Owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.*

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, County will assess the efforts of Owner through the use of certifications of compliance by the Owner or Property Manager. Thereafter, County will annually assess the efforts and the success of the affirmative marketing actions by the project Manager.

In the event Owner fails to comply with the affirmative marketing requirements, County will require corrective actions which include, but are not limited to, requiring the Owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. County may require other corrective actions as necessary.

**OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED  
BUSINESSES ENTERPRISES (MBE/WBE)**

Clackamas County Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
  - ◆ Encourage project sponsors, developers and Recipients to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
  - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.
  - ◆ Monitor project sponsors, developers and Recipients to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.



## ATTACHMENT G.

### 1. **Monthly Progress Reports.**

During the construction phase, the Owner or its representative must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

### 2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The Owner or its representative submits all of the following documentation:
  - i. Documentation that relocation (if any) was conducted in accordance with Section 24 of this Agreement;
  - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(2)(i);
  - iii. Certificate of Occupancy;
  - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget;
  - v. Documentation for each source of match;
  - vi. Contractor information:
    - (1) Copy of construction contract between Owner and General Contractor.
    - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
    - (3) Forms and Assurances from General Contractor:
      - (a) Affidavit of Payment of Debts and Claims;
      - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
      - (c) Consent of Surety Company to Final Payment (if bonded);
      - (d) Section 3 Summary Report (form HUD-60002); and
      - (e) Contractor/Subcontractor Activity form (form HUD-2516).
  - vii. Copy of the Management Agreement;
  - viii. Copy of HOME tenant lease;
  - ix. Copy of the written tenant selection criteria; and
  - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted.

**ATTACHMENT H.**

**REIMBURSEMENT FORM  
HOME INVESTMENT PARTNERSHIPS  
PROGRAM**

|               |  |               |  |
|---------------|--|---------------|--|
| DATE:         |  | PROJECT NAME: |  |
| ORGANIZATION: |  | CONTACT:      |  |
| TELEPHONE:    |  | E-MAIL:       |  |

**Payment Request:**

| Invoice # or Date              | PAYABLE TO: | FOR SERVICES: | Relates to Proforma Line Item | AMOUNT: |
|--------------------------------|-------------|---------------|-------------------------------|---------|
|                                |             |               |                               |         |
|                                |             |               |                               |         |
|                                |             |               |                               |         |
|                                |             |               |                               |         |
|                                |             |               |                               |         |
|                                |             |               |                               |         |
|                                |             |               |                               |         |
| <b>TOTAL AMOUNT REQUESTED:</b> |             |               |                               |         |

**Certification of Approval and Disbursement Authorization:**

I/We hereby certify that the above information is correct and that the funds requested are for payment of actual expenditures. All contractors listed have performed work and supplied materials as stated. This certification shall not constitute an acceptance of defective work or improper materials, nor is it a waiver of the warranties or any other remedies I/we are or may be entitled to under the contract. **Invoice(s) are attached.**

---

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**County Approval:** \_\_\_\_\_ **Amount Approved:** \_\_\_\_\_

\_\_\_\_\_  
Pamela Anderson, CD Manager

\_\_\_\_\_  
Date

## **ATTACHMENT I. VAWA NOTIFICATION AND CERTIFICATION**

**[Insert Name of Housing Provider<sup>1</sup>]**

### **Notice of Occupancy Rights under the Violence Against Women Act<sup>2</sup>**

#### **To all Tenants and Applicants**

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>3</sup> The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that **[insert name of program or rental assistance]** is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

#### **Protections for Applicants**

If you otherwise qualify for assistance under **[insert name of program or rental assistance]**, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

#### **Protections for Tenants**

If you are receiving assistance under **[insert name of program or rental assistance]**, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or

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<sup>1</sup> The notice uses HP for housing provider but the housing provider should insert its name where HP is used. HUD’s program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

<sup>2</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>3</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

occupancy rights under **[insert name of program or rental assistance]** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

### **Removing the Abuser or Perpetrator from the Household**

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

### **Moving to Another Unit**

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence,

dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

**(2) You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

**(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP's emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

### **Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

HP can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

### **Confidentiality**

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

#### **Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated**

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.



If HP can demonstrate the above, HP should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

**Other Laws**

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

**Non-Compliance with The Requirements of This Notice**

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

**For Additional Information**

You may view a copy of HUD's final VAWA rule at **[insert Federal Register link]**.

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

**Attachment:** Certification form HUD-5382 **[form approved for this program to be included]**



**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

**Use of This Optional Form:** If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: \_\_\_\_\_

2. Name of victim: \_\_\_\_\_

3. Your name (if different from victim's): \_\_\_\_\_

4. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_

5. Residence of victim: \_\_\_\_\_

6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_  
\_\_\_\_\_

7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

8. Date(s) and times(s) of incident(s) (if known): \_\_\_\_\_  
\_\_\_\_\_

10. Location of incident(s): \_\_\_\_\_

In your own words, briefly describe the incident(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

# PROMISSORY NOTE

## CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Webster Road Project

**\$400,000.00** \_\_\_\_\_, 2021

For value received, Webster Road Housing Limited Partnership, an Oregon limited partnership, ("Borrower"), promises to pay to the order of Clackamas County ("Lender"), the sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **zero percent (0.0 %) deferred payment per year, compounded annually**. The loan is evidenced by this Promissory Note the ("Note"), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, the "Loan Documents"). Unless otherwise defined herein, capitalized terms have the meaning assigned to them in the Loan Agreement.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of this Note and the Loan Agreement, the terms of the Loan Agreement shall control:

1. **Payment of Obligation**. Lender makes this loan for the development and construction of Webster Redevelopment (the "Project"), under Title II, Section 216 and 217 of the National Affordable Housing Act of 1990, and 24 CFR Part 92 (the "HOME" program).
  - a. The loan shall bear interest at a rate of **zero percent (0.0 %) deferred payment per year, compounded annually**.
  - b. The term of the loan is 55 years.
  - c. The Maturity Date is 55 years from the date on this Note shown above.
  - d. The loan shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Project, except as otherwise provided in the Declaration, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents including, but not limited to, failure to record the Trust Deed or Declaration of Restrictive Covenants.
  - e. Payments shall be made at such place as Lender may designate in writing.
  - f. Payments of principal and interest shall be made until the loan is paid in full.
2. **Governing Law**. This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
3. **Security**. This Note shall be secured by a trust deed from Borrower as grantor to Lender as beneficiary in the Project.
4. **Nonrecourse**. Non-recourse Obligation. Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's general and limited partners, and the Lender's sole recourse with respect to the Loan shall be the right to foreclose under the Deed of Trust and other collateral forming part of the Loan Documents; provided that this provision shall not restrict any exceptions to non-recourse liability set forth in the Loan Documents, respecting such matters as fraud, waste and similar matters respecting actions of the general partner of Borrower.

If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

Dated \_\_\_\_\_, 2021

Borrower:

**WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: HACC Webster Road, LLC  
an Oregon limited liability company  
Its: General Partner

By: Housing Authority of Clackamas County,  
a public body corporate and politic of the State of Oregon  
Its: Member

By: \_\_\_\_\_  
Name: Gary Schmidt  
Title: County Administrator, Clackamas County

AFTER RECORDING RETURN TO:  
Clackamas County Community Development Division  
2051 Kaen Road  
Oregon City, OR 97045

STATUTORY NOTICE:  
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

**CLACKAMAS COUNTY HOME PROGRAM**

**Name of Project: Webster Road Project**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated \_\_\_\_\_, 2021 by Webster Road Housing Limited Partnership, an Oregon limited partnership ("**Owner**") is given as a condition precedent to the award of HOME Investment Partnership ("**HOME**") Program funds by Clackamas County, a political subdivision of the State of Oregon ("**County**") together with any successor to its rights, duties, and obligations, and is made in favor of the Clackamas County, a political subdivision of the State of Oregon ("**County**"), who will administer compliance herunder for and on behalf of the County under the HOME Program.

Owner has applied to the County and entered into a HOME Loan Agreement ( "**Agreement**") for an award to the Project in amounts not to exceed **\$400,000.00**. As used in this Declaration, "**Project**" shall mean the Owner's leasehold interest in the real property described in Exhibit A (the "**Property**"), attached herto and incorporated by this reference herein, and the improvements located on the Property (the "**Improvements**"). The Project, commonly known as "Webster Road, will consist of 48-units of affordable housing. Owner has a leasehold interest in the Property and is the owner of the Improvements located on the Property. The Property is owned by the Housing Authority of Clackamas County, a public body corporate and politic of the State of Oregon ("**HACC**").

Pursuant to the terms of the Agreement, Owner has agreed to restrictions regarding rents and tenant eligibility that Owner will maintain for the Period of Affordability specified in the Agreement. This Declaration is subject to the terms and conditions of the Agreement.

In consideration of the promises and covenants set forth below and of other valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner and the County agree as follows:

**SECTION 1 - DEFINITIONS**

All the words and phrases used in this Declaration shall have the same meaning as when used in the Agreement and in 24 CFR 92 ("**HUD HOME Regulations**") unless the context requires otherwise.

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

- (A) Promptly after this Declaration is signed by Owner and County, Owner shall record this Declaration and all amendments and file in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the County a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) The Owner intends, declares, and covenants, on behalf of itself, its successors, assigns, and all future owners and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project: (1) shall be and are covenants running with the Project , encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the County and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the Project shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, each

and every contract, deed or other instrument hereafter signed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter signed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

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

### **SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

**The Owner represents, covenants, and warrants as follows:**

- (A) The Owner (1) is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to sign and deliver this Declaration.
- (B) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (C) The Owner has good and marketable title to the Improvements free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration and any County-approved loan documents relating to the Improvements, as described in that certain Priority and Subordination Agreement of even date herewith by and between the County, Owner, HACC, the Senior Lender (as defined below), Citibank, N.A., a national banking association, and others, or other permitted encumbrances).
- (D) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (E) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in 24 CFR Part 92 and applicable regulations.
- (F) Owner shall maintain four units in the Project as HOME-Assisted Units during the term of this Declaration. Owner shall ensure the following requirements with respect to the HOME-Assisted Units are met during the term of this Declaration:
- 100% of the HOME-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 50% of the median income (Very Low-Income as defined in the Agreement); for a total of 4 floating HOME units.
  - Rents for the HOME-Assisted Units will not exceed the gross rent allowable under 24 CFR 92.252(b)(1) except that, in accordance with 24 CFR 92.252(b)(2), "If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward the rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program."

The determination of whether a tenant meets the income requirement shall be made by the Owner or its designated agent at least annually in accordance with 24 CFR 92.252(h).

- (G) During the term of this Declaration, Owner will maintain the Project and each HOME-Assisted unit in accordance with the property standards requirements of 24 CFR 92.251.
- (H) Subject to the requirements of 24 CFR Part 92 and this Declaration, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the prior agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 92 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the County may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 92.

In addition, the withdrawal, or removal of the general partner of the Owner for cause pursuant to the terms of the Owner's Amended and Restated Agreement of Limited Partnership shall not constitute a default hereunder or under the Agreement, provided that the substitute general partner is reasonably acceptable to the County and is admitted to Owner within ninety days thereafter. In addition, the transfer of any interest of U.S. Bancorp Community Development Corporation, and its successors and assigns (the "**Limited Partner**"), as a limited partner interest in the Partnership and any interest in the Limited Partner, shall not constitute a default hereunder or under the Agreement or any of the Loan Document, notwithstanding anything to the contrary herein or therein.

- (I) The Owner will notify the County in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (J) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental

housing during the term of this Declaration unless required by law or unless the County has given its prior written consent.

- (K) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (L) The Owner warrants that it has not and will not sign any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except to the extent applicable law requires otherwise.

#### **SECTION 4 - TERM OF DECLARATION**

- (A) This Declaration applies immediately upon recordation, and Owner shall comply with all restrictive covenants contained herein during the term of this Declaration ("Terms of Affordability). The Terms of Affordability shall include an initial and extended period of affordability. The initial period of affordability shall be 15 years for all HOME units. The initial period of affordability begins on the Project completion date entered into HUD Integrated Disbursement and Information System (IDIS). The extended period of affordability begins at the end of the initial period of affordability and continues for an additional 45 years or until such time as the loan is deemed paid in full. The Terms of Affordability include both the initial and the extended periods of affordability, for a total of 60 years.
- (B) Pursuant to 24 CFR 92.252(e), as amended, this Declaration and the Terms of Affordability shall remain in effect for not less than the period described in section (A) above without regard to the term of the mortgage of other underlying security and without regard to any transfer of ownership; provided however, that the requirements herein, shall be terminated upon any foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original term, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project.

#### **SECTION 5 – COUNTY’S RIGHT TO INSPECT; OWNER’S OBLIGATION TO REPORT**

- (A) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the County, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income tenants which pertain to compliance with the County's Occupancy Restrictions specified in this Declaration.
- (B) The Owner shall submit any other information, documents, or certifications requested by the County which the County shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the County's Occupancy Restrictions specified in this Declaration.

#### **SECTION 6 - ENFORCEMENT OF 24 CFR 92 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS**

- (A) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 92, and applicable regulations, or the terms of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the County) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to Owner's obligations under 24 CFR Part 92 and affecting the Project.
- (B) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with 24 CFR Part 92 and the applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE COUNTY AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 92 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (C) The Owner agrees that the representations and covenants set forth herein may be relied upon by the County and all persons interested in Project compliance under 24 CFR Part 92 and the applicable regulations.
- (D) The Owner agrees to take any and all actions reasonably required by the County to substantiate the Owner's compliance with occupancy restrictions of 24 CFR Part 92 as now constituted or subsequently amended and other occupancy restrictions of the County as now constituted or subsequently adopted.
- (E) This Declaration and the Agreement of which it is a part may be enforced by the County or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Agreement.

**SECTION 7 - MISCELLANEOUS**

- (A) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (B) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE COUNTY:           Community Development Manager  
Clackamas County Community Development  
2051 Kaen Road, Oregon City, OR 97045

TO THE OWNER:           Webster Road Housing Limited Partnership  
13900 S. Gain Street  
Oregon City, OR 97045

WITH A COPY TO THE LIMITED PARTNER:

U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project Number: 27271  
Attn.: Director of LIHTC Asset Management  
Phone: (314) 335-2600

And:

Kutak Rock LLP  
Jill Goldstein, Esq. 1650 Farnam Street  
Omaha, NE 68102  
Phone: (402) 346-6000  
Fax: (402) 346-1148

WITH A COPY TO THE SENIOR LENDER:

U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project Number: 27271  
Attn.: Director of LIHTC Asset Management  
Phone: (314) 335-2600

WITH A COPY TO THE FUNDING LENDER:

Citibank, N.A.  
388 Greenwich Street, Trading 6th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: Webster Road Apartments Deal ID No. 60000819  
Facsimile: (212) 723-8209

With a copy to:           Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Webster Road Apartments Deal ID No. 60000819  
Facsimile: (805) 557-0924

Prior to the Conversion  
Date, with a copy to:    Citibank, N.A.  
388 Greenwich Street, Trading 6th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Webster Road Apartments Deal ID No. 60000819  
Facsimile: (212) 723-8209



Following the Conversion Date, with a copy to: Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: Webster Road Apartments Deal ID No. 60000819  
Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office  
Re: Webster Road Apartments Deal ID No. 60000819  
Facsimile: (646) 291-5754

The County, Owner, Limited Partner, or U.S. Bank National Association, a national banking association, (the "Senior Lender"), or Citibank, N.A., a national banking association, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (C) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Part 92, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HOME assistance. The County, together with Owner, may sign and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (D) Governing Law. This Declaration shall be governed by the laws of the State of Oregon, and, where applicable, the laws of the United States of America, without giving effect to the conflict of law provisions thereof.
- (E) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the reservation of HOME funds and shall not be deemed to terminate or merge with the awarding of the funds.

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

(Signatures continued on next page)

**OWNER:**

**WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: HACC Webster Road, LLC  
an Oregon limited liability company  
Its: General Partner

By: Housing Authority of Clackamas County,  
a public body corporate and politic of the State of Oregon  
Its: Member

By: \_\_\_\_\_  
Name: Mr. Gary Schmidt  
Title: County Administrator, Clackamas County

STATE OF OREGON       )  
  )ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Gary Schmidt, the County Administrator of Clackamas County.

\_\_\_\_\_  
Notary Public; State of OREGON  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY**

Real property in the County of Clackamas , State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GLADSTONE, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING A PART OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, AT THE RE- ENTRANT CORNER BEING MARKED BY A 4 INCH DIAMETER BRASS DISK MARKED CLACKAMAS COUNTY SURVEYOR IN WEBSTER ROAD AS SHOWN ON SURVEY NUMBER 2006-454, CLACKAMAS COUNTY SURVEY RECORDS;

THENCE, ALONG SAID NORTH LINE OF SAID FENDAL CASON DONATION LAND CLAIM, SOUTH 87° 02'43" EAST, 253.32 FEET;

THENCE, LEAVING SAID NORTH LINE, SOUTH 04° 13'31" WEST, 28.32 FEET TO A 5/8 INCH IRON ROD;  
THENCE, SOUTH 85° 46'29" EAST, 20.00 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 04° 13'37" WEST, 223.03 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 32° 00'73" WEST, 30.62 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 64° 01'4 6" WEST, 35.71 FEET;

THENCE SOUTH 76° 53'57" WEST, 95.53 FEET TO A 5/8 INCH IRON ROD;

THENCE NORTH 77° 48 '24 " WEST, 58.22 FEET TO A 5/8 INCH IRON ROD;

THENCE, ON A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 38° 00 '36" (CHORD BEARS SOUTH 83° 11'18 " WEST 32.57 FEET) 33.17 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY LINE OF THE TRACT OF LAND CONVEYED TO CARL CAMPBELL, ET AL, RECORDED IN BOOK 680, PAGE 774, DEED RECORDS;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 64° 77'0 0 " WEST, 73.42 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 87° 32'34" WEST, 776.54 FEET TO THE CENTERLINE OF WEBSTER ROAD, AS EXISTING ON MARCH 23, 7966, FROM WHICH POINT A 7/2 INCH IRON ROD BEARS NORTH 87° 32'34" EAST 33.46 FEET;

THENCE, ALONG THE CENTERLINE OF SAID WEBSTER RD, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 776.76 FEET THROUGH A CENTRAL ANGLE OF 06° 02'78" {CHORD BEARS SOUTH 27° 70'07" WEST 75.44 FEET) 75.47 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, NORTH 24° 77'76" 275.64 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, ON A CURVE TO THE LEFT HAVING A RADIUS OF 337.04 FEET THROUGH A CENTRAL ANGLE OF 08° 34'48" (CHORD BEARS NORTH 79° 53'52" EAST 50.42 FEET) 50.47 FEET TO THE POINT OF BEGINNING.

AFTER RECORDING RETURN TO:  
Clackamas County Community Development Division  
2051 Kaen Road, Suite 245  
Oregon City, OR 97045

STATUTORY NOTICE:  
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

TRUST DEED, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
CLACKAMAS COUNTY HOME PROGRAM

**Name of Project:** Webster Road Project

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of \_\_\_\_\_, 2021 by Webster Road Housing Limited Partnership, an Oregon limited partnership ("**Grantor**," "**Borrower**" or "**Owner**" having its office at 113900 S. Gain St., Oregon City, OR 97045, \_\_\_\_\_ ("**Trustee**" or "**Title Company**"), for the benefit of Clackamas County, a political subdivision of the State of Oregon, through its Community Development Division, having its office at 2051 Kaen Road, Oregon City, OR 97045 ("**Beneficiary**" or "**County**").

County has made a **zero percent (0.0%) interest deferred payment** loan to Borrower in the sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** under Title II of the National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq., and 24 CFR Part 92 (the "HOME" program). The loan is evidenced by this Trust Deed, a Promissory Note, a Loan Agreement and a Declaration of Land Use Restrictive Covenants (the "Declaration"), as they may be amended or supplemented from time to time, together referred to as the "**Loan Documents**." Capitalized terms have the meaning set forth in the Loan Agreement, except as otherwise defined in this Trust Deed. The purpose(s) of the loan are set forth in the Loan Agreement entered into between the parties.

The loan is due and payable in full at the earliest of: (i) the Maturity Date which is exactly **fifty-five (55) years from the executed date of this Trust Deed** except as otherwise provided in the Loan Agreement, (ii) the date the Property is sold, (iii) Owner's interest in the Property is transferred, except as allowed in the Declaration, or (iv) the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below). The initial HUD-required Period of Affordability shall be 15 years, without regard to the term of the loan or the transfer of ownership. The extended Period of Affordability shall be 45 years, without regard to the term of the loan or the transfer of ownership. The total Period of Affordability is sixty (60) years.

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record this Trust Deed.

For good consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the County, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to its leasehold interest in the real property located in Clackamas County, Oregon, described as:

See **Exhibit A** attached hereto and incorporated herein,

Together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, (the "**Property**"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "**Improvements**"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be re-conveyed.

## **BORROWER COVENANTS AND AGREES AS FOLLOWS:**

### **ARTICLE I**

#### **Particular Covenants and Warranties of Borrower**

**1.01 Obligations Secured.** This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future (the "Obligations").

**1.02 Property.** Borrower warrants that within 180 days of execution of the document, it will hold good and merchantable title to the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in the Priority Agreement (as defined below). Borrower covenants that it shall forever defend County's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

**1.03 [Reserved]**

**1.04 Further Assurances; Filing; Refiling; Etc.**

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as County or Title Company may require to accomplish the purposes of this Trust Deed.
- 2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
- 3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

**1.05 Compliance with Laws.** Borrower represents, warrants, and covenants that:

- 1) The Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments, including the HOME requirements (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
- 2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

**1.06 Definitions; Environmental Covenants; Warranties and Compliance**

- 1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
- 2) For the purposes of this section, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.
- 3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.
- 4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 5) Borrower shall give prompt written notice to County of:
  - (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;
  - (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
  - (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or
  - (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.
- 6) Borrower shall promptly provide to County copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. County shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by

Borrower, if County determines that such participation is reasonably necessary to protect its interest in the Trust Property.

- 7) If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to County a complete copy of any environmental assessment obtained by Borrower.
- 8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by County for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- 9) Borrower shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to County that:
  - (a) Neither the Property nor Borrower is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
  - (b) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
  - (c) To the best of Borrower's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- 11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the re-conveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

**1.07 Maintenance and Improvements.** Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without County's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, so that it continues to meet the property standards set forth in 24 CFR 92.251, and shall at County's election and Borrower's cost, restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below) pursuant to Sections 1.14 and 2.01, as applicable. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear accepted.

**1.08 Liens; Other Financing.** Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in that certain Priority and Subordination Agreement of even date herewith, by and between the Owner, County, U.S. Bank National Association, a national banking association, Citibank, N.A., a national banking association, and others (the "**Priority Agreement**").

**1.09 Impositions**

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.

- 2) Borrower may, at its expense and after prior notice to County, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither County nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to County cash, corporate surety bond, or other additional security in the amount determined by County with respect to the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final, non-appealable judgment.
- 3) Borrower shall furnish to County, promptly upon request, satisfactory evidence of the payment of all Impositions. County is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

**1.10 Books and Records; Inspection of the Property.** Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied, and in accordance with the record-keeping requirements of the Loan Agreement. Borrower shall permit Title Company, County, the Secretary of HUD and the Comptroller General of the U.S., and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times during normal business hours with prior notice of not less than 48 hours, subject to all safety and security policies uniformly employed at the Property and rights of tenants in lawful possession.

**1.11 Limitations of Use.** Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of County.

**1.12 Insurance**

- 1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:
  - (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance;
  - (b) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to County, and in no event less than \$2,000,000 per occurrence and \$4,000,000 aggregate coverage; and
  - (c) Unless County otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as County may require.
- 2) Insurance Companies and Policies. Insurer must be authorized to do business in Oregon. All insurance shall be written by a company or companies reasonably acceptable to County with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of County with loss proceeds under any policy payable to County, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to County of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against County; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. County shall be named as additional insured on all liability policies. Borrower shall forward to County, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.
- 3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and County are insured under such policy in the proper designated amount.
- 4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

**1.13 Assignments of Policies upon Foreclosure.** In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

**1.14 Casualty/Loss Restoration**

- 1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to County, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. County may make proof of loss if it is not made promptly and to County's satisfaction by Borrower.

- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, Borrower assigns to County all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements (subject to disbursement procedures established by County) if Borrower can demonstrate, to County's satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess insurance proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

**1.15 Actions to Protect Trust Property; Reserves**

- 1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, County may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that County shall first give notice to Borrower of such failure and a reasonable opportunity to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of County's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by County under this section shall impair any other right or remedy available to County or constitute a waiver of any default.
- 2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, County may require Borrower thereafter to pay and maintain with County reserves for payment of such obligations. In that event, Borrower shall pay to County each month a sum estimated by County to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to County upon demand. The reserves may be commingled with County's other funds, and County shall not be required to pay interest to Borrower on such reserves. County shall not hold the reserve in trust for Borrower, and County shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

**1.16 Insurance Warning. Unless Borrower provides County with evidence of the insurance coverage required by the Loan Documents, County may purchase insurance at Borrower's expense to protect County's interest.**

This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage County purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by County. The cost of this insurance may be added to Borrower's loan balance. If the cost is added to Borrower's loan balance, the interest rate of 8.0% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage County purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**1.17 Estoppel Certificates.** Borrower, within five days of the request, shall furnish Title Company and County a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations.

**1.18 Financial Information.** Borrower shall furnish to County within (i) 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's internally-prepared financial statement for such year, and (ii) 180 days after the end of each of Borrower's fiscal years a copy of Borrower's annual audited or certified public accountant reviewed financial statements (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to County any and all such other financial information as County shall reasonably request from time to time.

**ARTICLE II  
Condemnation**

**2.01 Condemnation**

- 1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to County.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, County shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at County's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the



Improvements (subject to reasonable disbursement procedures established by County) if Borrower can demonstrate, to County's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

### ARTICLE III

#### Assignment of Leases, Rents, Issues, and Profits

**3.01 Assignment.** Borrower assigns and transfers to County (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party. This assignment is intended by Borrower and County to create a present and unconditional assignment to County subject only to the license set forth in Section 3.04 below.

**3.02 Rights of County.** Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, County shall have the right, power, and authority to:

- 1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to County and that all Rents are to be paid directly to County, whether or not County shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not County has taken possession of the Trust Property;
- 2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to County;
- 3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or County, with respect to any and all Leases and Rents; and
- 4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

**3.03 Application of Receipts.** County shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of County, and in collecting any Rents, including internal personnel costs; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after County shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, County shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as County shall determine. The exercise or failure by County to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

**3.04 License.** County grants to Borrower a revocable license to collect and receive the Rents. Such a license may be revoked by County, without further notice to Borrower, other than the notice required by Article 5.01, if Borrower defaults under Article III or any other term of the loan documents. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all Lease obligations;
- 2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain County's prior written approval of the form and content of all future Leases.

Upon request of County, Borrower agrees:

- 1) To collect Rents no earlier than 30 days in advance of the day when they are due, and
- 2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

**3.05 Limitation of County's Obligations.** Notwithstanding the assignment provided for in this Article III, County shall not be obligated to perform or discharge, and County does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon County, or to make County responsible for any condition of the Property. County shall be accountable to Borrower only for the sums actually collected and received by County pursuant to this assignment. Borrower shall hold County fully harmless from, indemnify County for, and defend County against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against County on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the gross negligence or willful misconduct of County.

**3.06 Termination.** The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to County shall cease and terminate.

**3.07 Attorney-in-Fact.** Borrower irrevocably constitutes and appoints County, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower.

#### ARTICLE IV

##### Security Agreement and Fixture Filing

**4.01 Security.** To secure the Obligations, Borrower grants to County a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien, subordinate only to those liens previously approved by the County; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of County from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

#### ARTICLE V

##### Events of Default; Remedies

**5.01 Events of Default.** Each of the following shall constitute an event of default under the Loan Documents; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to Housing Authority of Clackamas County and to U.S. Bancorp Community Development Corporation and its permitted successors and assigns (the "Limited Partner") at the address set forth in the Declaration. County agrees that any cure of any default made or tendered by the Limited Partner shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

- 1) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 2) Failure of Owner to comply with the Affordability Requirements at any time during the Period of Affordability.
- 3) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 4) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for HOME funds.
- 5) Other Default. The occurrence of any other event of default under the Loan Documents.
- 6) Cross-Defaults. Owner's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project, including but not limited to the documents which evidence the other sources of funds listed in the Loan Documents.
- 7) Bankruptcy. The occurrence of any of the following with respect to Owner or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- 8) Transfer. Any transfer not in compliance with the Declaration.

**5.02 Remedies in Case of Default.** If an Event of Default shall occur, subject to the terms of Section 16 of the Loan Agreement, County or Title Company may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- 1) **Extend Period of Affordability.** If Borrower fails to provide the required rents, fails to rent to eligible tenants, or fails to maintain the units according to applicable Property Standards, County may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** County may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** County may have a receiver appointed for the Trust Property. County shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or County shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at County's option and waives any and all defenses to such an appointment.
- 4) **Possession.** County may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as County shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to County or any receiver appointed under this Trust Deed.
- 5) **Rents.** County may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. County shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (5). If Rents are collected by County under this subsection(), Borrower irrevocably appoints County as Borrower's attorney-in-fact, with power of substitution, to endorse instruments

received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.

- 6) **Power of Sale.** County may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
- 7) **Foreclosure.** County may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of County, County may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Abandonment.** County may abandon all or any portion of the Trust Property by written notice to Borrower.

**5.03 Sale.** In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as County may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including County, its elected officials, officers, agents, and employees, may purchase at any such sale. County and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, County and its officers may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to County or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of County, for such purpose.

**5.04 Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by County to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**5.05 Receiver or Trustee-in-Possession.** Upon taking possession of all or any part of the Trust Property, Title Company, County, or a receiver may:

- 1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
- 2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
- 3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
- 4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, County, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

**5.06 Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

- 1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
- 2) **Indebtedness.** To pay all Obligations, in such order as County shall determine in its sole discretion.
- 3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

**5.07 Deficiency.** No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

**5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

**5.09 Continued LIHTC obligations.** This Trust Deed shall to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the property. This subordination shall cease to be effective as of the earlier of (i) the date the property is acquired by foreclosure (or instrument in lieu of foreclosure), or (ii) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), for such other reason

provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h) (6) (E) (ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the property. This subordination shall be interpreted to constitute a subordination of this Trust Deed, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B) of the Code.

**ARTICLE VI**  
**General Provisions**

**6.01 Time is of the Essence.** Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

**6.02 Re-conveyance by Title Company.** At any time upon the request of County, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may re-convey, without warranty, all or any part of the Trust Property. The grantee in any re-conveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

**6.03 Notice.** Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth in the Declaration. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

**6.04 Substitute Trustee.** In the event of dissolution or resignation of Title Company, County may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

**6.05 Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and County. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, County shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as County deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

**6.06 Indemnity.** Borrower shall hold County and Title Company and their respective elected officials, directors, officers, employees and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, arising out of or in connection with Title Company's or County's interest under this Trust Deed, except Borrower shall not be liable for acts performed by County or Title Company in violation of applicable law or resulting from the gross negligence or willful misconduct of County or Title Company.

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

**6.08 Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

**6.09 Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

**6.10 Rights of Prior Mortgagee.** In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted in the Priority and Subordination Agreement, the rights of County with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to County to be applied in accordance with this Trust Deed. In the event there is any inconsistency between the terms of this Trust Deed and the Priority and Subordination Agreement executed by Borrower, County, and certain other parties and recorded against the Property on or about the date of this Trust Deed, the terms of the Priority and Subordination Agreement shall control.

**6.11 Person Defined.** As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

**6.12 Severability.** If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

**6.13 Entire Agreement.** This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

**6.14 Commercial Property.** Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

**6.15 Standard for Discretion.** In the event this Mortgage is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

**6.16 ORS 93.040 Warning.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated as of the date set forth above:

**WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: HACC Webster Road, LLC  
an Oregon limited liability company  
Its: General Partner

By: Housing Authority of Clackamas County,  
a public body corporate and politic of the State of Oregon  
Its: Member

By: \_\_\_\_\_  
Name: Gary Schmidt  
Title: County Administrator

STATE OF OREGON )  
 )ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Gary Schmidt, the County Administrator of Clackamas County.

\_\_\_\_\_  
Notary Public, State of OREGON  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION**

Real property in the County of Clackamas , State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GLADSTONE, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING A PART OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, AT THE RE- ENTRANT CORNER BEING MARKED BY A 4 INCH DIAMETER BRASS DISK MARKED CLACKAMAS COUNTY SURVEYOR IN WEBSTER ROAD AS SHOWN ON SURVEY NUMBER 2006-454, CLACKAMAS COUNTY SURVEY RECORDS;

THENCE, ALONG SAID NORTH LINE OF SAID FENDAL CASON DONATION LAND CLAIM, SOUTH 87° 02'43" EAST, 253.32 FEET;

THENCE, LEAVING SAID NORTH LINE, SOUTH 04° 13'31" WEST, 28.32 FEET TO A 5/8 INCH IRON ROD;  
THENCE, SOUTH 85° 46'29" EAST, 20.00 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 04°

13'37" WEST, 223.03 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 32° 00'73" WEST,

30.62 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 64° 01'4 6" WEST, 35.71 FEET;

THENCE SOUTH 76° 53'57" WEST, 95.53 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 77°

48 '24 " WEST, 58.22 FEET TO A 5/8 INCH IRON ROD;

THENCE, ON A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 38° 00 '36" (CHORD BEARS SOUTH 83° 11'18 " WEST 32.57 FEET) 33.17 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY LINE OF THE TRACT OF LAND CONVEYED TO CARL CAMPBELL, ET AL, RECORDED IN BOOK 680, PAGE 774, DEED RECORDS;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 64° 77'0 0 " WEST, 73.42 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 87° 32'34" WEST, 776.54 FEET TO THE CENTERLINE OF WEBSTER ROAD, AS EXISTING ON MARCH 23, 1966, FROM WHICH POINT A 7/2 INCH IRON ROD BEARS NORTH 87° 32'34" EAST 33.46 FEET;

THENCE, ALONG THE CENTERLINE OF SAID WEBSTER RD, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 776.76 FEET THROUGH A CENTRAL ANGLE OF 06° 02'78" {CHORD BEARS SOUTH 27° 70'07" WEST 75.44 FEET) 75.47 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, NORTH 24° 77'76" 275.64 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, ON A CURVE TO THE LEFT HAVING A RADIUS OF 337.04 FEET THROUGH A CENTRAL ANGLE OF 08° 34'48" (CHORD BEARS NORTH 79° 53'52" EAST 50.42 FEET) 50.47 FEET TO THE POINT OF BEGINNING.

June 10, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #01 to an Agreement with CareOregon, Inc.  
regarding Crisis Respite Services provided by Cascadia Behavioral Healthcare, Inc.

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | Provision of and payment for Crisis Respite Services for Clackamas County clients.  |
| <b>Dollar Amount and Fiscal Impact</b> | Up to \$364,270.00  |
| <b>Funding Source</b>                  | No County General Funds are involved.<br>Funding provided by State of Oregon, Oregon Health Authority   |
| <b>Duration</b>                        | Effective January 1, 2021 and terminates December 31, 2021  |
| <b>Previous Board Action</b>           | None  |
| <b>Counsel Review</b>                  | Reviewed and approved by Counsel April 7, 2021 (KR)   |
| <b>Procurement Review</b>              | Was this item reviewed by Procurement? No.<br>CareOregon contracts with Cascadia for crisis respite services for Clackamas County. County is required to reimburse CareOregon for any beds utilized by Clackamas County general fund clients. |
| <b>Strategic Plan Alignment</b>        | 1. Individuals and families in need are healthy and safe.<br>2. Ensure safe, healthy and secure communities.  |
| <b>Contact Person</b>                  | Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305   |
| <b>Contract No.</b>                    | #9970   |

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #01 to an Agreement with CareOregon, Inc. regarding Crisis Respite Services provided by Cascadia Behavioral Healthcare, Inc. CareOregon holds the contract with and compensates Cascadia for program services provided to Clackamas County clients. Maximum compensation to Cascadia, provided by CareOregon, shall not exceed \$910,675.00 (\$499 per bed x 5 beds x 365 days). County is responsible for reimbursing CareOregon for services provided to County general fund clients. Maximum reimbursement to CareOregon by County is limited to 2 beds at \$499 per bed for 365 days or \$364,270.00.

This Amendment is effective January 1, 2021 and terminates December 31, 2021.

**RECOMMENDATION:**

Staff recommends Board approval of this Amendment.

*Healthy Families. Strong Communities.*

Respectfully submitted,

*Mary Rowland for  
Rodney A. Cook*

Rodney A. Cook, Interim Director  
Health, Housing & Human Services Department



# Contract Transmittal Form

## Health, Housing & Human Services Department

|                             |  |   |
|-----------------------------|--|---|
| <b>H3S Contract #:</b> 9970 | <b>Division:</b> BH                    | <input type="checkbox"/> Subrecipient                         |
| <b>Board Order #:</b>       | <b>Contact:</b> Russell, Angela        | <input type="checkbox"/> Revenue                              |
|                             | <b>Program Contact:</b> Rumbaugh, Mary | <input checked="" type="checkbox"/> Amend # 1 \$ \$364,270.00 |
|                             |  | <input checked="" type="checkbox"/> Procurement Verified      |
|                             |  | <input checked="" type="checkbox"/> Aggregate Total Verified  |

Non BCC Item     BCC Agenda    **Date:** Thursday, June 10, 2021

**CONTRACT WITH:** CareOregon, Inc.

**CONTRACT AMOUNT:** \$364,270.00

### TYPE OF CONTRACT

- |   |   |
|---|---|
| <input type="checkbox"/> Agency Service Contract        | <input type="checkbox"/> Memo of Understanding/Agreement                        |
| <input type="checkbox"/> Construction Agreement         | <input checked="" type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement    | <input type="checkbox"/> Property/Rental/Lease                                  |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off  |

### DATE RANGE

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Full Fiscal Year _____ | <input type="checkbox"/> 4 or 5 Year _____                                     |
| <input type="checkbox"/> Upon Signature _____              | <input type="checkbox"/> Biennium _____  |
| <input type="checkbox"/> Other _____                       | <input checked="" type="checkbox"/> Retroactive Request? 1/1/2021 - 12/31/2021 |

### INSURANCE What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Business Automobile Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Professional Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by: Rastetter, Kathleen    Date Approved: Wednesday, April 7, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

Date: \_\_\_\_\_

H3S Admin  
Only

Date Received: \_\_\_\_\_  
Date Signed: \_\_\_\_\_  
Date Sent: \_\_\_\_\_

**FIRST AMENDMENT**

To The

**AGREEMENT**

Between

**CAREOREGON, INC.,**

and

**CLACKAMAS COUNTY**

This is the 1st Amendment to the Agreement (Agreement) that was effective January 1, 2021 to December 31, 2021 between CareOregon, Inc. (CareOregon) and Clackamas County (Provider).

CareOregon and Provider agree that the Agreement between the parties be amended as follows:

1. Agreement, Cascadia Behavioral Healthcare, Tigard Crisis Respite Program effective January 1, 2021 to December 31, 2021 is hereby replaced with Agreement, Cascadia Behavioral Healthcare, Tigard Crisis Respite Program effective January 1, 2021 to December 31, 2021.

IN WITNESS WHEREOF, the parties have executed the terms of this Amendment to be effective on **January 1, 2021 to December 31, 2021**. All other terms and conditions of the Agreement shall remain in full force and effect.

*[signatures on following page]*

Agreed to on behalf of CareOregon, Inc:

Agreed to on behalf of Clackamas County:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Eric C. Hunter

Name: \_\_\_\_\_

Title: Chief Executive Officer

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Agreement**  
**Cascadia Behavioral Healthcare, Tigard Crisis Respite Program**

This Agreement (Agreement) is between CareOregon, Inc. (CareOregon) and Clackamas County (Provider) for the time period of January 1, 2021 to December 31, 2021.

Project: Cascadia Crisis Respite  
Provider Contact: Elise Thompson  
Email: ethompson@clackamas.us and  
BHContracts@calckamas.us

CareOregon Contact: Jill Archer  
Email: providercontracts@careoregon.org

**I. RECITALS**

- A. CareOregon, Clackamas County (County) and Cascadia Behavioral Healthcare are independent entities.
- B. Both parties acknowledge this program and its funding is separate from any of CareOregon's other funding programs.
- C. This Agreement shall be applicable for the time period between January 1, 2021 and December 31, 2021.

**II. PURPOSE**

CareOregon has been delegated the responsibility of maintaining a contract with Cascadia Behavioral Healthcare's Tigard Respite program which includes the provision of respite service for members enrolled with Clackamas County's General Fund and safety net services. Both parties agree that Clackamas County shall be responsible for payment of respite services provided to Clackamas County General Funds members and that CareOregon shall be responsible for payment of respite services to CareOregon/Health Share Members.

**III. TERMS**

For the time period between January 1, 2021 and December 31, 2021:

- A. Cascadia Behavioral Healthcare agrees to submit invoices directly to CareOregon at \$499.00 per bed per day (up to five beds for 365 days from January 1, 2021 to December 31, 2021) as utilized by members enrolled with Clackamas County's General Fund and safety net services.
- B. CareOregon agrees to reimburse Cascadia Behavioral Healthcare for crisis respite services utilized by Clackamas County members eligible for General Fund and safety net services.
- C. Clackamas County agrees to reimburse CareOregon for crisis respite services utilized by ~~CareOregon Members~~ their members eligible for General Fund and safety net services. CareOregon is responsible for contacting Clackamas County regard invoicing procedures and timelines.

- D. Total payments for the term of this ~~LOA Agreement to Cascadia Behavioral Healthcare~~ CareOregon shall not exceed the funding amount of ~~\$364,270.00~~ \$10,675.00 for ~~25~~ beds from January 1, 2021 to December 31, 2021.
- E. Both parties agree these payments are for the period outlined above only and does not imply or guarantee ongoing funding.
- F. Per the terms of Cascadia Behavioral Healthcare's Provider Participation with CareOregon, CareOregon shall reimburse Cascadia Behavioral Healthcare for any unused and/or unreimbursed beds by either party. The maximum beds reimbursed will be up to five beds from January 1, 2021 to December 31, 2021.
- G. Either party can terminate this Agreement with 30 days written notice.

#### IV. GENERAL PROVISIONS

- A. Should Cascadia Behavioral Healthcare's Provider Participation Agreement with CareOregon terminate, this Agreement will cease immediately upon written notification to Clackamas County.
- B. Clackamas County agrees that Provider Contact named above is responsible for coordinating all aspects of the Agreement, including obtaining all necessary data and information, and notifying CareOregon of any delays.
- C. Both parties agree to seek written approval for, and provide a copy of, any news releases or another external communication related to the Agreement.
- D. Clackamas County agrees to uphold all confidentiality provisions of the Agreement between CareOregon and Clackamas County, and specifically safeguard the health information of Members as it applies to activities related to this program.
- E. CareOregon can terminate the agreement immediately if the safety or health of a member or staff person is threatened.
- F. Clackamas County is not eligible to participate or receive funding associated with this Agreement if Clackamas County is placed on the Tier Monitoring System by CareOregon's Peer Review Committee or has documented contract and/or compliance issues. All funding associated with this Agreement will be discontinued until Clackamas County is removed from the CareOregon Tier Monitoring System or has resolved compliance issue to CareOregon's satisfaction. Discontinued funding will not be dispersed.
- G. The Agreement is expressly subject to the debt limitation of the County set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- H. CareOregon shall pay all taxes owed to a public body, as defined in ORS 174.109, and attests to compliance with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620, and ORS Chapters 316, 317 and 318. CareOregon will continue to comply with the tax laws of this state or a political subdivision of the state during the term of this contract. Failure to comply with this contract term is a default for which the County may terminate the contract and seek damages and other relief available.
- I. This Agreement shall be governed and construed in accordance with the laws of the State

of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and CareOregon that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- J. CareOregon agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of CareOregon or CareOregon's employees or agents. Any obligation of the County to indemnify, hold harmless and defend CareOregon, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.
- K. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Agreement waiving a right to a jury trial or requiring binding arbitration are void.
- L. The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

June 10, 2021

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment #01 to Subrecipient Agreement with Cascadia Behavioral  
Healthcare, Inc. for Residential Treatment Services

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | To provide residential treatment services to Clackamas County clients.  |
| <b>Dollar Amount and Fiscal Impact</b> | Amendment adds \$12,228.00 to contract value. New maximum contract value is \$334,894.00.   |
| <b>Funding Source</b>                  | No County General Funds are involved. State of Oregon, Community Mental Health Program (CMHP) funds are utilized.   |
| <b>Duration</b>                        | Effective upon signature and terminates on June 30, 2021.   |
| <b>Previous Board Action</b>           | Agreement reviewed and approved by Board November 5, 2020.  |
| <b>Counsel Review</b>                  | Review by Counsel April 26, 2021 (AN)   |
| <b>Procurement Review</b>              | Was this item reviewed by Procurement? No<br>Not required for subrecipient agreements.  |
| <b>Strategic Plan Alignment</b>        | 1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals.<br>2. Ensure safe, healthy and secure communities. |
| <b>Contact Person</b>                  | Mary Rumbaugh, Director – Behavioral Health Division – 503-742-5305   |
| <b>Agreement No.</b>                   | #9390 (#20-036)   |

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #01 to Subrecipient Agreement with Cascadia Behavioral Healthcare, Inc. for residential treatment services to Clackamas County clients. Cascadia provides these services at three facilities in Clackamas County, and works collaboratively with the County on process including treatment planning, admission and discharge authorizations and referrals for clients to specialty behavioral health services. Amendment #01 adds funding to the Agreement for a Clackamas County and Cascadia Behavioral Healthcare client residing at a facility not operated by Cascadia. These funds will be provided by Cascadia to the facility where the client resides, Golden Acres Retirement Center.

Cascadia Behavioral Healthcare, Inc. is a not-for-profit agency that delivers whole health care – integrated mental health and addiction services, primary care, and housing – to promote and support the well-being of the communities served. For more than thirty-five years, Cascadia

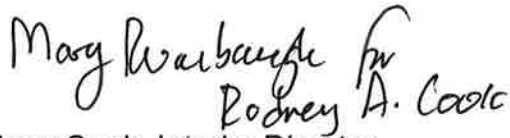
has been the community health and housing safety net provider for Oregonians of all ages experiencing mental health and addiction challenges, trauma, poverty, and homelessness.

This Amendment adds \$12,228.00 to the value of the Agreement, increasing the maximum agreement value to \$334,894.00.

**RECOMMENDATION:**

Staff recommends Board approval of the Amendment.

Respectfully submitted,

Handwritten signature in cursive script that reads "Mary Warburton for Rodney A. Cook".

Rodney Cook, Interim Director  
Health, Housing and Human Services



# Contract Transmittal Form

## Health, Housing & Human Services Department

|                             |   |  |
|-----------------------------|---|--|
| <b>H3S Contract #:</b> 9390 | <b>Division:</b> BH                     | <input type="checkbox"/> Subrecipient                        |
| <b>Board Order #:</b>       | <b>Contact:</b> Russell, Angela         | <input type="checkbox"/> Revenue                             |
|                             | <b>Program Contact:</b> Thompson, Elise | <input checked="" type="checkbox"/> Amend # 1 \$ \$12,228.00 |
|                             |   | <input type="checkbox"/> Procurement Verified                |
|                             |   | <input type="checkbox"/> Aggregate Total Verified            |

Non BCC Item     BCC Agenda    **Date:** Thursday, June 10, 2021

**CONTRACT WITH:** Cascadia Behavioral Healthcare, Inc.^

**CONTRACT AMOUNT:** \$334,894.00

### TYPE OF CONTRACT

- |   |  |
|---|--|
| <input type="checkbox"/> Agency Service Contract        | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement         | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement    | <input type="checkbox"/> Property/Rental/Lease                       |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off                                     |

### DATE RANGE

- |  |   |
|--|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____              | <input type="checkbox"/> 4 or 5 Year _____ - _____          |
| <input checked="" type="checkbox"/> Upon Signature _____ - 6/30/2021 | <input type="checkbox"/> Biennium _____ - _____             |
| <input type="checkbox"/> Other _____ - _____                         | <input type="checkbox"/> Retroactive Request? _____ - _____ |

### INSURANCE What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived  
If no, explain why:

**Business Automobile Liability:**     Yes     No, not applicable     No, waived  
If no, explain why:

**Professional Liability:**     Yes     No, not applicable     No, waived  
If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by: Naylor, Andrew    Date Approved: Monday, April 26, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

Date: \_\_\_\_\_

H3S Admin  
Only

Date Received: \_\_\_\_\_  
Date Signed: \_\_\_\_\_  
Date Sent: \_\_\_\_\_

## Subrecipient Amendment

Subrecipient Agreement Number: 20-036 (BH 9390)

Board Order Number:

Department/Division: H3S/Behavioral Health

Amendment No. 01

Subrecipient: Cascadia Behavioral Healthcare, Inc.

Amendment Requested By: Mary Rumbaugh

Changes:  Scope of Service  
 Agreement Time

Agreement Budget  
 Other: Update reporting contact

### Justification for Amendment:

This Subrecipient Agreement provides for residential treatment services to Clackamas County clients.

Amendment #01 adds funding to the Agreement for Clackamas County and Cascadia Behavioral Health client residing at a facility not operated by Cascadia. These funds will be provided by Cascadia to the facility where the client resides, Golden Acres Retirement Center.

This Amendment also updates the reporting contact for the Behavioral Health Division.

Maximum compensation is **increased by \$12,228.00** to a revised value of **\$334,894.00**. This amendment is effective **upon signature** and continues through **June 30, 2021**.

Except as amended hereby, all other terms and conditions of the contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference.

---

**AMEND Agreement Section 4:**

4. **Grant Funds.** COUNTY's funding for this Agreement is the 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159). The maximum, not to exceed, grant amount COUNTY will pay is **\$322,666.00**. This is a rate-based agreement and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Performance Measures and Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
- 4.1. **Federal Funds: \$72,000.00** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) (CFDA 93.958) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Community Mental Health Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
- 4.2. **Other Funds: \$250,666.00** in State funds are provided for funding of other items in the program budget.

**TO READ:**

4. **Grant Funds.** COUNTY's funding for this Agreement is the 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159). The maximum, not to exceed, grant amount COUNTY will pay is **\$334,894.00**. This is a rate-based agreement and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Performance Measures and Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
- 4.1. **Federal Funds: \$72,000.00** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) (CFDA 93.958) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Community Mental Health Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
- 4.2. **Other Funds: \$262,894.00** in State funds are provided for funding of other items in the program budget.

**AMEND Agreement Section 12 (b), Indemnification:**

b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

To the extent permitted by applicable law, SUBRECIPIENT shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon, the Oregon Health Authority, COUNTY, and their officers, employees, and agents 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 operations of SUBRECIPIENT, including but not limited to the activities of SUBRECIPIENT or its officers, employees, subcontractors or agents under this AGREEMENT.

Subrecipients that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of SUBRECIPIENT or any of the officers, agents, employees or subcontractors of SUBRECIPIENT ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by SUBRECIPIENT from and against any and all Claims.

**To Read:**

- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to **(1) SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control; or (2) SUBRECIPIENT's breach of this Agreement including, but not limited to, any claims by the State of Oregon regarding misuse of grant funds provided under this Agreement.**

SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

To the extent permitted by applicable law, SUBRECIPIENT shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon, the Oregon Health Authority, COUNTY, and their officers, employees, and agents 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 operations of SUBRECIPIENT, including but not limited to the activities of SUBRECIPIENT or its officers, employees, subcontractors or agents under this Agreement.

Subrecipients that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of SUBRECIPIENT or any of the officers, agents, employees or subcontractors of SUBRECIPIENT ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by SUBRECIPIENT from and against any and all Claims.

**AMEND TO ADD to Exhibit A, Subrecipient Scope of Work:**

**6. Additional Requirements**

***Subject to the terms and conditions of this Agreement, SUBRECIPIENT may use grant funds to compensate for residential housing services provided to SUBRECIPIENT's clients. Such compensation must be at the applicable state rate, and only to the extent permitted by applicable law. Such compensation shall only be for housing, and not for any mental health or other medical treatment services.***

**AMEND Exhibit B, Subrecipient Program Budget:**

| <b>SERVICE ELEMENT</b> | <b>NOT TO EXCEED VALUE</b> |
|------------------------|----------------------------|
| MHS 20 – Federal Funds | \$72,000.00                |
| MHS 28 – State Funds   | \$250,666.00               |
| <b>TOTAL</b>           | <b>\$322,666.00</b>        |

**TO READ:**

| <b>SERVICE ELEMENT</b> | <b>NOT TO EXCEED VALUE</b> |
|------------------------|----------------------------|
| MHS 20 – Federal Funds | \$72,000.00                |
| MHS 28 – State Funds   | <b>\$262,894.00</b>        |
| <b>TOTAL</b>           | <b>\$334,894.00</b>        |

**AMEND Section 4 of Exhibit D, Required Financial Reporting and Reimbursement Request:**

4. Request for Reimbursement shall be submitted electronically to:

[BHAP@clackamas.us](mailto:BHAP@clackamas.us), [NBenner@clackamas.us](mailto:NBenner@clackamas.us), and [MWestbrook@clackamas.us](mailto:MWestbrook@clackamas.us)

Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

**TO READ:**

4. Request for Reimbursement shall be submitted electronically to:

[BHAP@clackamas.us](mailto:BHAP@clackamas.us), [JThomas@clackamas.us](mailto:JThomas@clackamas.us), and [MWestbrook@clackamas.us](mailto:MWestbrook@clackamas.us)

Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

**AMEND Incident Reporting Section of Exhibit E, Reporting:**

**INCIDENT REPORTING**

Clackamas County BHD defines a reportable incident as an event in which an individual is believed to have been abused, endangered, or significantly harmed. A reportable incident may include, but is not limited to, any serious incident that presents a risk to health and safety and may be a result of staff action or inaction, incidents between individuals, incidents that occur on passes, or incidents of self-harm where medical attention is necessary. Any such incident involving a client that occurs on SUBRECIPIENT's premise, with SUBRECIPIENT staff, or during the course of treatment by SUBRECIPIENT must be reported.

Examples of reportable incidents include:

- Seclusion and/or restraint resulting in physical injury
- Runaway from program or while on pass
- Medication error, which a reasonable person would conclude might have resulted in a death, serious injury or hospitalization. {Notes: Medication non-compliance does not have to be reported

unless there is a resulting reportable event; medications missed while hospitalized does not have to be reported}

- **Severe property damage**
- **Serious injury resulting in medical attention**
- **Significant suicide attempt resulting in medical attention**
- **Death of a client/resident**
- **Death or serious injury of another individual caused by the client/resident**
- **Physical attack on another individual resulting in a physical injury**
- **Mandatory reporting event**
- **Allegation of abuse by program staff {See OAR 407-045-0290(5)}**

#### Procedure

- 1) **Items above in bold, italicized lettering require immediate notification to COUNTY Program Supervisor when such an incident occurs.**
- 2) SUBRECIPIENT shall send via secure email a copy of the incident report with twenty-four (24) hours, using the following address:

**Secure email:** [NBenner@clackamas.us](mailto:NBenner@clackamas.us)

- 3) Be advised that submitting an incident report **does not fulfill abuse reporting obligations**. Depending on the nature of the incident, an abuse report may also be required per the Abuse Reporting requirement noted above and in this Agreement. In the event of a death in which there is reasonable cause to believe that an adult has died as a result of abuse, the provider must also:
  - A. **Notify OHA/Addictions and Mental Health Division of the incident (855-503-SAFE).**
  - B. **Report the death to Clackamas County's Mental Health Abuse Investigators at (503) 650-3000.** The State of Oregon, Addictions and Mental Health Division requires Clackamas County Adult Protective Service Investigators to investigate any death of a client receiving mental health services.
  - C. **Submit evidence to the Clackamas County Adult Protective Service Investigator that the report has been made by sending, via secure email, a copy of the confirmed fax which notified the Division of the reportable incident. The report is to be sent to the email address above.**

#### TO READ:

#### INCIDENT REPORTING

Clackamas County BHD defines a reportable incident as an event in which an individual is believed to have been abused, endangered, or significantly harmed. A reportable incident may include, but is not limited to, any serious incident that presents a risk to health and safety and may be a result of staff action or inaction, incidents between individuals, incidents that occur on passes, or incidents of self-harm where medical attention is necessary. Any such incident involving a client that occurs on SUBRECIPIENT's premise, with SUBRECIPIENT staff, or during the course of treatment by SUBRECIPIENT must be reported.

Examples of reportable incidents include:

- **Seclusion and/or restraint resulting in physical injury**

- Runaway from program or while on pass
- Medication error, which a reasonable person would conclude might have resulted in a death, serious injury or hospitalization. {Notes: Medication non-compliance does not have to be reported unless there is a resulting reportable event; medications missed while hospitalized does not have to be reported}
- **Severe property damage**
- **Serious injury resulting in medical attention**
- **Significant suicide attempt resulting in medical attention**
- **Death of a client/resident**
- **Death or serious injury of another individual caused by the client/resident**
- **Physical attack on another individual resulting in a physical injury**
- **Mandatory reporting event**
- **Allegation of abuse by program staff {See OAR 407-045-0290(5)}**

#### Procedure

- 4) **Items above in bold, italicized lettering require immediate notification to COUNTY Program Supervisor when such an incident occurs.**
- 5) SUBRECIPIENT shall send via secure email a copy of the incident report with twenty-four (24) hours, using the following address:

**Secure email: [JThomas@clackamas.us](mailto:JThomas@clackamas.us)**

- 6) Be advised that submitting an incident report **does not fulfill abuse reporting obligations**. Depending on the nature of the incident, an abuse report may also be required per the Abuse Reporting requirement noted above and in this Agreement. In the event of a death in which there is reasonable cause to believe that an adult has died as a result of abuse, the provider must also:
  - A. Notify OHA/Addictions and Mental Health Division of the incident **(855-503-SAFE)**.
  - B. Report the death to Clackamas County's Mental Health Abuse Investigators at **(503) 650-3000**. The State of Oregon, Addictions and Mental Health Division requires Clackamas County Adult Protective Service Investigators to investigate any death of a client receiving mental health services.
  - C. Submit evidence to the Clackamas County Adult Protective Service Investigator that the report has been made by sending, via secure email, a copy of the confirmed fax which notified the Division of the reportable incident. The report is to be sent to the email address above.

**SIGNATURE PAGE**

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

**CASCADIA BEHAVIORAL HEALTHCARE,  
INC.**

**COUNTY OF CLACKAMAS  
BOARD OF COMMISSIONERS**

Derald Walker 4/27/2021  
Authorized Signature Date

- Commissioner: Tootie Smith, Chair
- Commissioner: Sonya Fischer
- Commissioner: Paul Savas
- Commissioner: Martha Schrader
- Commissioner: Mark Shull

Derald Walker, PhD / President-CEO  
Name / Title (Printed)

**Signing on behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director Date  
Health, Housing and Human Services

Approved as to form:

\_\_\_\_\_  
County Counsel Date



June 10, 2021

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #02 to a Contract with Lines for Life for Crisis Line Services

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | Contractor provides behavioral health crisis line intervention and triage call coverage services.   |
| <b>Dollar Amount and Fiscal Impact</b> | Amendment adds \$34,151; increasing the contract maximum value to \$167,351.  |
| <b>Funding Source</b>                  | No County General Funds are involved. Funding provided through Oregon Health Plan (OHP).  |
| <b>Duration</b>                        | Effective July 1, 2021 through September 30, 2021.  |
| <b>Previous Board Action</b>           | No previous Board action. County Administrator reviewed and approved Amendment #01 January 7, 2021.   |
| <b>Counsel Review</b>                  | Reviewed and approved May 17, 2021 (KR)   |
| <b>Procurement Review</b>              | Was this item reviewed by Procurement? No.<br>This Amendment extends the term of the Contract to allow for the completion of a formal procurement process for these services.   |
| <b>Strategic Plan Alignment</b>        | 1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals.<br>2. Ensure safe, healthy and secure communities. |
| <b>Contact Person</b>                  | Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305   |
| <b>Contract No.</b>                    | 9710  |

**BACKGROUND:**

The Behavioral Health Division (BHD) of the Health, Housing & Human Services Department (H3S) requests the approval of Amendment #02 to Contract #9710 with Lines for Life for behavioral health crisis line intervention and triage call coverage services.

Lines for Life is a regional non-profit dedicated to preventing substance abuse and suicide. Offering help and hope to individuals and communities, and promoting mental health for all. Through education, training, and advocacy Lines for Life strives to prevent issues of substance abuse, mental illness, and thoughts of suicide to reach crisis levels.

This Amendment, reviewed and approved by County Counsel on date, extends the term of the Contract three (3) months to allow for the completion of a formal procurement (Request for Proposals) for these services. The Amendment will ensure that there is no gap in services prior to a new contract being issued. This Amendment is effective July 1, 2020 and terminates on September 30, 2021, and adds \$34,151, increasing the Contract's maximum value to \$167,351.

*Healthy Families. Strong Communities.*

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

Clackamas.us/h3s

**RECOMMENDATION:**

Staff recommends approval of this Amendment.

Respectfully submitted,

*Mary W. Wainwright for  
Rodney A. Cook*

Rodney Cook, Interim Director  
Health, Housing & Human Services Department

# Contract Transmittal Form

## Health, Housing & Human Services Department

|                             |   |  |
|-----------------------------|---|--|
| <b>H3S Contract #:</b> 9710 | <b>Division:</b> BH                       | <input type="checkbox"/> Subrecipient                        |
| <b>Board Order #:</b>       | <b>Contact:</b> Russell, Angela           | <input type="checkbox"/> Revenue                             |
|                             | <b>Program Contact:</b> Anderson, Jeffrey | <input checked="" type="checkbox"/> Amend # 2 \$ \$34,151.00 |
|                             |   | <input checked="" type="checkbox"/> Procurement Verified     |
|                             |   | <input checked="" type="checkbox"/> Aggregate Total Verified |

Non BCC Item     BCC Agenda    **Date:** Thursday, June 10, 2021

**CONTRACT WITH:** Lines for Life

**CONTRACT AMOUNT:** \$167,351.00

### TYPE OF CONTRACT

- |   |   |
|---|---|
| <input type="checkbox"/> Agency Service Contract        | <input type="checkbox"/> Memo of Understanding/Agreement                        |
| <input type="checkbox"/> Construction Agreement         | <input checked="" type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement    | <input type="checkbox"/> Property/Rental/Lease                                  |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off  |

### DATE RANGE

- |  |   |
|--|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____        | <input type="checkbox"/> 4 or 5 Year _____ - _____          |
| <input type="checkbox"/> Upon Signature _____ - _____          | <input type="checkbox"/> Biennium _____ - _____             |
| <input checked="" type="checkbox"/> Other 7/1/2021 - 9/30/2021 | <input type="checkbox"/> Retroactive Request? _____ - _____ |

### INSURANCE What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Business Automobile Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Professional Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by: Rastetter, Kathleen    Date Approved: Monday, May 17, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

Date: \_\_\_\_\_

|                   |                      |
|-------------------|----------------------|
| H3S Admin<br>Only | Date Received: _____ |
|                   | Date Signed: _____   |
|                   | Date Sent: _____     |

**Contract Amendment #02**  
**Clackamas County, acting through its Health, Housing, and Human Services Department,**  
**Behavioral Health Division**

H3S Contract Number: 9710 Board Agenda Number: \_\_\_\_\_

and Board date: \_\_\_\_\_

Division: Behavioral Health

Amendment No. 02

Contractor: Lines for Life

Amendment Requested By: Mary Rumbaugh, Director, Behavioral Health Division

Changes:            Scope of Services            Contract Budget/Compensation  
                          Contract Term                Other \_\_\_\_\_

---

This Amendment #02 is entered into between Lines for Life (“Contractor”), and Clackamas County, acting through its Health, Housing and Human Services Department, Behavioral Health Division (“County”) and shall become part of the contract entered into between both parties on July 17, 2020 (“Contract”), as amended.

**Justification for Amendment:**

This Contract provides behavioral health crisis line intervention and triage call coverage services.

This Amendment #02 **extends the contract term through September 30, 2021**, and **adds \$34,151.00** to the value of the Contract. The new maximum contract value is \$167,351.00.

This Amendment #02 is effective **upon signature** and continues through **September 30, 2021**.

Except as amended hereby, all other terms and conditions of the contract remain in full force and effect. The County has identified the changes with ***“bold/italic”*** font for easy reference.

---

**AMEND Article I, Section 1 of the Contract:**

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2021**.

**TO READ:**

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on *September 30, 2021*.

**AMEND Article I, Section 3 of the Contract:**

3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **one hundred thirty-three thousand two hundred dollars (\$133,200.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a fixed fee basis in accordance with the rates and costs specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.

**TO READ:**

3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **one hundred sixty-seven thousand three hundred fifty-one dollars (\$167,351.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a fixed fee basis in accordance with the rates and costs specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.

**AMEND Exhibit B, Section D of the Contract:**

**D. Hours of Operation**

County crisis line shall be forwarded to Contractor by County staff per the following schedule:

| <b>Monday, Tuesday, Wednesday, Thursday: 6:30 p.m. through 8:45 a.m.</b> |   |                     |
|--|---|---------------------|
| <b>Friday: 6:30 p.m. through 10:30 a.m.</b>                              |   |                     |
| <b>Saturday: 6:30 p.m. through 8:45 a.m. Monday</b>                      |   |                     |
| <b>Sunday: Clackamas Mental Health Center CLOSED</b>                     |   |                     |
| <b>HOLIDAYS</b>  | <b>CONTRACTOR HOURS</b>   | <b>CENTER HOURS</b> |
| Independence Day, July 4   | Midnight – 10:30 a.m.; 3:30 p.m. Saturday, July 4 through 8:45 a.m. Monday, July 6          | 11 a.m. – 4 p.m.    |
| Labor Day, September 7   | Midnight – 10:30 a.m.; 6:30 p.m. Monday, September 7 through 8:45 a.m. Tuesday, September 8 | 10 a.m. – 7 p.m.    |

**Lines for Life #9710**

*Professional Services Contract – Amendment #02*

|                                    |  |                         |
|------------------------------------|--|-------------------------|
| Veteran’s Day, November 11         | Midnight – 10:30 a.m.; 6:30 p.m. Wednesday, November 11 through 8:45 a.m. Thursday, November 12    | 10 a.m. – 7 p.m.        |
| Thanksgiving Day, November 26      | Midnight – 11:30 a.m.; 3:30 p.m. Thursday, November 26 through 8:45 a.m. Friday, November 27       | 11 a.m. – 4 p.m.        |
| Christmas Day, December 25         | Midnight – 11:30 a.m.; 3:30 p.m. Friday, December 25 through 8:45 a.m. Saturday, December 26       | 11 a.m. – 4 p.m.        |
| <i>New Year’s Day, January 1</i>   | <i>Midnight – 11:30 a.m.; 3:30 p.m. Friday, January 1 through 10:30 a.m. Saturday, January 2</i>   | <i>11 a.m. – 4 p.m.</i> |
| <i>MLK Day, January 18</i>         | <i>Midnight – 10:30 a.m.; 6:30 p.m. Monday, January 18 through 8:45 a.m. Tuesday, January 19</i>   | <i>10 a.m. – 7 p.m.</i> |
| <i>Presidents Day, February 15</i> | <i>Midnight – 10:30 a.m.; 6:30 p.m. Monday, February 15 through 8:45 a.m. Tuesday, February 16</i> | <i>10 a.m. – 7 p.m.</i> |
| <i>Memorial Day, May 31</i>        | <i>Midnight – 10:30 a.m.; 6:30 p.m. Monday, May 31 through 8:45 a.m. Tuesday, June 1</i>           | <i>10 a.m. – 7 p.m.</i> |

Upon notification from County, Contractor will allow County to forward the Crisis Line to Contactor outside of the above scheduled times.

**TO READ:**

**D. Hours of Operation**

County crisis line shall be forwarded to Contractor by County staff per the following schedule:

|  |   |                     |
|--|---|---------------------|
| <b>Monday, Tuesday, Wednesday, Thursday: 6:30 p.m. through 8:45 a.m.</b> |   |                     |
| <b>Friday: 6:30 p.m. through 10:30 a.m.</b>                              |   |                     |
| <b>Saturday: 6:30 p.m. through 8:45 a.m. Monday</b>                      |   |                     |
| <b>Sunday: Clackamas Mental Health Center CLOSED</b>                     |   |                     |
| <b>HOLIDAYS</b>  | <b>CONTRACTOR HOURS</b>   | <b>CENTER HOURS</b> |
| Independence Day, July 4, 2020   | Midnight – 10:30 a.m.; 3:30 p.m. Saturday, July 4 through 8:45 a.m. Monday, July 6              | 11 a.m. – 4 p.m.    |
| Labor Day, September 7, 2020   | Midnight – 10:30 a.m.; 6:30 p.m. Monday, September 7 through 8:45 a.m. Tuesday, September 8     | 10 a.m. – 7 p.m.    |
| Veteran’s Day, November 11   | Midnight – 10:30 a.m.; 6:30 p.m. Wednesday, November 11 through 8:45 a.m. Thursday, November 12 | 10 a.m. – 7 p.m.    |
| Thanksgiving Day, November 26  | Midnight – 11:30 a.m.; 3:30 p.m. Thursday, November 26 through 8:45 a.m. Friday, November 27    | 11 a.m. – 4 p.m.    |
| Christmas Day, December 25   | Midnight – 11:30 a.m.; 3:30 p.m. Friday, December 25 through 8:45 a.m. Saturday, December 26    | 11 a.m. – 4 p.m.    |
| New Year’s Day, January 1  | Midnight – 11:30 a.m.; 3:30 p.m. Friday, January 1 through 10:30 a.m. Saturday, January 2       | 11 a.m. – 4 p.m.    |

**Lines for Life #9710**

*Professional Services Contract – Amendment #02*

|   |  |                             |
|---|--|-----------------------------|
| MLK Day,<br>January 18                      | Midnight – 10:30 a.m.; 6:30 p.m. Monday, January 18<br>through 8:45 a.m. Tuesday, January 19         | 10 a.m. – 7<br>p.m.         |
| Presidents Day,<br>February 15              | Midnight – 10:30 a.m.; 6:30 p.m. Monday, February 15<br>through 8:45 a.m. Tuesday, February 16       | 10 a.m. – 7<br>p.m.         |
| Memorial Day,<br>May 31                     | Midnight – 10:30 a.m.; 6:30 p.m. Monday, May 31<br>through 8:45 a.m. Tuesday, June 1                 | 10 a.m. – 7<br>p.m.         |
| <i>Juneteenth, June<br/>19, 2021</i>        | <i>Midnight – 10:30 a.m.; 6:30 p.m. Friday, June 18<br/>through 10:30 a.m. Saturday, June 19</i>     | <i>10 a.m. – 7<br/>p.m.</i> |
| <i>Independence<br/>Day, July 4, 2021</i>   | <i>Midnight – 11:30 a.m.; 3:30 p.m. Monday, July 5<br/>through 8:45 a.m. Tuesday, July 6</i>         | <i>11 a.m. – 4<br/>p.m.</i> |
| <i>Labor Day,<br/>September 6,<br/>2021</i> | <i>Midnight – 10:30 a.m.; 6:30 pm Monday, September 6<br/>through 8:45 a.m. Tuesday, September 7</i> | <i>10 a.m. – 7<br/>p.m.</i> |

Upon notification from County, Contractor will allow County to forward the Crisis Line to Contactor outside of the above scheduled times.

**AMEND Exhibit D, Section a. of the Contract:**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$133,200.00**.

Base rate of \$6,170 per month for up to three hundred (300) individual calls.

Calls in excess of three hundred (300) per month shall be compensated at \$22.57 per call.

**TO READ:**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$167,351.00**.

Base rate of \$6,170 per month for up to three hundred (300) individual calls.

Calls in excess of three hundred (300) per month shall be compensated at \$22.57 per call.

[Signature page follows]

**Lines for Life #9710**

*Professional Services Contract – Amendment #02*

Page 5 of 5

**SIGNATURE PAGE**

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

**LINES FOR LIFE**



5/17/21

Authorized Signature

Date

David E. Westbrook

Name / Title (Printed)

126379-14

Oregon Business Registry #

Domestic Nonprofit Corporation / Oregon

Entity Type / State of Formation

**CLACKAMAS COUNTY  
BOARD OF COMMISSIONERS**

Commissioner: Tootie Smith, Chair

Commissioner: Sonya Fischer

Commissioner: Paul Savas

Commissioner: Martha Schrader

Commissioner: Mark Schull

Tootie Smith, Chair

Date

Approved as to form:



County Counsel

5/17/2021

Date



June 10, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment #20 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | Amendment #20 amends exhibit A to add the federal award information datasheet.  |
| <b>Dollar Amount and Fiscal Impact</b> | Contract maximum value remains the same \$19,499,741.00   |
| <b>Funding Source</b>                  | Funding through the State - No County General Funds are involved.   |
| <b>Duration</b>                        | Effective March 1, 2021 and terminates on June 30, 2021   |
| <b>Previous Board Action</b>           | The Board previously reviewed and approved this agreement on June 20, 2019, Agenda item 062019-A1, September 5, 2019, Agenda item 090519-A1, September 26, 2019, Agenda item 092619-A5, October 24, 2019, Agenda item 102419-A5, October 31, 2019, Agenda item 103119-A3, December 12, 2019, Agenda item 121219-A2, January 8, 2020, Agenda item 010920-A8, March 26, 2020, Agenda Item 032620-A5, April 23, 2020, June 25, 230, Agenda item 062520-A8, October 22, 2020, Agenda item 102220-A1, January 14, 2021, Agenda item 011421-A3, January 28, 2021, Agenda item 012821-A8, February 25, 2021, Agenda item-A6, April 29, 2021, Agenda item A-4 |
| <b>Strategic Plan Alignment</b>        | 1. Improved Community Safety and Health<br>2. Ensure safe, healthy and secure communities   |
| <b>Counsel Review</b>                  | County counsel has reviewed and approved this document on May 10, 2021 KR   |
| <b>Procurement Review</b>              | 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/><br>2. This item is an IGA  |
| <b>Contact Person</b>                  | Philip Mason-Joyner, Public Health Director – (503)742-5956   |
| <b>Contract No.</b>                    | 9329-20   |

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #20 amends exhibit A to add the federal award information datasheet. Contract maximum value remains the same \$19,499,741.00

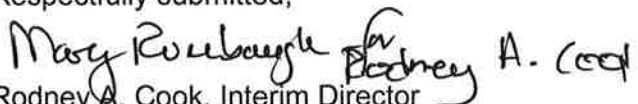
This contract is effective March 1, 2021 and continues through June 30, 2021.

Page 2 Staff Report  
June 10, 2021  
Agreement #9329-20

**RECOMMENDATION:**

Staff recommends the Board approval of this Amendment.

Respectfully submitted,

  
Rodney A. Cook, Interim Director  
Health, Housing, and Human Services

Agreement #159803



**TWENTIETH AMENDMENT TO OREGON HEALTH AUTHORITY  
2019-2021 INTERGOVERNMENTAL AGREEMENT FOR THE  
FINANCING OF PUBLIC HEALTH SERVICES**

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](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Twentieth Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2019, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Clackamas County.

**RECITALS**

WHEREAS, OHA and LPHA wish to modify the Table in the definition for Program Element of Exhibit A of the Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

**AGREEMENT**

1. This Amendment is effective on the first day of the of the month noted in the Issue Date section of Exhibit C Financial Assistance Award FY21.
2. Exhibit A “Definitions”, Section 18 “Program Element” is amended to add Program Element titles and funding source identifiers as follows:

| <b>PE NUMBER AND TITLE<br/>• SUB-ELEMENT(S)</b>  | <b>FUND TYPE</b> | <b>FEDERAL AGENCY/<br/>GRANT TITLE</b>   | <b>CFDA#</b> | <b>HIPAA RELATED<br/>(Y/N)</b> | <b>SUB-RECIPIENT<br/>(Y/N)</b> |
|--|------------------|--|--------------|--------------------------------|--------------------------------|
| <u>PE 01-07</u> ELC ED Contact Tracing           | FF               | CDC/Epidemiology and Laboratory Capacity | 93.323       | N                              | Y                              |
| <u>PE01-08</u> COVID Wrap Direct Client Services | FF               | CDC/Epidemiology and Laboratory Capacity | 93.323       | N                              | Y                              |
| <u>PE01-09</u> COVID-19 Active Monitoring - ELC  | FF               | CDC/Epidemiology and Laboratory Capacity | 93.323       | N                              | Y                              |
| <u>PE01-10</u> OIP – CARES                       | FF               | Immunization and Vaccines for Children   | 93.268       | N                              | Y                              |

**OHA - 2019-2021 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES**

- 3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
- 4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
- 5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
- 6. The parties expressly ratify the Agreement as herein amended.
- 7. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

**8. Signatures.**

**STATE OF OREGON ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY (OHA)**

By: \_\_\_\_\_

Name: /for/ Carole L. Yann

Title: Director of Fiscal and Business Operations

Date: \_\_\_\_\_

**CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY**

*Approved by Wendy Johnson, Senior Assistant Attorney General on July 9, 2020. Copy of emailed approval on file at OHA, OC&P.*

**REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION**

By: \_\_\_\_\_

Name: Derrick Clark (or designee)

Title: Program Support Manager

Date: \_\_\_\_\_

June 10, 2021

Board of County Commissioner  
 Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority (OHA) for access to the electronic referral system, Oregon Tobacco Quit Line.

|  |  |
|--|--|
| <b>Purpose/Outcomes</b>                | Oregon Health Authority (OHA) will facilitate adding regional partner health centers to their electronic referral system, Oregon Tobacco Quit Line. This includes: Clackamas Health Centers, Multnomah County Health System, Neighborhood Health Center, and Virginia Garcia Memorial Health Center. |
| <b>Dollar Amount and Fiscal Impact</b> | Contract maximum value is \$40,000.00.   |
| <b>Funding Source</b>                  | Funding through Health Share of Oregon Grant - No County General Funds are involved.   |
| <b>Duration</b>                        | Effective upon signature and terminates on December 31, 2021   |
| <b>Previous Board Action</b>           | No previous Board action   |
| <b>Strategic Plan Alignment</b>        | 1. Improved Community Safety and Health<br>2. Ensure safe, healthy and secure communities  |
| <b>Counsel Review</b>                  | County counsel has reviewed and approved this document on April 5, 2021 KR   |
| <b>Procurement Review</b>              | 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/><br>2. This item is an IGA   |
| <b>Contact Person</b>                  | Philip Mason-Joyner, Public Health Director – (503)742-5956  |
| <b>Contract No.</b>                    | 10096  |

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval an Intergovernmental Agreement with the Oregon Health Authority to facilitate adding regional partner health centers to their electronic referral system, Oregon Tobacco Quit Line.

Clackamas County Public Health is partnering with Clackamas Health Centers, Multnomah County Health System, Neighborhood Health Center, and Virginia Garcia Memorial Health Center to strengthen the Tobacco cessation initiative. This project is funded by a grant from Health Share of Oregon.

Contract maximum value is \$40,000.00.

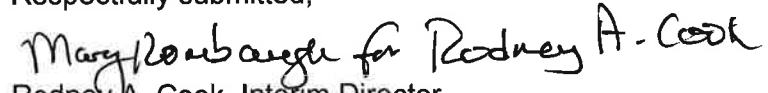
Page 2 Staff Report  
June 10, 2021  
Agreement #10096

This contract is effective upon signature and continues through December 31, 2021.

**RECOMMENDATION:**

Staff recommends the Board approval of this IGA.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary Roubange for Rodney A. Cook". The signature is written in a cursive style.

Rodney A. Cook, Interim Director  
Health, Housing, and Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

H3S Contract #: 10096

Division: PH

Subrecipient

Board Order #:

Contact: Weber, Jeanne

Revenue

Program Contact:

Amend # \$

Zentner, Jamie

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

Date: Thursday, June 10, 2021

**CONTRACT WITH:** OR-Oregon Health Authority

**CONTRACT AMOUNT:** \$40,000.00

### TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

### DATE RANGE

Full Fiscal Year

4 or 5 Year

Upon Signature - 12/31/2021

Biennium

Other

Retroactive Request?

### INSURANCE What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Business Automobile Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Professional Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No

Yes (must have CC approval-next box)

N/A

(Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by Kathleen Rastetter

Date Approved: Monday, April 5, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

Date: \_\_\_\_\_

H3S Admin  
Only

Date Received: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Sent: \_\_\_\_\_

## AGREEMENTS/CONTRACTS

|   |  |
|---|--|
| X | New Agreement/Contract                       |
|   | Amendment/Change Order Original Number _____ |

**ORIGINATING COUNTY**

**DEPARTMENT: Health, Housing Human Services  
Public Health**

**PURCHASING FOR: Contracted Services**

**OTHER PARTY TO**

**CONTRACT/AGREEMENT: OR-Oregon Health Authority**

**BOARD AGENDA ITEM**

**NUMBER/DATE:**

**DATE: 6/10/2021**

**PURPOSE OF**

**CONTRACT/AGREEMENT:** OHA will coordinate with Clackamas County Public Health Division to implement electronic referrals from four health centers to the Oregon Tobacco Quit Line. The health centers are Clackamas Health Centers, Multnomah County Health System, Neighborhood Health Center, Virginia Garcia Memorial Health Center.

**H3S CONTRACT NUMBER: 10096**



**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND OREGON HEALTH AUTHORITY**

OHA #170053-0  
Agreement #10096

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Oregon Health Authority (Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

*The County desires to contract with the agency to coordinate the connection of regional partners to the Oregon Tobacco Quit Line.*

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

**TERMS**

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2021, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed forty thousand dollars (\$40,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit invoices for Work performed at the beginning of each electronic referral project, and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties**
  - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
  - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this

Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**6. Termination.**

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**7. Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its

officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

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

8. **Insurance** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Jamie Zentner or their designee will act as liaison for the County.

**Contact Information:**

503-758-4143 - [JZentner@clackamas.us](mailto:JZentner@clackamas.us)

Hilde Hinkel or their designee will act as liaison for the Agency.

**Contact Information:**

(971) 673-9182 - [janet.h.hinkel@state.or.us](mailto:janet.h.hinkel@state.or.us)

## 10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this

Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.

- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent

specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

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

**IN WITNESS HEREOF,** the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County**

**Oregon Health Authority**

\_\_\_\_\_  
Chair, Board of County Commissioners

*Tim D. Noe*  
\_\_\_\_\_  
Tim D. Noe, Center Administrator  
[name/title]

\_\_\_\_\_  
Date

*05/11/21*  
\_\_\_\_\_  
Date

S:\Admin\CONTRACTS\PUBLIC HEALTH\Expense\Oregon Health Authority\Electronic referral to Tobacco Quit Line (OHA)\FY20-21\Contracts\H3SPHOR-OregonHealthAuthority10096.docx

Exhibit A

SCOPE OF WORK

**I. OHA is responsible for:**

1. Coordinating activities with Optum (the Oregon Tobacco Quit Line operator) to ensure completion of the electronic referral system at the level of the Oregon Tobacco Quit Line.
  - a. E-referral process will support bi-directional data exchange between the Oregon Tobacco Quit Line and referring health care professionals at the health centers.
  - b. System will allow electronic sending of referrals to the Quit Line and any outcomes of referrals back to the sending clinic.
2. Coordinating with Optum to determine the appropriate electronic referral process to enable sending of patient data to OHA and delivery of outcome data to the health centers.
  - a. OHA will oversee implementation with Optum until OHA and CCHPD are satisfied with incoming and outgoing data.
    - i. Includes validation of system credentials, confirming required data fields, and testing functionality of the bi-directional system at each stage of implementation.
3. Ensuring Optum uses industry- approved, HIPAA-compliant methods for exchanging protected health information.
  - a. Includes ensuring Optum adheres to the electronic referral guidance recommended by the North American Quitline Consortium.
4. Confirming with Optum that the Quit Line received an actual referral (rather than a test referral).
5. Ensuring continued operation and maintenance of the electronic referral connection at the level of the Oregon Tobacco Quit Line, including annual fees from Optum.

**II. CCPHD is responsible for:**

1. Coordinating with health centers and electronic medical record (EMR) vendor (OCHIN Epic) to ensure completion of the electronic referral system at the level of the clinic serviced by OCHIN.
2. Coordinating with clinics and OCHIN to determine the appropriate electronic referral process to enable sending of patient data to OHA and delivery of outcome data to the health centers.
  - a. CCPHD will oversee implementation with clinics and OCHIN until OHA and CCHPD are satisfied with incoming and outgoing data.
    - i. Includes validation of system credentials, confirming required data fields, and testing functionality of the bi-directional system at each stage of implementation.



3. Ensuring clinics and OCHIN use industry- approved, HIPAA-compliant methods for exchanging protected health information.
4. Confirming with clinics that the referring healthcare professional received the associated, complete outcome report.
5. Maintaining ongoing referrals from clinics, including the connection serviced by OCHIN and associated fees.