



Commissioners encourage public to attend public meeting digitally.

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

AGENDA

***Revised** Added F.1

Wednesday November 25, 2020 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-74

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

***** Wildfire Update**

***** COVID-19 Update**

I. HOUSING AUTHORITY CONSENT AGENDA

1. In the Matter of approval to execute the General Depository Agreement, HUD Form 51999 - HACC

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

1. Recognition of County Surveyor Ray Griffin as 2020 Surveyor of the Year (Cheryl Bell, Department of Transportation)

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

1. Second Reading of Ordinance No. 09-2020, Adding Clackamas County Code Chapter 8.10, Short-Term Rentals to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, Compliance Hearings Officer (Nathan Boderman, County Counsel)
2. Approval of Resolution Authorizing a Financing for New Capital Projects for Surface Water Management Agency of Clackamas County (Nathan Boderman, County Counsel)
3. Approval of Resolution Authorizing a Financing for New Capital Projects Clackamas County Service District No. 1 (Nathan Boderman, County Counsel)
4. Approval of Resolution Authorizing a Financing for New Capital Projects for Tri-City Service District (Nathan Boderman, County Counsel)
5. Approval of Resolution Authorizing a Financing for New Capital Projects for Water Environment Services (Nathan Boderman, County Counsel)

IV. PUBLIC DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Public wishing to comment on a discussion item will be prompted how to do that when the time is right.)*

County Administration

1. Supporting the Construction Career Pathways Program (Tracy Moreland, County Administration)

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

A. Health, Housing & Human Services

1. Approval for a Revenue Agreement with CareOregon for COVID Direct Member Support & Telehealth Infrastructure funding. – *Health Centers*
2. Approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project for Human Immunodeficiency Virus (HIV) Testing and Counseling Services – *Public Health*
3. Approval to Accept Federal Grant Award for a Comprehensive Opioid, Stimulant, and Substance Abuse Site-Based Program Grant (COSSAP – *CFCC*)
4. Amendment #8 to Agreement #7462 a Revenue Agreement with CareOregon for Pharmacist Services to members enrolled with the Oregon Health Plan (OHP) – *Health Centers*

B. Department of Transportation & Development

1. Approval of Contract Amendment No. 2 with the National Safety Council for the purposes of Safe Systems Approach to Rural Road to Zero
2. Approval of an Intergovernmental Agreement with the Oregon Department of Transportation for Right of Way Services for the South End Road at Milepost 3.8 Project
3. Approval of a Contract with DiExSys, LLC for Traffic Safety Software – *Procurement*

C. Business & Community Services

1. A Board Order Approving Property Disposition Procedures Amendment and Property Control Transfer of Korner Park Property from Business and Community Services (BCS) to Clackamas County Department of Transportation and Development (DTD)

D. Technology Services

1. Approval for a Service Level Agreement with Cascade Utilities Inc for a connection to Government Camp.
2. Approval for a Service Level Agreement with OHSU for a dark fiber connection.

E. Juvenile Department

1. Approval of Amendment #9 Intergovernmental Agreement with Multnomah County Assessment and Evaluation for Assessment and Evaluation Beds for Youth

***F. County Administration**

- *1. Approval of a Contract with Hawkins Delafield & Wood, LLP to serve as a P3 Legal Advisor - *Procurement*

VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of an Intergovernmental Agreement Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park

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

VIII. COUNTY ADMINISTRATOR UPDATE

IX. COMMISSIONERS COMMUNICATION

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

November 25, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

In the Matter of approval to execute the General Depository Agreement, HUD Form 51999

Purpose/Outcomes	Approval to execute HUD Form 51999, General Depository Agreement
Dollar Amount and Fiscal Impact	\$0
Funding Source(s)	U.S. Department of Housing and Urban Development No County General Funds are involved
Duration	Nov 20, 2020 – until terminated
Previous Board Action	Last signed February, 2018
Strategic Plan Alignment	1. Efficient and effective services 2. Build public trust through good government
Counsel Review	n/a
Procurement Review	n/a
Contact Person	Jill Smith, HACC Executive Director (503) 742-5336
Contract Number	n/a

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing & Human Services Department requests approval to execute a General Depository Agreement. This is a U.S. Department of Housing & Urban Development (HUD) required agreement between the Housing Authority of Clackamas County and Wells Fargo.

HACC's Annual Contributions Contract (ACC) with HUD requires HACC to deposit all program funds under an ACC in accordance with the terms of a General Depository Agreement (GDA), HUD Form 51999. The GDA is a HUD form that is executed between HACC and Wells Fargo. The GDA requires Wells Fargo to continuously and fully (100%) secure all deposits regardless of type that are in excess of federally insured limits, as well as set limits on the type of investments that can be made with ACC funds.

RECOMMENDATION:

Staff recommends the Housing Authority Board Chair and Secretary sign the document necessary to execute the agreement.

Respectfully submitted,

Rodney A. Cook, H3S Deputy –for
Richard Swift, Director
Health, Housing and Human Services

Public reporting burden for this collection of information is estimated to average 1 hour per response. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. HUD will use this information to ensure PHAs use all Program Receipts received from HUD or otherwise associated with public housing funds for purposes of public housing, by requiring such financial assistance to be deposited into interest-bearing accounts at certain financial institutions. The information requested does not lend itself to confidentiality.

This Agreement, entered into this 10th day of November, 2020 by and between Housing Authority of Clackamas County (herein called the "HA"), a duly organized and existing public body corporate and politic of the County of Clackamas and Wells Fargo Bank (herein called the "Depository"), located at 301 S Tryon St, 7th Floor, MAC D1129-072, Charlotte, NC 28282-1915, Attn: DACA Team.

Witnesseth:

Whereas, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more Annual Contributions Contracts (herein called the "ACC" with the HA for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC 1437, et seq.); and

Whereas, under the terms of the ACC the HA is required to select as depositories of its funds, financial institutions whose deposits or accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF) as long as this Agreement is in force and effect.

Now Therefore, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by the FDIC Corporation or NCUSIF.
2. All monies deposited by the HA with the Depository shall be credited to the HA in a separate interest-bearing deposit or interest-bearing accounts, designated 3547918999 checking; 3293267096 money market; 6275442009 development; 1739242152 Escrow.

Accounts" (herein the "Accounts"). Any portion of HA Funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD in a notice. Collateralization is required on a daily basis at the end of the business day. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. The HA shall have possession of the securities (or the HA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by safe keeping receipt and a written bailment for hire contract) and will be maintained for the full term of deposit. The Depository may substitute other securities as collateral to equal or increase the value. If the HA is an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.

3. Except as stated in Paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase investment securities with monies from the Accounts or to sell securities, if such order or directive is in writing and signed on behalf of the HA by an officer or member designated by resolution of the Board of Directors of the HA to have such authority. To assist the Depository in its obligation, the HA shall furnish the Depository with a certified copy of the resolution.

4. Any securities received from the HA or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safe-keeping for the HA until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Account upon receipt

5. If the Depository receives written notice from HUD that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the HA from said Accounts until the Depository is authorized to do so by written notice from HUD.

6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the ACC, and shall be under no duty to investigate or determine whether any action taken by either the HA or HUD in respect of the Accounts are consistent with or are authorized by the ACC or whether either HA or HUD is in default under the provisions of the ACC. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed

7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the HA and HUD. This Agreement may be terminated by either party hereto upon thirty days' written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this

Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in Paragraph 5.

8. HUD is intended to be a third-party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall provide the HA with remote, electronic access to the Accounts for the purpose of monitoring the crediting or depositing of any monies in the Accounts.

10. The provisions of this Agreement may not be modified by either Party without the prior written approval of HUD

11. **Strike this paragraph if inapplicable:** Previous General Depository or Savings Depository Agreements, if any, entered into between the Depository and the HA are hereby terminated and all monies and securities of the HA on deposit with or held by the Depositories pursuant to the terms of said Agreement shall continue to be held for account of the HA pursuant to and in accordance with the provisions of this Agreement.

12. **Strike this paragraph if paragraph 2 applies:** For use only in certain States that have statutes that prohibit HAs from implementing paragraph 2.

~~At no time shall the HA Funds in the Accounts be permitted to exceed the amount insured by Federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the HA, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the HA or, (b) on behalf of the HA, purchase securities approved for investment by the HA. Such securities shall not be considered to be a part of the Account pursuant to Paragraph 4 hereof but shall be held by the Depository as custodian or trustee for the HA in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated as _____.~~

~~Income or other proceeds from securities held in the Securities Account shall, as directed by the HA, upon receipt, be paid to or on behalf of the HA; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this Paragraph, be deposited in the Accounts. If the Depository receives written notice from HUD pursuant to Paragraph 5 hereof that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any directive from the HA to sell securities, or permit any withdraws by the HA, from the Securities Account until the Depository is authorized to do so by written notice from HUD.~~

~~During the pendency of such restrictions on the Accounts and the Securities Account, the Depository, except as directed in writing by HUD, shall not remit any payment to the HA for the purpose of limiting the amount of funds in the Account to the Insured Amount but shall instead purchase securities approved for investment by the HA and hold such securities in the Securities Account.~~

13. Notice required under the terms and conditions of this agreement shall be deemed to have been given when it made by:

Executive Director, on behalf of Clackamas County Housing Authority
Title Organization (HA)

_____, on behalf of Wells Fargo Bank
Title Organization (Depository)

Portland Field Office, Public Housing Director, on behalf of HUD
Title Organization (HUD)

Notice shall be made in writing. Notice may be delivered in person, by United States Postal Service mail, by receipted commercial mail delivery, by facsimile machine or other electronic means that clearly identifies the sender as one of the persons so authorized in this paragraph. **Notice under the terms of this agreement shall be implemented by the Depository within 24 hours of actual receipt.**

In Witness Whereof, the HA and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

Housing Authority of Clackamas County

HA
(SEAL)

ATTEST:

By _____
Chairman

Secretary

Wells Fargo Bank

Depository
(SEAL)

ATTEST

By _____

November 25, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Recognition of County Surveyor Ray Griffin as 2020 Surveyor of the Year

Purpose/Outcome	To recognize County Surveyor Ray Griffin's selection as 2020 Surveyor of the Year by the Oregon Association of County Engineers and Surveyors (OACES).
Dollar Amount and Fiscal Impact	None
Funding Source	N/A
Duration	N/A
Previous Board Action / Review	None
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> The work of the Surveyor's Office is a core function within the Land Use and Permitting line of business, and key in meeting our mission of providing services so all can experience a safe, thriving and well-planned community.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> The County's goals of growing a vibrant economy and building a strong infrastructure are directly supported by the work performed by the Surveyor's Office, led by Ray Griffin. This work is the foundation of development, and a vital resource for all construction within incorporated and unincorporated Clackamas County.</p>
Counsel Review	N/A
Procurement Review	<p>1. Was the item processed through Procurement? No</p> <p>2. If no, provide brief explanation: Item is a recognition.</p>
Contact Person	Cheryl Bell, Assistant Director, Department of Transportation and Development; 503-260-7124

BACKGROUND:

We are very proud to announce that Ray Griffin, our County Surveyor, has been recognized by his colleagues throughout Oregon as the 2020 Surveyor of the Year.

Ray joined Clackamas County in the Surveyor's Office in 2015 and moved up to the position of County Surveyor in 2016. In that role he supervises a team of eight, including both surveying and public land corner staff. His office oversees the 6,400 land corners in the County, and provides surveying resources within incorporated cities and for the unincorporated areas of the County. In this work the Office annually restores an average of 60 land corners, and facilitates the creation of

1,300 to 1,500 new lots or parcels each year. This work directly supports development within the County and creation of our vibrant community.

In giving Ray this significant recognition, the Oregon Association of County Engineers and Surveyors stated that he is strong in three key components to success: knowledge, dedication and collaboration. Their statement went on to say:

- He has been very active within the organization, often bringing complex and well thought-out questions to the group, as well as always having a solution or opinion for other member's questions.
- Ray works diligently to find ways to improve his county's surveyor's office, and the larger surveyor community is fortunate that he shares his successes with the group. In particular he has spearheaded the adoption of new plotter technology and the acceptance of new drafting media.
- Ray is a respected mentor in the profession and has fostered new budding surveyors in learning the craft through his county's internship program.

RECOMMENDATION

Staff recommends the Board of Commissioners join the Department of Transportation and Development, and his colleagues, in recognizing Clackamas County Surveyor Ray Griffin for his professional expertise and achievements as 2020 Oregon Surveyor of the Year.

Respectfully submitted,

Dan Johnson

Dan Johnson
Director, Department of Transportation & Development

RECORDING MEMO

	New Agreement/Contract
	Amendment/Change/Extension
	Policy Reports
X	Other

ORIGINATING COUNTY

DEPARTMENT:

Transportation & Development – Office of the Director

PURCHASING FOR:

N/A

OTHER PARTY TO

CONTRACT/AGREEMENT:

N/A

BOARD AGENDA DATE: November 25, 2020_____

AGENDA ITEM NUMBER: _____

PURPOSE:

Recognition of County Surveyor Ray Griffin as 2020 Surveyor of the Year

Please return to Lori Phillips, DTD Office of the Director after recording.



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
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Andrew Narus
Sarah Foreman
Assistants

November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Second Reading of Ordinance No. 09-2020, Adding Clackamas County Code Chapter 8.10, *Short-Term Rentals* to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, *Compliance Hearings Officer*

Purpose/Outcomes	<i>To add a new section to County Code implementing regulations related to short-term rentals, together with corresponding conforming amendments.</i>
Dollar Amount and Fiscal Impact	<i>Implementation of this program would require up to two additional full time employees (FTE), plus additional time for the code enforcement Hearing's Officer. Based on cost estimates from DTD and the Finance Department, the total cost to run the STR program annually will be approximately \$320,000.</i>
Funding Source	<i>Anticipated revenue generated from newly adopted registration fees, potential seed money from the Tourism and Cultural Affairs Department. Otherwise, General Fund would cover any shortfalls in funding from these planned funding sources.</i>
Duration	<i>Indefinite.</i>
Previous Board Action	<i>Policy Sessions: March 13, 2019; June 11, 2019; August 6, 2019; September 25, 2019; October 22, 2019; January 14, 2020; March 11, 2020; and October 13, 2020.</i> <i>Public Hearings: January 30, 2020; February 13, 2020; and November 5, 2020.</i>
Strategic Plan Alignment	<i>Ensure safe, healthy and secure communities. Build public trust through good government.</i>
Contact Person	<i>Martha Fritzie - 503-742-4529; Nate Boderman - 503-655-8364</i>
Contract No.	<i>N/A</i>

BACKGROUND:

The Board of County Commissioners held a public hearing to take testimony on the proposed short-term rental ordinance on November 5, 2020. At that hearing, the Board voted to proceed to a second reading of the proposed ordinance, as drafted. Subsequent conversations among the Commissioners occurred at Issues meetings on November 10th and 17th but ultimately resulted in confirmation that staff proceed as directed at the November 5th hearing.

Staff has made no changes to the draft ordinance, which is attached to this staff report and, if approved, would establish a short-term rental (STR) registration and regulation program through the addition of a new section to the County Code: *Section 8.10 Short-Term Rentals*.

To fully implement the proposed STR program, the following actions would need to occur:

- (1) Adoption of Section 8.10, Short-Term Rentals into the County Code, which would house the entire STR registration program, including all rules and regulations specific to STRs; application processes and requirements; and enforcement processes and actions. This action requires a first and second reading of the ordinance enabling the County Code amendment. The proposed effective date for this STR program is July 1, 2021.

Today's hearing constitutes the second reading of this ordinance.

- (2) Adoption of amendments to the county's Zoning & Development Ordinance (ZDO) to eliminate any conflicts between the ZDO and County Code, and, specifically, to clarify where short-term rentals would be allowed. This action requires a public hearing before the Planning Commission, which occurred on November 23, 2020, and a public hearing before the Board, currently scheduled for December 9, 2020.
- (3) Adoption of the fees and fines associated with the STR program into Appendix A & Appendix B of the County Code, respectively. This action requires Board adoption during the budget process that will occur in the spring of 2021.

As noted in previous meetings and hearings, to fully fund the STR program and not rely on any General Fund moneys to support the program, a registration fee would need to be charged. As drafted, implementation of the STR program is anticipated to require a 2-year registration fee of approximately \$800 - \$900 (or \$400-\$450 annually) in order to support the program. Similar to increases in fees for other types of business uses, Staff expect that this fee would be effectively "passed through" to nightly renters and would likely result in a slight increase in nightly rental rates county-wide. For example, if a unit was rented for an average of 3 nights per month (36 nights per year), nightly rates would need to increase by \$11.11 to generate \$400 annually.

Fines for non-compliance would also need to be established. These fines would need to be substantially similar to other fines identified in the County Code for similar types of infractions.

If at today's hearing, the second reading of the proposed short-term rental ordinance, the Board decides to adopt *Section 8.10, Short-Term Rentals* into the County Code, the first of the three steps needed for full adoption of the STR program would be concluded.

RECOMMENDATION:

Staff respectfully requests that the BCC hold this public hearing and approve the amendments included in Ordinance No. 09-2020.

Respectfully submitted,



Nate Boderman
Assistant County Counsel

Attachments:

- A. ORDINANCE NO.09-2020, An Ordinance Adding Clackamas County Code Chapter 8.10, *Short-Term Rentals* to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, *Compliance Hearings Officer*
- B. Written public comments received between 11/5/2020 and 11/16/2020. (*Note: All public comments received since this project began were sent to the BCC previously and are available to view on the project webpage: <https://www.clackamas.us/planning/str>*)

ORDINANCE NO. 09-2020

**An Ordinance Adding
Clackamas County Code Chapter 8.10, *Short-Term Rentals*
and Amending Clackamas County Code Chapter 2.07, *Compliance
Hearings Officer***

WHEREAS, the Board of Commissioners of Clackamas County finds that a property owner's short-term rental of a dwelling unit is an acceptable activity within the unincorporated areas of Clackamas County; and

WHEREAS, the Board finds that it is in the public's interest to regulate short-term rentals in order to enhance public safety and livability; and

WHEREAS, the Board finds that the short-term rental of dwelling units could have negative impacts on the cost of housing in Clackamas County, and therefore wish to limit those impacts by requiring those short-term rentals located within the Portland Metropolitan Urban Growth Boundary to be located on the same tract as the owner's primary residence,

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

Section 1: Chapter 8.10, as shown on Exhibit "A", which is attached hereto and incorporated herein by this reference, is hereby added to the Clackamas County Code.

Section 2: Chapter 2.07 is hereby amended to add a reference to Chapter 8.10, *Short-Term Rentals*, in the second paragraph of Section 2.07.010 for purposes of clarifying that enforcement of the *Short-Term Rental* Chapter shall be processed under the provisions of Chapter 2.07.

Section 2: Effective Date. This Ordinance shall be effective on July 1, 2021.

ADOPTED this _____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Chapter 8.10

8.10 SHORT-TERM RENTALS

8.10.010 Purpose

The purpose of this chapter is to regulate short-term rentals in order to enhance public safety and livability within the unincorporated areas of Clackamas County. Specifically, this chapter addresses public safety concerns typically associated with short-term rentals, and clarifies the process for both property owners and staff related to permitting short-term rentals and enforcing violations of these standards.

8.10.020 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

- A. ADMINISTRATOR means the County Administrator of Clackamas County or his/her designee.
- B. DWELLING UNIT is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. For the purposes of this chapter only, a guest house is considered to be part of the dwelling unit to which it is accessory, even though it is a separate structure. Guest house shall have the meaning given to that term in Section 202 of the Clackamas County Zoning and Development Ordinance.
- C. OCCUPANTS means persons who are authorized to stay overnight within a short-term rental.
- D. OWNER is the owner or owners of a dwelling unit used as a short-term rental.
- E. OVERNIGHT means anytime between the hours of 10 p.m. and 7 a.m. on the following day.
- F. PREMISES means the short term rental and the lot on which it is located.
- G. PRIMARY RESIDENCE means a dwelling unit where an owner lives most of the time. At a given time, an owner does not have more than one primary residence. For purposes of determining whether a dwelling unit is a primary residence, the County may consider factors that include, but are not limited to: whether the dwelling unit is the legal residence of the owner for purposes of voting, motor vehicle/driver licensing, income tax calculation, and the time the owner has spent at the dwelling unit.
- H. REGISTRANT means the owner, or agent of the owner, designated on the registration to act for the owner, who is responsible for ensuring the short-term rental adheres to all applicable requirements to maintain a short-term rental registration.
- I. REGISTRATION means a short-term rental registration.
- J. SHORT-TERM RENTAL means a dwelling unit, or portion of a dwelling unit, that is rented to any person or entity for lodging or residential purposes, for a period of up to 30 consecutive nights.
- K. SLEEPING AREA means a room or other space within a dwelling unit designed and intended primarily for sleeping.

8.10.030 Applicability

This chapter shall apply within the unincorporated areas of Clackamas County including within urban growth boundaries, but shall not apply within the boundaries of any incorporated city.

This chapter does not apply to hotels, motels, bed and breakfast facilities, hostels, campgrounds, recreational vehicle (RV) camping facilities, or organizational camps.

8.10.040 Short-Term Rental Registration Requirements and Fee

- A. All short-term rentals shall be registered, except that any short-term rental that qualifies for an exemption to the Transient Room Tax under Section 8.02.060(C), as “incidental” use of the property, shall be exempt from the registration requirements set forth herein.
- B. Application forms for a registration for a short-term rental will be available at County offices. Applications for initial and renewal registrations for a short-term rental must be submitted to the County and must be signed under penalty of perjury. The application documents must include at least the following:
1. The location of the premises.
 2. The true names, telephone numbers, and addresses and any aliases of the persons that have, or have had within the preceding year, a financial interest in the premises.
 3. A Land Use Compatibility Statement, signed by a Planning & Zoning Division representative, affirming that the short-term rental complies with Section 8.10.060(A).
 4. Signed affidavit of compliance with all building and fire standards in Section 8.10.060(G), and all applicable requirements in Section 8.10.060(D-F).
 5. Evidence that all current taxes and fees owed to Clackamas County have been paid for the premises.
 6. Evidence that a Transient Room Tax registration form has been submitted to the County.
 7. The name, telephone number, and address of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
 8. Proof of liability insurance coverage on the short-term rental.
 9. A statement that the registrant of the short-term rental has met and will continue to comply with the standards and requirements of this chapter.
 10. A site plan that identifies, at a minimum, all structures on the property, driveway(s), off-street parking spaces, and garbage receptacles.
 11. A dwelling unit floor plan that identifies, at a minimum, all sleeping areas and other rooms in the dwelling unit.
 12. If the premises includes a guest house to be used as a short-term rental, verification that the guest house is equipped with indoor plumbing equipped with a water closet, lavatory, shower, bathtub or combination bath/shower. All plumbing fixtures must be connected to an approved water supply, and an approved sanitary sewer or private sewage system.
- C. A separate registration application must be submitted for each proposed short-term rental; however only one short-term rental registration shall be approved per dwelling unit.
- D. At the time of submission of a short-term rental registration application, the registrant must pay a short-term rental registration fee. The fee amount shall be set by resolution of the Board of County Commissioners.

- E. A registration is transferable to a new registrant, so long as the new registrant submits notification to the administrator, signed by the original registrant, of the transfer and agrees in writing to comply with the requirements of this chapter. A change of registrant notification form will be available at County offices.
- F. No short-term rental may be publicly advertised for rent unless it has been registered with the County

8.10.050 Registration Termination – Renewal – Fee

- A. A short-term rental registration terminates automatically two years after the date of issuance, unless a new registration application is approved by the county.
- B. Registrants wishing to continue uninterrupted operation of a short-term rental shall submit a new application to the County a minimum of 30 days prior to the expiration of the registration.
- C. At the time of submission of a new short-term rental registration application, the registrant must pay the short-term rental registration application fee. The fee amount shall be set by resolution of the Board of County Commissioners.
- D. A short-term rental registration terminates automatically if state statutes, regulations or guidelines are modified or changed to prohibit operation of the short-term rental under this chapter.

8.10.060 Standards and Conditions

Any short-term rental must comply with the following standards at all times, in addition to any other state and local requirements:

- A. Dwelling Unit. The short-term rental must be operated within a legally-established, permanent dwelling unit.
 1. The dwelling unit associated with a short-term rental shall not have been established through a land use approval or other approval process that specifically limited the use of the dwelling unit, the occupancy of the dwelling unit, or the duration of the existence of the dwelling unit. Examples of non-qualifying dwellings include those approved as an accessory farmworker dwelling, a caretaker dwelling, or a temporary dwelling for care.
 2. Guest houses may only be used as a short-term rental if the guest house has been legally-established and where a registrant can demonstrate that the structure is equipped with indoor plumbing, a water closet, lavatory, shower, bathtub or combination bath/shower.
 3. Temporary sleeping accommodations such as tents and recreational vehicles are not considered to be dwelling units under the county's zoning and development ordinance and may not be used as a short-term rental.
- B. Maximum Overnight Occupancy. The number of overnight occupants in the short-term rental shall not exceed the number of occupants authorized in the registration. The maximum overnight occupancy shall be clearly posted in the short-term rental, disclosed in any advertising of the availability of the short-term rental, and included in any rental agreement with tenants. The maximum overnight occupancy authorized in the registration for the short-term rental shall be calculated as follows:
 1. Two occupants per sleeping area, plus four additional occupants.

2. Roll-out beds, fold-out couches, or other similar temporary beds shall not be considered a “sleeping areas” for the purposes of calculating maximum allowed occupancy, but could accommodate the four additional occupants.
 3. In no case shall more than 15 occupants be authorized by a short-term rental registration. If only a portion of a dwelling unit is used as a short-term rental, all occupants, including those occupying the portion of the dwelling unit not used as a short-term rental, shall be counted toward the 15-occupant maximum.
- C. Noise. Notice shall be clearly posted in the short-term rental that identifies and informs occupants of their obligation to abide by the County’s current noise control ordinance standards (Clackamas County Code Chapter 6.05).
- D. Parking. One off-street motor vehicle parking space per two sleeping areas is required. Garage space may be used to meet required parking standards if evidence is provided that there is sufficient cleared garage space to fit a vehicle(s). All required parking spaces must be available for occupants to use.
1. If the short-term rental contains only one sleeping area, one off-street parking space is required.
 2. If the short-term rental cannot provide the required number of parking spaces based on sleeping areas, the registrant may request a reduced maximum overnight occupancy based on available parking. In no case shall the registrant advertise for, or rent to, more persons than are authorized under the reduced maximum occupancy total.
 3. Short-term rentals in dwellings approved under the “resort accommodations” category in the Rural Tourist Commercial district are not required to provide more off-street parking than was required and approved under Zoning and Development Ordinance provisions.
 4. In no event shall vehicles block access for emergency vehicles, block access to the premise, block a parked motor vehicle, or otherwise park in a manner that violates the County’s current parking and towing ordinance standards (Clackamas County Code Chapter 7.01). Violation of this section may subject the offending vehicle to immediate tow pursuant to ORS 98.853.
- E. Garbage. All garbage from a short-term rental shall be legally removed from the premises by the owner, occupant or franchised service provider at least once per week during any week, or portion thereof, in which the short-term rental is occupied. All outdoor garbage receptacles shall be covered. Recycling container(s) shall be available for use by renters.
- F. Registration Identification. The registration identification number assigned to the short-term rental by the administrator shall be included on any advertisement or rental platform where the short-term rental is offered to the public for occupancy.
- G. Building and Fire Safety. A short-term rental shall comply with all ordinances that apply to a dwelling, and all structural components shall be kept in sound condition and good repair. In addition:
1. Working smoke detectors and carbon monoxide detectors shall be installed and maintained in locations as required by the Oregon Residential Specialty Code.
 2. Working fire extinguishers shall be placed in the kitchen and next to each wood burning appliance in an easily accessible location. A minimum of two (2) extinguishers are required in each Dwelling Unit.
 3. Code-compliant pool and hot tub barriers shall be present, if applicable.

4. Every sleeping area shall have not less than one operable emergency escape and rescue opening, including basement sleeping areas. Windows must meet the egress size required when the Dwelling Unit was built and permitted. Use the chart below to determine minimum size egress window based upon the year the house was built.

Year of Construction	Sill Height	Net Opening	Min. Height	Min. Width
Prior to 1964	No requirement	5.0 Sq. feet	No requirement	No requirement
1964 to 1970	48"	5.0 Sq. feet	24"	24"
1970-1976	48"	5.0 Sq. feet	22"	22"
1976-Present	44"	5.7 Sq. feet	24"	20"

5. All exterior building exits shall be clear, operable and available to renters. For Premises located at elevations above 3,500', doors that exit under active roof snow slide zones do not need to be available or operable when snow is present, unless the exit is part of the required primary egress for the Dwelling Unit or building.
 6. All electrical wiring shall be covered, and wall outlets, switches and junction boxes shall have code-approved covers in place.
 7. Electrical panels shall have a clear working space of at least 30 inches wide in front of the panel, and a clear space 78 inches high in front of the panel. All circuit breakers and/or fuses shall be clearly labeled in the event the power needs to be shut off to a certain area or appliance.
 8. All restrictions and prohibitions for burning as determined by the local Fire District shall be observed. All wood-burning fire pits and fireplaces shall be covered or made otherwise unavailable during burn prohibition periods. Contact information for the local Fire District shall be clearly posted in the short-term rental.
 9. The dwelling shall have no open building or zoning code violations.
- H. For any short-term rental located within the Portland Metropolitan Urban Growth Boundary, the dwelling unit to be used as a short-term rental must be located on the same tract as the owner's primary residence. However, the owner is not required to be present on the tract when the short-term rental is occupied. Tract shall have the meaning given to that term in Section 202 of the County's Zoning and Development Ordinance.

8.10.70 Registration Review

- A. The administrator shall, within thirty (30) days after receipt of a complete application for a short-term rental registration and applicable fee, either issue the owner a registration or provide notice of denial.
- B. Upon approval, the administrator shall furnish notice of the approval to all property owners of record within 300 feet of the premises, and contiguous properties under the same ownership. This approval notice shall provide the name, telephone number, and address of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
- C. The administrator may deny a registration application for failure to submit the materials or fee set forth in Section 8.10.040, for failure to meet the standards and conditions set

forth in Section 8.10.060, for submitting falsified information to the County, or for noncompliance with any other applicable County ordinances.

8.10.080 Examination of Books, Records and Premises

To determine compliance with the requirements of this chapter, the Clackamas County Zoning and Development Ordinance, and any local tax measures, the administrator may examine or cause to be examined by an agent or representative designated by the administrator, at any reasonable time, the premises, and any and all financial, operational and facility information, including books, papers, and state and federal income tax returns. Every owner is directed and required to furnish to the administrator the means, facilities and opportunity for making such examinations and investigations.

8.10.090 Emergency Revocation

- A. In the sole determination of the Clackamas County Building Official, when a violation of the building code or applicable county ordinance exists at a short-term rental that presents an immediate serious fire or life safety risk, the Clackamas County Building Official may immediately revoke the short-term rental registration as a fire or life safety risk. The Clackamas County Building Official shall provide written documentation of the violation, and notification of the owner's right to appeal, as provided in 8.10.100.
- B. Upon an emergency revocation, the short-term rental shall not be rented or used as a short-term rental unless the revocation is withdrawn or a new short-term rental registration has been obtained.
- C. At any time following the emergency revocation of a short-term rental registration pursuant to this subsection, the Clackamas County Building Official may reinstate the registration upon a re-inspection by the Clackamas County Building Official verifying that the subject building code or county ordinance violation has been corrected.

8.10.100 Administration and Enforcement

The County encourages owners, registrants, occupants, and affected residents and owners of nearby properties, to cooperate directly to resolve conflicts arising from the occupancy of any short-term rental. Along those lines, the first attempt to remedy a violation of any of the standards in this chapter should be to contact the representative associated with the registration, as identified in the approval notice and the required short-term rental posting. In the event that the listed representative does not respond within 24 hours or does not adequately remedy the issue, the Clackamas County Department of Finance should be notified.

- A. For acts of noncompliance, the Code Enforcement Program of the Department of Transportation and Development shall administer, supervise, and perform all acts necessary to enforce this chapter or any other chapters of the Clackamas County Code applicable to short-term rentals, except as otherwise provided for in state law or in the Clackamas County Code such as, but not limited to, those regulations for which the Clackamas County Sheriff's Office has been vested with enforcement authority.
- B. Except as otherwise provided in this chapter, Chapter 2.07 of the Clackamas County Code shall govern the process for enforcement of this chapter, including but not limited to the notice and procedures associated with any compliance hearing.

- C. An owner that operates a short-term rental without an approved registration, or fails to pay the fees prescribed herein, shall be subject to immediate citation. Additionally, an owner that fails to pay the fees prescribed herein may have their short-term rental registration immediately revoked.
- D. A person who receives a citation for violation of this chapter shall respond within fourteen (14) days of the issuance of the citation by payment of any penalties established under this chapter, or by requesting a hearing as provided in this section.
- E. In addition to citation, the Code Enforcement Program of the Department of Transportation and Development may require an inspection of the premises.
- F. In addition to citation, the Hearings Officer may:
 - 1. Suspend the short-term rental registration until the short-term rental is in compliance with the standards and conditions set forth in Section 8.10.060; or
 - 2. Revoke the short-term rental registration if there have been three separate violations of this chapter related to the same short-term rental within the applicable two-year registration period or three separate documented violations by any occupant of the same short-term rental within the applicable two-year registration period related to the County's noise control ordinance standards (Clackamas County Code Chapter 6.05) or the County's parking and towing ordinance standards (Clackamas County Code Chapter 7.01).
- G. Alleged acts of noncompliance must be based on either:
 - 1. The personal observation of the Sheriff or designee, code enforcement officer, or Clackamas County Department of Finance staff; or;
 - 2. A determination by the Sheriff or designee, code enforcement officer, or Clackamas County Department of Finance staff that there are reasonable grounds to conclude that the alleged acts of noncompliance did, in fact, occur, after either an investigation or following a sworn statement of a person who personally witnessed the alleged incident.

8.10.110 Penalties

Violation of this chapter shall be punishable by suspension or revocation of a short-term rental registration, or by a penalty or fine in an amount set by resolution of the Board of County Commissioners. Except in the case of an emergency revocation, any owner may not obtain or renew a short-term rental registration on the premises sooner than one year after the date of revocation.

Fritzie, Martha

Page 1 of 13

From: Carol Williams <carolrealtor@yahoo.com>
Sent: Monday, November 16, 2020 12:07 PM
To: Fritzie, Martha
Subject: Short term rental proposed rules

Follow Up Flag: Follow up
Flag Status: Flagged

Warning: External email. Be cautious opening attachments and links.

Hello,
I attended several meetings at the beginning of this process but then with the postponement due to covid I lost track a little bit. What is the address I can send comments to at this time? In reading it again and comparing it to the City of Milwaukie rules (we are in Oak Grove so unincorporated) I am most concerned with the proposed fees. City of Milwaukie only has a yearly tax of less than 200 and yet these unincorporated Clackamas County rules say 800-900 every two years? Wow that is a huge difference when you're a very small business trying to make a good portion of your income (especially now when my business is much less than normal and my husband has been furloughed from his 30-year job since March with no end in sight). We have been paying the STR tax for years now, if there was a one-time fee for some sort of inspection that's understandable too. But this ongoing fee seems out of line.
If you could forward this to the right party or tell me who to send it to that would be much appreciated!

Thanks so much,

Carol Williams

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[Phishing Email](#)

Fritzie, Martha

From: Heidi Brewer <hmbwolf@yahoo.com>
Sent: Tuesday, November 10, 2020 2:14 PM
To: Fritzie, Martha
Subject: Re: Short term and vacation rentals

I recently learned that I was mistaken about the regulations on the short term and vacation rentals that are being preposed.

I am very much FOR these regulations.

Sorry for my past mistake.

Thank you.

Heidi Brewer

On Thursday, October 22, 2020, 1:26:03 PM PDT, Fritzie, Martha <mfritzie@clackamas.us> wrote:

Thank you, Heidi. Your comments will be forwarded to the Board of County Commissioners prior to the November 5th hearing.

All upcoming meeting information and materials will be posted on our webpage:
<https://www.clackamas.us/planning/str>.

Martha

Martha Fritzie, Principal Planner

Clackamas County DTD|Planning & Zoning Division

150 Beaver Creek Road|Oregon City, OR 97045

(503) 742-4529

Office hours 7:30am to 6:00pm|Monday – Thursday

Due to COVID-19, I am working remotely and will do my best to respond in a timely manner. I appreciate your understanding during this challenging time.

For general planning questions, contact our main customer service desk at 503-742-4501 or email at zoninginfo@clackamas.us. The Development Services lobby is currently open for limited hours. Please visit our [webpage](#) for updates on services available online, service hours and other related issues. Thank you.

Ordinance No. 09-2020
Short-Term Rentals
Page 3 of 13

The Clackamas County Department of Transportation and Development is dedicated to providing excellent customer service. Please help us to serve you better by giving us your [feedback](#). We appreciate your comments and will use them to evaluate and improve the quality of our public service.

From: Heidi Brewer <hmbwolf@yahoo.com>
Sent: Sunday, October 18, 2020 1:27 PM
To: Fritzie, Martha <MFritzie@clackamas.us>
Subject: Short term and vacation rentals

Warning: External email. Be cautious opening attachments and links.

I am concerned about allowing more short term and vacation rentals. I live next to a vacation rental, it is noisy and annoying, and I never know who will be there or when. It bothers me not knowing who my neighbors are or what they are like. They have no investment in the neighborhood and don't care about it. Even the people who own the houses live elsewhere and the rentals they have here are only an income to them or at the best a place to go on the weekends. That's not a true home the way it is for those of us who live here, and they don't feel the same way or respect it as much as we do.

I moved onto the mountain 18 years ago for the peace and quiet and my neighbors were here for the same reasons. I do not want my home overrun by strangers who don't respect or care about my home.

Heidi Brewer

20465 East Donny Dell Lane

Rhododendron OR 97049

NOTE: This message was trained as non-spam. If this is wrong, please correct the training as soon as possible.

Fritzie, Martha

Page 4 of 13

From: Paul Marks <paul.marks64@gmail.com>
Sent: Sunday, November 8, 2020 11:32 PM
To: Fritzie, Martha
Subject: short-term/vacation rental (STR) regulations

Warning: External email. Be cautious opening attachments and links.

Paul Marks
PO Box 67
Brightwood, OR 97011

Martha Fritzie
Planning & Zoning, Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045

Dear Ms Fritzie,

I would like to provide input to the upcoming hearing on the future Clackamas County short-term/vacation rental (STR) regulations. I have a cabin in Welches and from time to time over the last few years have put our one-room guest house and my master bedroom on AirBnb. I only did it sparingly, so I have never made more than a few hundred dollars a month. The proposed owner's fee of \$800 - \$900 for a two year period would basically force me to stop renting out these spaces. You probably know AirBnb has an option where they adjust the price of your place based on demand. My minimum was usually \$35 but sometimes AirBnb would increase it up to \$40 or \$45. Basically your fee amounts to a large tax on me that will significantly cut into my revenue. By forcing me out of business you will distort the market because only owners who rent out their places full time or who have places at the higher end of the market will remain in business. They will be able to charge more both to cover your fee and because people will be forced into more expensive places when those at the low end like mine exit the market. Please ask the commissioners if making Mount Hood accessible only to the wealthy is fair and equitable and sends the right message for what Clackamas County stands for.

In sum, the county really needs to find a way to have a flexible fee based on the amount of money that a landlord makes - or to create an exemption if rental collections are below a certain amount.

Sincerely
Paul Marks
65796 East Springbrook Street
Welches OR 97067

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[Phishing Email](#)

Fritzie, Martha

Page 5 of 13

From: Warren Neth <mail@warrenneth.com>
Sent: Saturday, November 7, 2020 8:46 AM
To: Fritzie, Martha
Subject: Short-term rental policy

Warning: External email. Be cautious opening attachments and links.

Greetings,

My father and I own a vacation rental property in Government Camp at 89047 E Government Camp Loop, and have feedback on the new short-term rental policy.

Government Camp and the larger Mt. Hood Territory is a tourist and recreation area, with long traditions. One is having bunk rooms for multiple kids to stay in one room. The criteria you are trying to impose will end a tradition that has gone on without issue in Government Camp.

In pursuit of fixing problems that are largely clustered in the Portland Metro area(valley), it would be a shame to end the mountain 'lodge' traditions of things like bunk rooms in Government Camp Village for skiers, let alone trying to 'fix' nonexistent parking issues.

The Government Camp CPO should have a tool to amend the Short-term rental policy based on local knowledge of parking concerns, etc.

Thanks,
Warren Neth
360-771-1296

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[Phishing Email](#)

Fritzie, Martha

From: John Ingersoll <john@highcascade.com>
Sent: Friday, November 6, 2020 7:13 PM
To: Fritzie, Martha
Subject: Re: Short-term rental regulations RTC parking

Follow Up Flag: Follow up
Flag Status: Flagged

Warning: External email. Be cautious opening attachments and links.

Martha,

I did see the posting on STR .. thanks for reaching out. thanks for including me on the update list. And thanks for the inserted language (exception) for RTC including the RTC zone in Government Camp. it matches county approved on-street parking in the RTC. .

I had a concern that others are not aware of the STR regulations being proposed. I was happy to see last week VRBO sent an email and asked their Clackamas clients to be aware /involved of this process..

I still plan to attend the public meetings .

Kind regards

BOARDWALK
— LODGE —

John Ingersoll Owner and Manager

t: 503.501.7500

e: john@highcascade.com

I am a confident, vibrant and respectful man. 11/19/94

On Nov 3, 2020, at 4:34 PM, Fritzie, Martha <MFritzie@clackamas.us> wrote:

Hi John – I am not sure if you have reviewed the materials posted for this week’s hearing on the short-term rental regulations yet, but I wanted to make sure you saw the following “exception” that was added under the parking provisions:

Short-term rentals in dwellings approved under the “resort accommodations” category in the Rural Tourist Commercial district are not required to provide more off-street parking than was provided and approved under Zoning and Development Ordinance provisions.

If you have not yet seen the whole packet for the hearing, you can find it here: <https://www.clackamas.us/meetings/bcc/business>.

Let me know if you have any questions or if you have any concerns about this additional language.

Thanks,
Martha

Martha Fritzie, Principal Planner
Clackamas County DTD | Planning & Zoning Division
150 Beavercreek Road | Oregon City, OR 97045
(503) 742-4529
Office hours 7:30am to 6:00pm | Monday – Thursday

Due to COVID-19, I am working remotely and will do my best to respond in a timely manner. I appreciate your understanding during this challenging time.

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The Clackamas County Department of Transportation and Development is dedicated to providing excellent customer service. Please help us to serve you better by giving us your [feedback](#). We appreciate your comments and will use them to evaluate and improve the quality of our public service.

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Fritzie, Martha

From: Mark Skinner <mwskinner55@gmail.com>
Sent: Thursday, November 5, 2020 2:00 PM
To: Fritzie, Martha
Subject: STRs
Attachments: 25 cars 9 August 2020 at 1124 SE River Forest Rd. 1.jpg; 25 cars 9 August 2020 at 1124 SE River Forest Rd. 2.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Warning: External email. Be cautious opening attachments and links.

Hello to you and Commissioners,

I tuned in to most of the STR discussion this morning 5 November 2020. Here are my thoughts:

1. As written the regulations are a good start, and fair to all parties.
2. Without registration there will be no accountability, and the program will fail. All STR owners need to register, and the fine for not registering—done so that owners don't have to pay the fee or be accountable or respect the rule of law—should be a strong deterrent. \$1000 for a first time violation, and another \$1000/year of operation without registration sounds about right. You can be sure neighbors will let the county know of violators, because we detest them for ruining our peace of mind and want to see them comply for the good of the neighborhood.
3. In my experience—I have three STRs as immediate neighbors—most STR owners are irresponsible people who are making money at the expense of their neighbors and refuse to discipline their “guests” for obvious infractions. Commissioners who spoke of this matter as a minor problem involving some parking excesses are misinformed. STRs are ruining neighborhoods, including mine.
 - a. The fact that AirBnB has a “no party” rule is as of today completely meaningless; AirBnB does not enforce that rule and is unresponsive to violations (proven again last summer when various neighbors complained to AirBnB and got nowhere). Owners do not enforce that rule. The naive might think that writing “No Parties” on your STR listing achieves something, but it doesn't since neither the owners nor AirBnB nor “guests” care about it at all.
 - i. This last summer we had one event across the street at 1124 SE River Forest Rd. with 25 cars strewn about the neighborhood and fifty people singing *Kumbaya* to the entire neighborhood. I hate that song.
 - ii. We had giant pool parties full of screaming kids that BEGAN at 7AM on Sunday morning at that same address. It was loud 300 feet away in my bedroom.
 - iii. We had a bachelorette party with young women hanging around in the street smoking and drinking, and far more than the 12 person limit that supposedly obtains at that “No Parties” address of 1124 SE River Forest Rd. These were very loud people.

What happened to the rule of law? I can see it being reestablished in this case with these regulations, and if the Sheriff starts writing some complaints instead of issuing warning after warning after warning. Warnings have no effect since it's the same problem different people every week. And that's the point: without some regulations and some enforcement we as neighbors are powerless to make things better in our neighborhoods.

In summary, I support the regulations though I wish they were stronger about noise and had a smaller maximum occupancy. I moved into a quiet neighborhood, which STRs are gradually ruining with more people, more cars, more lights, more strangers, and more tension. Why is your freedom to use your property the way you want more important than mine to do the same?

Thank you,

Mark

Mark W. Skinner, Ph.D.
Skinner and Associates
1275 SE River Forest Rd.
Milwaukie, OR 97267
971-337-7132

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[Phishing Email](#)





Fritzie, Martha

From: Craig Thiry <craig@iambam.org>
Sent: Thursday, November 5, 2020 11:55 AM
To: Fritzie, Martha
Subject: Re: adjacent property to owners? not in draft reg?

Follow Up Flag: Follow up
Flag Status: Flagged

Warning: External email. Be cautious opening attachments and links.

One additional comment to add to Jim Bernards comment about future costs and how this might work.

I have real estate in 5 other states and the smarter government operators come up with a tiered costing structure, based on number of problems and visits that are required due to county call outs, inspections, etc.

You might consider this, as it is further incentive for owners to be good operators, and also minimizes costs for those who don't bring the same cost to the county.

I have to leave the meeting before adding this verbally. Thanks again, hopefully this will provide some good food for thought! :-)

Craig Thiry

On Thu, Nov 5, 2020 at 11:28 AM Craig Thiry <craig@iambam.org> wrote:

Hi Martha,

I have attended and commented during public meetings about having partitioned my duplex into two single family residences with a shared wall. I pay additional taxes, due to higher value, greater insurance costs, etc.

During verbal comments and some of the posts on the County website there were modifications to make sure that I would not be penalized for having partitioned my property, as my primary residence is part of this duplex that was partitioned.

I don't see clear reference to that in the draft document, unless maybe I don't understand the definition of tract.

Could you clarify this for me? Will my two SFR's that are adjacent qualify so that I can continue to do Short Term Rental on my other 1/2 of my building?

I will hope to get in public comment but I have to depart for another meeting and not sure I will be allowed to speak.

Thanks,

--

Craig Thiry
Intelligent Asset Management Companies (IAM LLCs)

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Craig Thiry
Intelligent Asset Management Companies (IAM LLCs)

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Gregory L. Geist
Director

November 25, 2020

Board of County Commissioners
Acting as the governing body of
Surface Water Management Agency of Clackamas County

Members of the Board:

Approval of a Resolution Authorizing a Financing for New Capital Projects for
Surface Water Management Agency of Clackamas County

Purpose/Outcomes	Approval of a Resolution Authorizing a Financing for New Capital Projects for Surface Water Management Agency of Clackamas County.
Dollar Amount and Fiscal Impact	Issuance of up to \$50 million in new debt.
Funding Source	WES monthly service charge revenues will be used to pay annual debt service associated with the borrowing. No County General Fund revenues are involved.
Duration	Debt is anticipated to be issued for a 25 year term.
Previous Board Action/Review	Prior discussions related to budget and financing strategies.
Counsel Review	This Resolution was reviewed and approved by County Counsel on November 16, 2020.
Strategic Plan Alignment	1. Build Public Trust Through Good Government: The issuance at this time of very low interest rates should result in significant interest expense savings. 2. Build Strong Infrastructure: Construction of necessary facilities to meet the needs of current customers and future growth.
Contact Person	Chris Storey, WES Assistant Director (503-742-4543)
Contract No.	<i>Resolution No. not assigned yet.</i>

Water Environment Services (“WES”) was established by an intergovernmental agreement that was entered into pursuant to Oregon Revised Statutes (“ORS”) Chapter 190 by Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County (collectively, the “Partners”). This agreement allows WES to enter into financing agreements if the above parties to the intergovernmental agreement each approve WES entering into such financing agreements after each holds a public hearing. Therefore, each of the Partners and WES itself must authorize entering into the proposed financing and each must hold a public hearing as part of the overall authorization.

WES, as an ORS 190 entity, is responsible for managing the WES’ debt portfolio separately from the County. WES is rated AAA by Standard and Poor’s rating agency, their highest rating, reflecting the overall financial health of WES as an organization. This high rating may enable WES to borrow at the lowest available interest rates and overall cost to finance several of the

key projects included in the adopted Capital Improvement Plan. The attached orders and associated public hearings authorize the issuance of debt to accomplish this purpose.

BACKGROUND:

WES is estimating the need to borrow up to approximately \$50 million to supplement existing reserves to fund needed capital projects over the next three years through the issuance of revenue obligations with a term of 25 years. At the closing of the bond sale, the Internal Revenue Service will require a finding of a reasonable expectation to spend 85% of the proceeds of the borrowing within three years of the date of borrowing. Consequently, WES has identified projects in its approved Capital Improvement Plan (“CIP”) that will be initiated over the next three years and that will be financed with the borrowed funds, as well as acknowledging that the CIP is updated annually and some additional projects may be funded thereby. The following are brief summary descriptions of those projects.

- ***Clackamas Interceptor Capacity Improvements – Estimated cost over the next 36 months: \$33 million.*** The existing Clackamas Interceptor has been shown in past studies to lack capacity to serve the existing service area into the future. Additionally, parts of the interceptor require rehabilitation. A conceptual design has been completed. Work is underway to assess the current condition as well as the current and future capacity needs for the areas served by the interceptor. Improvements along the length of the interceptor will be designed together. Construction will then be phased over several years through a series of projects to assure the ability to serve existing and future customers.
- ***Tri-City Water Resource Recovery Facility (“WRRF”) Wet Weather Outfall – Estimated cost over the next 36 months: \$12.75 million.*** Projected total future wastewater flows to the Tri-City WRRF were developed as part of the Collection System Master Plan (“CSMP”) and are expected to be approximately 176 million gallons per day (“MGD”) under build-out conditions. The capacity of the existing outfall is approximately 75 MGD and is expected to be exceeded as flows increase over the next several years. The new outfall will provide the additional capacity needed and will be sufficient except for peak wet weather in future years. The projected flows and sizing of the new outfall assume the reductions in inflow and infiltration (“I/I”) cited in the CSMP. The citizens of the City of Oregon City recently voted to approve the construction of the portion of this project that will need to occur in Jon Storm Park.
- ***Tri-City WRRF Solids Handling Improvements Project – Estimated cost over the next 36 months: \$9.1 million.*** WES has identified the need to expand and refurbish the solids handling processes at the Tri-City WRRF. Project costs include construction and engineering services during construction. The project could include new sludge stabilization and dewatering facilities, electrical distribution upgrades, digester feed tank, digested sludge storage, cake storage and load out facility, centrate storage, biogas utilization and upgrades to existing facilities. The new cogeneration system will provide approximately half of the power required at the facility and provide heat for the process and space heat for several buildings. Construction is expected to be completed in 2021.
- ***Multiple Pump Station Upgrades – Estimated cost over the next 36 months: \$8 million.*** Eight pump stations need rehabilitation. Upgrades will include pumps and electrical systems, HVAC and structural components. The pump stations include Willamette, Sieben Lane, South Welches, Golf Course Terrace, Gladstone, Clackamas, 82nd Drive, and Timberline Rim.

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- **Kellogg Creek WRRF Solids Improvement Project – Estimated cost over the next 36 months: \$5 million.** Currently, digested sludge from the Kellogg Facility is hauled to, and dewatered at, the Tri-City facility. Dewatered biosolids are hauled to eastern Oregon for beneficial reuse. This project would provide dewatering at the Kellogg Facility with improvements to the digester complex, including updating the biogas utilization system. The budget for this project was increased to include new thickening equipment.
- **Pipe and Manhole Rehabilitation and Replacement – Estimated cost over the next 36 months \$3 million.** Sanitary sewer pipe and manholes are subject to degraded condition through exposure to chemicals, organic growths, and soil movement. This degradation leads to defects in pipe which can result in surface water and groundwater infiltration into the collection system, straining treatment capacities and increasing risk of pipe failure. This project will repair and/or replace damaged and aging pipelines utilizing methods including pipelining, pipe bursting and replacement. This project will also rehabilitate aging manholes which have degraded condition through normal exposure to chemical and biological components and soil movement. Rehabilitation efforts to reduce risk will range from cleaning and spray lining to complete manhole replacement depending upon the degree of wear.
- **Inflow and Infiltration Reduction Program – Estimated cost over the next 36 months \$3 million.** Inflow and Infiltration (“I/I”) is clean groundwater and/or rainwater that enters the sewer system through direct connections such as roof drains or area drains or defects such as leaking joints or manholes. When the amount of I/I becomes excessive it can cause capacity deficiencies in the sewer system and possible overflows. When the amount of I/I becomes excessive it is more cost effective to remove the I/I than upsize infrastructure or treatment facilities to transport and treat the extraneous clean water. This project will involve activities to identify areas of high I/I and their sources and include design and construction of sewer rehabilitation projects, to abate the I/I. The Mount Talbert and Gladstone Area Sanitary Sewer Evaluation Survey (“SSES”) and I/I Reduction Project are funded by this Program.

The attached resolution has been reviewed and approved by County Counsel and outside Bond Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Surface Water Management Agency of Clackamas County, adopt the resolution authorizing Water Environment Services to enter into financing agreements necessary to fund its adopted Capital Improvement Plan.

Respectfully submitted,

Chris Storey Digitally signed by Chris Storey
Date: 2020.11.17 15:47:41
-08'00'

Chris Storey, Assistant Director
WES

Attachments: Authorizing Resolution

BEFORE THE BOARD OF THE SURFACE WATER MANAGEMENT AGENCY OF
CLACKAMAS COUNTY

FOR THE STATE OF OREGON, FOR THE COUNTY OF CLACKAMAS

A Resolution Approving Water Environment) RESOLUTION NO. _____
Services Entering into One or More Financing)
Agreements; and Providing an Effective Date.)
)
)

The Board of County Commissioners of Clackamas County (“Board”), acting as the governing body of the Surface Water Management Agency of Clackamas County (the “District”), finds as follows:

A. Pursuant to Oregon Revised Statutes (“ORS”) Chapter 190, the District, Tri-City Service District, and Clackamas County Service District No. 1 (collectively, the “Partners”) entered into an Intergovernmental Partnership Agreement, as amended (the “Partnership Agreement”), which created a new municipal entity known as Water Environment Services (“WES”) for the purpose of providing more efficient and cost-effective wastewater and surface water services on a more regional basis. The Partnership Agreement became fully effective on June 30, 2018.

B. The Partnership Agreement authorizes WES to borrow money and issue debt instruments, bonds, securities or provide for the borrowing of money and issuance of debt instruments in support of any lawful purpose of WES, and provides that it is the intention of the Partners that all future debt necessary to support the WES system shall be issued by WES if revenue-based.

C. ORS Section 190.080(1) provides that intergovernmental entities may enter into financing agreements to accomplish the public purposes of the parties if the parties to the intergovernmental agreement approve the entity entering into financing agreements after a public hearing.

D. WES desires to enter into one or more financing agreements in an aggregate principal amount not to exceed \$50,000,000 to finance real and personal property for the sanitary and storm sewer system of WES (the “System”), including the Clackamas Interceptor Capacity Improvements, Tri-City Water Resource Recovery Facility Wet Weather Outfall, Tri-City Solids Handling Improvements, Pump Station Upgrades, Tri-City Liquids Expansion, Kellogg Creek Solids Improvements, Pipe and Manhole Rehabilitation and Replacement, the Inflow and Infiltration Reduction Program, and other projects listed on WES’ adopted capital improvement plan (collectively, the “Projects”), which accomplish a public purpose of the District, and intends to pledge the net revenues of the System to pay amounts due under the financing agreements.

E. The Partners, including the District, desire to authorize WES to enter into such financing agreements under ORS Section 271.390 and the applicable provisions of ORS Chapter 287A.

NOW, THEREFORE, THE BOARD, ACTING AS THE GOVERNING BODY OF SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, RESOLVES AS FOLLOWS:

Section 1. Approval of Borrowing. A public hearing was held before the Board on this day, November 25th, 2020 regarding WES entering into one or more financing agreements in an aggregate principal amount of up to \$50,000,000 to finance the Projects pursuant to ORS Section 190.080(1)(a), ORS Section 271.390, and the applicable provisions of ORS Chapter 287A (collectively, the “Act”). By adoption of this Resolution, the Board hereby approves of WES entering into one or more financing agreements in an aggregate principal amount of up to \$50,000,000 pursuant to the Act to finance the Projects.

Section 2. Effective Date. This Resolution shall become effective immediately upon its adoption.

ADOPTED this 25th day of November, 2020.

BOARD OF COUNTY COMMISSIONERS
as the Governing Body of the
Surface Water Management Agency of Clackamas County

Chair

Recording Secretary



Gregory L. Geist
Director

November 25, 2020

Board of County Commissioners
Acting as the governing body of
Clackamas County Service District No. 1

Members of the Board:

Approval of a Resolution Authorizing a Financing for New Capital Projects for
Clackamas County Service District No. 1

Purpose/Outcomes	Approval of a Resolution Authorizing a Financing for New Capital Projects for Clackamas County Service District No. 1.
Dollar Amount and Fiscal Impact	Issuance of up to \$50 million in new debt.
Funding Source	WES monthly service charge revenues will be used to pay annual debt service associated with the borrowing. No County General Fund revenues are involved.
Duration	Debt is anticipated to be issued for a 25 year term.
Previous Board Action/Review	Prior discussions related to budget and financing strategies.
Counsel Review	This Resolution was reviewed and approved by County Counsel on November 16, 2020.
Strategic Plan Alignment	1. Build Public Trust Through Good Government: The issuance at this time of very low interest rates should result in significant interest expense savings. 2. Build Strong Infrastructure: Construction of necessary facilities to meet the needs of current customers and future growth.
Contact Person	Chris Storey, WES Assistant Director (503-742-4543)
Contract No.	<i>Resolution No. not assigned yet.</i>

Water Environment Services (“WES”) was established by an intergovernmental agreement that was entered into pursuant to Oregon Revised Statutes (“ORS”) Chapter 190 by Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County (collectively, the “Partners”). This agreement allows WES to enter into financing agreements if the above parties to the intergovernmental agreement each approve WES entering into such financing agreements after each holds a public hearing. Therefore, each of the Partners and WES itself must authorize entering into the proposed financing and each must hold a public hearing as part of the overall authorization.

WES, as an ORS 190 entity, is responsible for managing the WES’ debt portfolio separately from the County. WES is rated AAA by Standard and Poor’s rating agency, their highest rating, reflecting the overall financial health of WES as an organization. This high rating may enable WES to borrow at the lowest available interest rates and overall cost to finance several of the

key projects included in the adopted Capital Improvement Plan. The attached orders and associated public hearings authorize the issuance of debt to accomplish this purpose.

BACKGROUND:

WES is estimating the need to borrow up to approximately \$50 million to supplement existing reserves to fund needed capital projects over the next three years through the issuance of revenue obligations with a term of 25 years. At the closing of the bond sale, the Internal Revenue Service will require a finding of a reasonable expectation to spend 85% of the proceeds of the borrowing within three years of the date of borrowing. Consequently, WES has identified projects in its approved Capital Improvement Plan (“CIP”) that will be initiated over the next three years and that will be financed with the borrowed funds, as well as acknowledging that the CIP is updated annually and some additional projects may be funded thereby. The following are brief summary descriptions of those projects.

- ***Clackamas Interceptor Capacity Improvements – Estimated cost over the next 36 months: \$33 million.*** The existing Clackamas Interceptor has been shown in past studies to lack capacity to serve the existing service area into the future. Additionally, parts of the interceptor require rehabilitation. A conceptual design has been completed. Work is underway to assess the current condition as well as the current and future capacity needs for the areas served by the interceptor. Improvements along the length of the interceptor will be designed together. Construction will then be phased over several years through a series of projects to assure the ability to serve existing and future customers.
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- **Kellogg Creek WRRF Solids Improvement Project – Estimated cost over the next 36 months: \$5 million.** Currently, digested sludge from the Kellogg Facility is hauled to, and dewatered at, the Tri-City facility. Dewatered biosolids are hauled to eastern Oregon for beneficial reuse. This project would provide dewatering at the Kellogg Facility with improvements to the digester complex, including updating the biogas utilization system. The budget for this project was increased to include new thickening equipment.
- **Pipe and Manhole Rehabilitation and Replacement – Estimated cost over the next 36 months \$3 million.** Sanitary sewer pipe and manholes are subject to degraded condition through exposure to chemicals, organic growths, and soil movement. This degradation leads to defects in pipe which can result in surface water and groundwater infiltration into the collection system, straining treatment capacities and increasing risk of pipe failure. This project will repair and/or replace damaged and aging pipelines utilizing methods including pipelining, pipe bursting and replacement. This project will also rehabilitate aging manholes which have degraded condition through normal exposure to chemical and biological components and soil movement. Rehabilitation efforts to reduce risk will range from cleaning and spray lining to complete manhole replacement depending upon the degree of wear.
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The attached resolution has been reviewed and approved by County Counsel and outside Bond Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Service District No. 1, adopt the resolution authorizing Water Environment Services to enter into financing agreements necessary to fund its adopted Capital Improvement Plan.

Respectfully submitted,

Chris Storey  Digitally signed by Chris Storey
Date: 2020.11.17 15:47:17
-08'00'

Chris Storey, Assistant Director
WES

Attachments: Authorizing Resolution

NOW, THEREFORE, THE BOARD, ACTING AS THE GOVERNING BODY OF CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, RESOLVES AS FOLLOWS:

Section 1. Approval of Borrowing. A public hearing was held before the Board on this day, November 25, 2020, regarding WES entering into one or more financing agreements in an aggregate principal amount of up to \$50,000,000 to finance the Projects pursuant to ORS Section 190.080(1)(a), ORS Section 271.390, and the applicable provisions of ORS Chapter 287A (collectively, the “Act”). By adoption of this Resolution, the Board hereby approves of WES entering into one or more financing agreements in an aggregate principal amount of up to \$50,000,000 pursuant to the Act to finance the Projects.

Section 2. Effective Date. This Resolution shall become effective immediately upon its adoption.

ADOPTED this 25th day of November, 2020.

BOARD OF COUNTY COMMISSIONERS
as the Governing Body of Clackamas County Service District No. 1

Chair

Recording Secretary



Gregory L. Geist
Director

November 25, 2020

Board of County Commissioners
Acting as the governing body of
Tri-City Service District

Members of the Board:

Approval of a Resolution Authorizing a Financing for New Capital Projects for
Tri-City Service District

Purpose/Outcomes	Approval of a Resolution Authorizing a Financing for New Capital Projects for Tri-City Service District.
Dollar Amount and Fiscal Impact	Issuance of up to \$50 million in new debt.
Funding Source	WES monthly service charge revenues will be used to pay annual debt service associated with the borrowing. No County General Fund revenues are involved.
Duration	Debt is anticipated to be issued for a 25 year term.
Previous Board Action/Review	Prior discussions related to budget and financing strategies.
Counsel Review	This Resolution was reviewed and approved by County Counsel on November 16, 2020.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build Public Trust Through Good Government: The issuance at this time of very low interest rates should result in significant interest expense savings. 2. Build Strong Infrastructure: Construction of necessary facilities to meet the needs of current customers and future growth.
Contact Person	Chris Storey, WES Assistant Director (503-742-4543)
Contract No.	<i>Resolution No. not assigned yet.</i>

Water Environment Services (“WES”) was established by an intergovernmental agreement that was entered into pursuant to Oregon Revised Statutes (“ORS”) Chapter 190 by Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County (collectively, the “Partners”). This agreement allows WES to enter into financing agreements if the above parties to the intergovernmental agreement each approve WES entering into such financing agreements after each holds a public hearing. Therefore, each of the Partners and WES itself must authorize entering into the proposed financing and each must hold a public hearing as part of the overall authorization.

WES, as an ORS 190 entity, is responsible for managing the WES’ debt portfolio separately from the County. WES is rated AAA by Standard and Poor’s rating agency, their highest rating, reflecting the overall financial health of WES as an organization. This high rating may enable WES to borrow at the lowest available interest rates and overall cost to finance several of the

key projects included in the adopted Capital Improvement Plan. The attached orders and associated public hearings authorize the issuance of debt to accomplish this purpose.

BACKGROUND:

WES is estimating the need to borrow up to approximately \$50 million to supplement existing reserves to fund needed capital projects over the next three years through the issuance of revenue obligations with a term of 25 years. At the closing of the bond sale, the Internal Revenue Service will require a finding of a reasonable expectation to spend 85% of the proceeds of the borrowing within three years of the date of borrowing. Consequently, WES has identified projects in its approved Capital Improvement Plan (“CIP”) that will be initiated over the next three years and that will be financed with the borrowed funds, as well as acknowledging that the CIP is updated annually and some additional projects may be funded thereby. The following are brief summary descriptions of those projects.

- ***Clackamas Interceptor Capacity Improvements – Estimated cost over the next 36 months: \$33 million.*** The existing Clackamas Interceptor has been shown in past studies to lack capacity to serve the existing service area into the future. Additionally, parts of the interceptor require rehabilitation. A conceptual design has been completed. Work is underway to assess the current condition as well as the current and future capacity needs for the areas served by the interceptor. Improvements along the length of the interceptor will be designed together. Construction will then be phased over several years through a series of projects to assure the ability to serve existing and future customers.
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The attached resolution has been reviewed and approved by County Counsel and outside Bond Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Tri-City Service District, adopt the resolution authorizing Water Environment Services to enter into financing agreements necessary to fund its adopted Capital Improvement Plan.

Respectfully submitted,

Chris Storey Digitally signed by Chris Storey
Date: 2020.11.17 15:48:02 -08'00'

Chris Storey, Assistant Director
WES

Attachments: Authorizing Resolution

NOW, THEREFORE, THE BOARD, ACTING AS THE GOVERNING BODY OF TRI-CITY SERVICE DISTRICT, RESOLVES AS FOLLOWS:

Section 1. Approval of Borrowing. A public hearing was held before the Board on this day, November 25th, 2020, regarding WES entering into one or more financing agreements in an aggregate principal amount of up to \$50,000,000 to finance the Projects pursuant to ORS Section 190.080(1)(a), ORS Section 271.390, and the applicable provisions of ORS Chapter 287A (collectively, the “Act”). By adoption of this Resolution, the Board hereby approves of WES entering into one or more financing agreements in an aggregate principal amount of up to \$50,000,000 pursuant to the Act to finance the Projects.

Section 2. Effective Date. This Resolution shall become effective immediately upon its adoption.

ADOPTED this 25th day of November, 2020.

BOARD OF COUNTY COMMISSIONERS
as the Governing Body of Tri-City Service District

Chair

Recording Secretary



Gregory L. Geist
Director

November 25, 2020

Board of County Commissioners
Acting as the governing body of
Water Environment Services

Members of the Board:

Approval of a Resolution Authorizing a Financing for New Capital Projects for
Water Environment Services

Purpose/Outcomes	Approval of a Resolution Authorizing a Financing for New Capital Projects for Water Environment Services.
Dollar Amount and Fiscal Impact	Issuance of up to \$50 million in new debt.
Funding Source	WES monthly service charge revenues will be used to pay annual debt service associated with the borrowing. No County General Fund revenues are involved.
Duration	Debt is anticipated to be issued for a 25 year term.
Previous Board Action/Review	Prior discussions related to budget and financing strategies.
Counsel Review	This Resolution was reviewed and approved by County Counsel on November 16, 2020.
Strategic Plan Alignment	1. Build Public Trust Through Good Government: The issuance at this time of very low interest rates should result in significant interest expense savings. 2. Build Strong Infrastructure: Construction of necessary facilities to meet the needs of current customers and future growth.
Contact Person	Chris Storey, WES Assistant Director (503-742-4543)
Contract No.	<i>Resolution No. not assigned yet.</i>

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key projects included in the adopted Capital Improvement Plan. The attached orders and associated public hearings authorize the issuance of debt to accomplish this purpose.

BACKGROUND:

WES is estimating the need to borrow up to approximately \$50 million to supplement existing reserves to fund needed capital projects over the next three years through the issuance of revenue obligations with a term of 25 years. At the closing of the bond sale, the Internal Revenue Service will require a finding of a reasonable expectation to spend 85% of the proceeds of the borrowing within three years of the date of borrowing. Consequently, WES has identified projects in its approved Capital Improvement Plan (“CIP”) that will be initiated over the next three years and that will be financed with the borrowed funds, as well as acknowledging that the CIP is updated annually and some additional projects may be funded thereby. The following are brief summary descriptions of those projects.

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- ***Tri-City WRRF Solids Handling Improvements Project – Estimated cost over the next 36 months: \$9.1 million.*** WES has identified the need to expand and refurbish the solids handling processes at the Tri-City WRRF. Project costs include construction and engineering services during construction. The project could include new sludge stabilization and dewatering facilities, electrical distribution upgrades, digester feed tank, digested sludge storage, cake storage and load out facility, centrate storage, biogas utilization and upgrades to existing facilities. The new cogeneration system will provide approximately half of the power required at the facility and provide heat for the process and space heat for several buildings. Construction is expected to be completed in 2021.
- ***Multiple Pump Station Upgrades – Estimated cost over the next 36 months: \$8 million.*** Eight pump stations need rehabilitation. Upgrades will include pumps and electrical systems, HVAC and structural components. The pump stations include Willamette, Sieben Lane, South Welches, Golf Course Terrace, Gladstone, Clackamas, 82nd Drive, and Timberline Rim.

- **Tri-City WRRF Liquids Expansion – Estimated cost over the next 36 months: \$5 million.** The results of the Collection System Master Plan show that peak wet weather flow to the Tri-City WRRF exceeds its hydraulic capacity. The Willamette Facilities Plan (“WFP”) has started and is a planning effort for the Tri-City and Kellogg Creek WRRFs needed to define facilities that will be required to provide peak wet and dry weather capacity for the near and long term. This project, yet to be defined, will address the wet weather expansion required to be completed within the next five years. The costs are placeholders and will be better defined upon completion of the Willamette Facilities Plan in 2021. Note that projected flows and project sizing assumes the I/I reductions noted in the Collection System Master Plan. Construction of this estimated total \$85M expansion will continue beyond 2025.
- **Kellogg Creek WRRF Solids Improvement Project – Estimated cost over the next 36 months: \$5 million.** Currently, digested sludge from the Kellogg Facility is hauled to, and dewatered at, the Tri-City facility. Dewatered biosolids are hauled to eastern Oregon for beneficial reuse. This project would provide dewatering at the Kellogg Facility with improvements to the digester complex, including updating the biogas utilization system. The budget for this project was increased to include new thickening equipment.
- **Pipe and Manhole Rehabilitation and Replacement – Estimated cost over the next 36 months \$3 million.** Sanitary sewer pipe and manholes are subject to degraded condition through exposure to chemicals, organic growths, and soil movement. This degradation leads to defects in pipe which can result in surface water and groundwater infiltration into the collection system, straining treatment capacities and increasing risk of pipe failure. This project will repair and/or replace damaged and aging pipelines utilizing methods including pipelining, pipe bursting and replacement. This project will also rehabilitate aging manholes which have degraded condition through normal exposure to chemical and biological components and soil movement. Rehabilitation efforts to reduce risk will range from cleaning and spray lining to complete manhole replacement depending upon the degree of wear.
- **Inflow and Infiltration Reduction Program – Estimated cost over the next 36 months \$3 million.** Inflow and Infiltration (“I/I”) is clean groundwater and/or rainwater that enters the sewer system through direct connections such as roof drains or area drains or defects such as leaking joints or manholes. When the amount of I/I becomes excessive it can cause capacity deficiencies in the sewer system and possible overflows. When the amount of I/I becomes excessive it is more cost effective to remove the I/I than upsize infrastructure or treatment facilities to transport and treat the extraneous clean water. This project will involve activities to identify areas of high I/I and their sources and include design and construction of sewer rehabilitation projects, to abate the I/I. The Mount Talbert and Gladstone Area Sanitary Sewer Evaluation Survey (“SSES”) and I/I Reduction Project are funded by this Program.

The attached resolution has been reviewed and approved by County Counsel and outside Bond Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of Water Environment Services, adopt the resolution authorizing Water Environment Services to enter into financing agreements necessary to fund its adopted Capital Improvement Plan.

Respectfully submitted,

Chris Storey Digitally signed by Chris Storey
Date: 2020.11.17 15:48:22
-08'00'

Chris Storey, Assistant Director
WES

Attachments: Authorizing Resolution

the estimated weighted average life of the financing agreement does not exceed the estimated dollar weighted average life of the property that is financed; and

WHEREAS, the Board, acting as the governing body of WES, hereby determines that the Projects are needed; and

WHEREAS, it is desirable to obtain financing for the Projects in an aggregate principal amount of not more than \$50,000,000 pursuant to ORS 271.390 and the applicable provisions of ORS Chapters 190 and 287A; and

WHEREAS, WES may make expenditures on the Projects (the "Expenditures") before WES borrows to finance the Projects, and the rules of the United States Internal Revenue Service require WES to declare its official intent to reimburse itself for amounts that WES will spend before it borrows, in order for WES to reimburse itself for those Expenditures from the proceeds of a tax-exempt borrowing;

Now, THEREFORE be it hereby resolved:

SECTION 2. AUTHORIZATION.

WES may finance the Projects under the authority of ORS Section 271.390 and the applicable provisions of ORS Chapters 190 and 287A, by entering into one or more financing agreements in an aggregate principal amount of not more than \$50,000,000 (the "Financing Agreements"). WES may also pay costs associated with the Financing Agreements with proceeds of the Financing Agreements. The Financing Agreements shall be special obligations of WES that are payable solely from the net revenues of WES's Sewer System and related amounts as provided in WES's Amended Master Sewer Revenue Bond Declaration, dated as of June 30, 2018 (the "Master Declaration") or a subordinate lien declaration.

SECTION 3. DELEGATION.

The WES Director or the WES Assistant Director or the person authorized to act on behalf of the WES Director or the WES Assistant Director (each of whom is referred to as a "WES Official") is hereby authorized, on behalf of WES and without further action by the Board, to:

1) Negotiate, execute, and deliver one or more Financing Agreements to accomplish the financing authorized in this Resolution. Subject to the limitations of this Resolution, the Financing Agreements may be in such form and contain such terms as the WES Official may approve.

2) Negotiate, execute and deliver one or more escrow agreements or similar documents (the "Escrow Agreements") that provide for the issuance of one or more series of "revenue obligations" (the "Obligations") that represent ownership interests in the principal and interest payments due from WES under the Financing Agreements. Subject to the limitations of this Resolution, the Escrow Agreements and each series of Obligations may be in such form and contain such terms as the WES Official may approve.

3) Pledge all or any portion of the net revenues of WES's Sewer System, as defined in the Master Declaration to pay the Financing Agreements, and determine the lien status of each pledge and execute a subordinate lien declaration, if applicable.

4) Prepare, execute and deliver one or more declarations that supplement or amend the Master Declaration, in order to issue the Financing Agreements as "Parity Obligations" under the Master Declaration.

5) Deem final and authorize the distribution of a preliminary official statement for each series of Obligations and authorize the preparation and distribution of a final official statement or other disclosure document for each series of Obligations.

6) Undertake to provide continuing disclosure for each series of Obligations in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.

7) Apply for ratings for each series of Obligations, determine whether to purchase municipal bond insurance or obtain other forms of credit enhancements for each series of Obligations, enter into agreements with the providers of credit enhancement, and execute and deliver related documents.

8) Enter into additional covenants for the benefit of the purchasers of the Obligations that the WES Official determines are desirable to obtain more favorable terms for the Financing Agreements.

9) Appoint and enter into agreements with service providers whose services are desirable for the financing, including municipal advisor, paying agent, and escrow agent.

10) Determine the final principal amount of each Financing Agreement, the interest rate or rates that each Financing Agreement shall bear, WES's prepayment rights, and other terms of each Financing Agreement and each series of Obligations.

11) If beneficial, establish reserve accounts to secure the borrowings with proceeds of the Financing Agreements or other amounts.

12) Solicit competitive bids for the purchase of the Obligations and award the sale to the bidders offering the most favorable terms to WES, select underwriters to purchase the Obligations and negotiate the terms of the sale of those Obligations with the underwriters, or place any Financing Agreement directly with a commercial bank or other lender.

13) Issue any qualifying Financing Agreement as a "tax-exempt bond" bearing interest that is excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), designate any Financing Agreement as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code, if applicable, and enter into covenants to maintain the excludability of interest on those Financing Agreements from gross income under the Code.

14) Issue any Financing Agreement as a "taxable bond" bearing interest that is includable in gross income under the Code.

15) Execute and deliver any other certificates or documents and take any other actions that the WES Official determines are desirable to carry out this Resolution.

SECTION 4. DECLARATION OF INTENT TO REIMBURSE.

WES hereby declares its official intent pursuant to Section 1.150-2 of the Treasury Regulations to reimburse itself with the proceeds of the Financing Agreements for any Expenditures paid before the Financing Agreements are issued.

SECTION 5. EFFECTIVE DATE.

This Resolution shall take effect immediately upon its adoption.

ADOPTED this 25th day of November, 2020.

BOARD OF COUNTY COMMISSIONERS
as the Governing Body of Water Environment Services

Chair

Recording Secretary



November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Resolution Supporting Construction Career Pathways Program (C2P2)

Purpose/Outcomes	Formal Resolution in support of the BCC adoption of the C2P2 Regional Framework and County Plan on November 17, 2020.
Dollar Amount and Fiscal Impact	\$50,000 to Clackamas Workforce Partnership for Workforce Investment
Funding Source	To be determined by County Administrator and approved by the BCC
Duration	FY 2020-2021
Previous Board Action	Adoption of the C2P2 Regional Framework on Nov. 17, 2020
Counsel Review	This Resolution has been reviewed by County Counsel 11/9/2020
Procurement Review	No - item is a Resolution
Strategic Plan Alignment	Supports Goal: Grow a Vibrant Economy by advocating for family-wage job opportunities for a growing, diverse workforce
Contact Person	Tracy Moreland: tracymor@clackamas.us
Contract No.	n/a

BACKGROUND:

The Construction Career Pathways Project (C2P2), aims to address a lack of diversity in the skilled construction workforce in the metro area, where people of color and women face significant barriers in accessing and sustaining these careers.

In 2018, Metro and the City of Portland commissioned a construction workforce market study in anticipation of upcoming public construction projects. This study clearly showed:

- Construction is a high-growth industry reporting a severe shortage in skilled workers.
- There is a need for nearly 14,000 construction workers between now and 2021.

- The need for construction workforce will only increase in the next ten years as new construction projects arise and nearly 20% of the workforce is at or near retirement age.
- The construction workforce has been historically homogenous – currently only 4% women and 20% minorities.
- People of color and women are more likely to work in the lower-paying trades.

To address these challenges, Metro convened a workgroup of regional public agencies in the summer of 2018 to develop the Construction Career Pathways Project Regional Framework. Over the next year this workgroup helped develop seven essential points Public Owners should integrate in order to ensure success and move the needle toward achieving construction workforce equity. The attached Clackamas County C2P2 Participation Plan outlines how the County can support the following C2P2 points:

- I. Set Clear Workforce Diversity Goals
- II. Set Project Thresholds
- III. Track and Review Progress
- IV. Develop a Workforce Agreement
- V. Implement Worksite Anti-Harassment and Culture Change Strategies
- VI. Collectively Invest in Workforce Supply
- VII. Establish Regional Collaborative

The Clackamas County Board approved adoption of the C2P2 Regional Framework and allocated a sum of \$50,000 for Workforce Investment to Clackamas Workforce Partnership on November 17, 2020.

RECOMMENDATION:

Staff recommends the Board approval of this Resolution in tandem with the recent adoption of the C2P2 Regional Framework on November 17, 2020.

Respectfully submitted,

Tracy Moreland
Policy Advisor
Clackamas County Administration

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

**In the Matter of Supporting
Construction Careers Pathways Program (C2P2)**

Page 1 of 2

WHEREAS, Careers in the construction industry provide family-wage jobs and help build a vibrant economy.

WHEREAS, The Portland Metro Region Construction Workforce Market Study found a severe shortage of, and need for a skilled construction workforce for new construction projects in the Greater Portland region.

WHEREAS, the Clackamas County Board of Commissioners would like its public projects to help increase and support opportunities for women and communities of color, recognizing that they face significant barriers to careers in the construction industry.

WHEREAS, Metro has convened a Public Owner Workgroup, which developed the Construction Career Pathways Project (C2P2) Regional Framework with significant input from community and industry stakeholders.

WHEREAS, C2P2, through its Framework, aims to support region-wide efforts, across agencies, to address those barriers faced by women and people of color in the construction industry.

WHEREAS, The Framework provides tools and guidance to help agencies set region-wide workforce diversity goals, establish project thresholds, track and review progress on goals, develop workforce agreements, implement worksite anti-harassment and culture change strategies, collectively invest in workforce supply, and establish regional collaboration.

NOW THEREFORE, the Clackamas County Board of Commissioners hereby resolves to:

1. Adopt the Construction Careers Pathways Framework (C2P2) in an effort to support a regional approach to recruiting and retaining women and people of color in the construction trades:
 - Set region-wide workforce diversity goals,
 - Establish project thresholds,
 - Track and review progress on goals,
 - Develop workforce agreements,

- Implement worksite anti-harassment and culture change strategies,
 - Collectively invest in workforce supply, and
 - Establish regional collaboration.
2. Enlist Clackamas Workforce Partnership (CWP), a county nonprofit partner, to help support and oversee this effort with Clackamas County staff.

Dated this _____ day of _____, 2020

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

November 25th, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval for a Revenue Agreement with CareOregon for COVID Direct Member Support & Telehealth Infrastructure Funding.

Purpose/Outcomes	The purpose of this agreement is to expand access and improve options for care via telehealth services.
Dollar Amount and Fiscal Impact	CareOregon will pay Clackamas County up to \$250,000.00.
Funding Source	No County funds are involved. Funding through CareOregon.
Duration	March 15, 2020 – April 15, 2022
Previous Board Action	No previous board action.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities by increasing the number of telehealth visits.
Counsel Review	1. October 15, 2020 - KR 2. November 2, 2020 - EOC
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. Revenue contract, no procurement needed.
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	9910

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of agreement #9910, a Revenue agreement with CareOregon. This agreement will allow for improved access to telehealth care services with the purchase of 53 laptops and web cameras. This technology will expand access and options to care for our patients.

CareOregon will provide a payment of \$50,000 upon execution of this agreement. They will provide a second payment of \$50,000 upon approval of narrative report. They will provide up to \$150,000 in bonuses for the achievement of metrics for the period of October 2020 to December 2021.

This is a retroactive agreement. The contract was received on October 13, 2020. The agreement is effective March 15, 2020 to April 15, 2022.

RECOMMENDATION:

Staff recommends approval of this amendment.

Respectfully submitted,


 Richard Swift, Director
 Health, Housing & Human Services Department

Healthy Families. Strong Communities.

CareOregon, Inc.
Letter of Agreement
COVID Direct Member Support & Telehealth Infrastructure

#9910

This Letter of Agreement (“Agreement”) is entered into between CareOregon, Inc. (“CareOregon”) and Clackamas County, by and through its Health Centers (“Provider”) for the period of March 15, 2020 through April 15, 2022 and sets forth the understandings and commitments concerning funding and administration of COVID Direct Member Support & Telehealth Infrastructure Program (“Program”). For purposes of this Agreement, CareOregon and Provider may each be referred to individually as a “Party” and collectively as the “Parties”.

I. Recitals:

- A. CareOregon is an entity sub-contracted with Health Share of Oregon (HSO), a certified Coordinated Care Organization that has entered a Health Plan Services, Coordinated Care Organization Contract and Cover All Kids Health Plan Services Contract (intentionally referred to in the singular as the “CCO Contract”), with the state of Oregon, acting by and through the Oregon Health Authority (“OHA”).
- B. As a subcontractor of HSO, CareOregon provides health plan functions for HSO, as contracted for in the CCO Contract, whereby CareOregon serves HSO Members enrolled in the Oregon Health Plan (“OHP”).
- C. CareOregon is an entity sub-contracted with CareOregon Advantage (COA), a Medicare Advantage plan contracted with the Centers for Medicare and Medicaid Services (CMS).
- D. Provider is contracted with CareOregon under a Provider Health Care Services Agreement and thus, subject to all the laws, rules, regulations, and contractual obligations that apply to OHP.
- E. The Parties desire to contract with one another such that CareOregon provides financial support to Provider for rendering certain services to eligible members, all pursuant to the terms and conditions of this Agreement. Both Parties acknowledge the funding provided pursuant to this Agreement is separate from any of CareOregon’s other funding.

II. Program Description:

Whereas, COVID-19 revealed a network infrastructure ill-suited to support telehealth services necessitated by this pandemic. To promote safe and equitable care, the COVID Direct Member Support & Telehealth Infrastructure Program will provide financial support to Provider.

The financial support, necessitated by the COVID-19 pandemic, will reconnect Provider with patients who are high-risk for contracting the virus. Given the need for social distancing, this technology improves access for all patients and allows clinics to reserve in-patient visit time and space for those who require this type of visit. Improving access improves health outcomes by promoting health and wellness through effective case management, care coordination and

chronic disease management. Preventative care management also reduces hospital admissions and readmissions.

III. Program Objectives:

The Program support of Provider will allow for improved access to care in the following ways:

Through the purchase of 53 laptops and 53 web cams, Provider is expanding access to and options for care. Telehealth gives provider and patient more options for receiving care thus improving health quality by addressing preventative health needs as well as the ability to respond to health concerns in a timely, efficient manner.

IV. Definitions.

A. The term "Principal(s)" shall mean any officer, director, owner, partner, agent, employee, subcontractor, contractor, person with management or supervisory responsibilities, or other representative of the respective Party.

V. **Term:** This Agreement commences on March 15, 2020 ("Effective Date") and shall remain in effect through April 15, 2022 ("Termination Date") unless otherwise terminated as stipulated herein.

VI. Termination.

A. Either Party can terminate this Agreement without cause upon providing thirty (30) days prior written notice to the other Party.

B. Without prejudiced to any other remedies available to it at law, either Party shall have the right to terminate this Agreement at any time for cause upon written notice to the other Party.

i. For purposes hereof, cause is defined as: (1) inability to perform the responsibilities hereunder or incompetence demonstrated in performance of responsibilities under this Agreement; (2) reasonable belief that the Principals, as defined herein, or representative(s) of either Party actively participating in performing the responsibilities hereunder have violated any applicable laws, rules, or regulations; (3) fraud, dishonesty, substance abuse, or personal conduct of either Party or its Principals which may harm the business and/or reputation of either Party; (4) reasonable belief that the health, safety, or welfare of a Member or Principal of either Party is threatened; (5) the termination of Provider's Health Care Services Agreement with CareOregon; and (6) a material breach.

- ii. In addition to permitting termination of this Agreement, a material breach committed by Provider shall entitle CareOregon to suspend or recoup all payments made to Provider pursuant to this Agreement and shall entitle CareOregon, at its election, to suspend Provider's participation in any and all CareOregon programs until such time as all material breaches are cured to CareOregon's satisfaction.
- C. This Agreement shall immediately terminate, as appropriate, in the event the services provided pursuant to this Agreement are determined to be funded through alternative revenue sources.
- D. Unless prohibited by law, this Agreement may be terminated, in whole or in part, by CareOregon whenever and for any reason CareOregon determines that such termination is in the best interest of CareOregon, the community it services, or the Members it serves.
- E. The Party initiating the termination, under any circumstance, shall render written Legal Notice of termination to the other Party and must specify the provision of this Agreement giving the right to termination, the circumstances giving rise to termination, and the date on which such termination is proposed to become effective.
- F. Upon Termination under any circumstance, any payments not yet made by CareOregon to Provider shall not be made and any remaining balance of payments disbursed to Provider under this Agreement that have not been used for, or committed to, the Program prior to termination must be refunded and repaid promptly to CareOregon. Provider understands and agrees that CareOregon will not be liable for, nor shall payments be made or used for, any services performed after the date of Termination.

VII. Program Elements:

- A. **Reports: Provider** agrees to prepare and submit a final report as set forth below.
 - 1) The final report shall include the following components:
 - i. **Narrative Report:** Provider must respond to narrative questions describing progress, success, and barriers within the model of care. The report will clearly outline how the initial payment, made upon execution of this Agreement, is being utilized to support the Program objectives as outlined in Section III above, and must also relate how the funded staffing is directly and materially designed to achieve the following for enrolled CareOregon members:
 - To improve engagement and health quality.
 - To increase the likelihood of desired health outcomes in ways that are capable of being objectively measured and of producing verifiable results and achievements.
 - To be directed toward individual enrollees or incurred for the benefit of specified segments of enrollees or provide health improvements to the population beyond those enrolled in coverage as long as no additional costs are incurred due to the non-enrollees.

- To be grounded in evidence-based medicine, widely accepted best clinical practice, or criteria issued by recognized professional medical associations, accreditation bodies, government agencies or other nationally recognized health care quality organizations.

2) Provider must submit the final narrative report **via secure email** no later than November 16, 2020.

3) CareOregon, in its sole discretion, will determine if the fund utilization successfully meets the Program objectives. If it is determined by CareOregon that the objectives are not on track to be met by the reported payment utilization, both parties agree to a meeting to discuss and set forth in a written summary how the second payment installment will be utilized, prior to its disbursement by CareOregon.

B. Quality Improvement: To qualify for a quality improvement bonus progress toward the Program Objectives shall be measured:

1) for the period October 1, 2020 through December 31, 2020 as follows:

- 40% based on achieving engagement rate benchmark of 95% for Medicare members that qualify for inclusion in the HEDIS Controlling Blood Pressure (CBP) measure.

- Engagement will be measured by CareOregon's 12 month primary care engagement rate. The 12 month primary care engagement rate measures the percent of members assigned to Provider with at least one primary care visits in the past 12 months with Provider

- 40% based on either achieving an all Medicare engagement rate of 85% **OR** an increase of 3% over October 4, 2020 baseline performance.

- Engagement will be measured by CareOregon's 12 month primary care engagement rate. The 12 month primary care engagement rate measures the percent of members assigned to Provider with at least one primary care visits in the past 12 months with Provider

- 20% based on increasing percent of Medicare members with an annual wellness visit by 3% based on October 7, 2020 baseline.

- Eligible codes are: G0438, G0439, G0468

- o AWVs can be provided telephonically and must be coded as risk adjustment eligible visits.

AWV Risk adjustment eligible criteria:

Telephone visits are not risk adjustment eligible and therefore do not support risk gap closure, which is measured using CMS risk adjustment response files. During the COVID-19 pandemic, CMS has not made an exception to the synchronous, audio-visual requirement for risk

adjustment. As such, CPT codes 99441-99443 are not eligible for risk adjustment. Please see risk adjustment eligible billing codes below

The CMS filtering logic for risk adjustment looks at the CPT codes, provider specialty and bill type code on encounters(claims) to determine if the diagnosis codes on the encounter(claim) are eligible for risk adjustment. An encounter(claim) must have at least one risk adjustment eligible CPT code to be risk adjustment eligible. CareOregon only includes risk adjustment eligible diagnoses in the recapture measurement.

Risk Adjustment Eligible Billing Codes

Visit Type	In-person	Telehealth
99201	Yes	Yes
99202	Yes	Yes
99203	Yes	Yes
99204	Yes	Yes
99205	Yes	Yes
99211	Yes	Yes
99212	Yes	Yes
99213	Yes	Yes
99214	Yes	Yes
99215	Yes	Yes
99381-99387	Yes	No
99391 – 99397	Yes	No
99441 – 99443	No	No
98966 – 98968	No	No

CareOregon’s Risk Adjustment Recapture policy will be applied in the recapture rate calculation. Risk recapture rate is the ratio of chronic conditions reported for a member in one date of service year (observation year) to the same conditions reported in the previous year (base period year). The risk recapture rate for this agreement is defined as Chronic HCCs recaptured in Observation period / Chronic HCCs captured in Base Period. In cases where a chronic condition is reported in the observation period that was not reported in the base period, the new condition will be included in both the numerator and the denominator in recapture.

2) for the period of January 1, 2021 through December 30, 2021 both parties agree to establish mutually agreed upon targets for the clinical quality associated with Medicare star measures no later than January 1, 2021. If the parties are not able to reach agreement on targets by January 1, 2021, no bonus monies for this period will be payable to Provider, until such as time as agreement is reached, inclusive of retro-active bonus payments.

3) Upon signing of the contract, CO agrees to provide baseline data as outlined in section VII B.1, Program Elements above.

C. In addition to the information listed above and at the reasonable request of CareOregon, Provider shall submit other reports and shall make its personnel available to discuss expenditures, records, the progress of Program, or other topics related to this Agreement. Furthermore, upon providing reasonable notice to Provider, CareOregon shall be entitled to audit Provider's performance of its duties and obligations hereunder to establish, among other things, meaningful progress made to fulfill the purpose of this Agreement, that Provider's performance is in compliance with the terms and conditions of this Agreement, including Providers compliance programs, along with any other related data elements reasonably requested. Upon identification by CareOregon of issues with Provider's performance, including indications that quality, access, or expenditure management goals are being compromised, that Member rights or health are being affected, or any other notable deficiencies or material breach(s) of this Agreement, Provider shall be required to address such issues through education, counseling, or a Corrective Action Plan to remediate the identified issue(s) and establish care improvements. Provider shall cooperate with CareOregon with respect to any such audit and corrective action required, including by providing CareOregon with Records and site access within such reasonable time frames as requested by CareOregon.

VIII. Payment:

A. Payment will be comprised of the following components:

- \$50,000.00 payable upon execution of this Agreement
- \$50,000.00 payable upon receipt and approval of the Narrative Report as described in section VII.A, Program Elements.
- Up to a \$10,000.00 monthly bonus, weighed per Section VII.B, for the period of October 1, 2020 through December 31, 2020 for the achievement of engagement metrics as described in section VII.B, Program Elements, to be paid by April 15, 2021.
- Up to a \$10,000.00 monthly bonus for the period of January 1, 2021 through December 31, 2021 for the achievement of metrics to be jointly agreed upon no later than January 1, 2021 per Section VII.B.2, Program Elements. Payment for the bonus achieved 2021 will be paid April 15th, 2022

B. Total payment under this Agreement will not exceed \$250,000.00 over the term of this Agreement. Nothing in this Agreement implies or guarantees ongoing funding or payment throughout and beyond the Term of this Agreement.

C. Any and all costs incurred by Provider which are not eligible for payment under this Agreement shall be the sole obligation of Provider. In addition, CareOregon is under no obligation to pay for or participate in any cost increases, change orders, cost overruns, or additional Program expenses of any kind.

IX. Representations and Warranties.

- A. Provider represents and warrants that Provider and its Principals possess the knowledge, skill, experience necessary to perform the services contemplated under this agreement and will perform such services in a timely manner and with the maximum reasonable degree of quality, care, and attention to detail.
- B. Provider expressly represents and warrants to CareOregon that Provider is eligible to participate in and receive payment pursuant to this Agreement. In so doing, Provider certifies by entering into this Agreement that neither it nor its Principals are: (1) placed on the Tier Monitoring System by CareOregon's Peer Review Committee;(2) have documented contract and/or compliance issues; or, (3) are presently declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency.
- C. Should it be determined that Provider was ineligible to receive payments from CareOregon pursuant to this Agreement, Provider expressly agrees to promptly repay all such payments disbursed to it under this Agreement.
- D. If Provider 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 Provider is removed from the CareOregon Tier Monitoring System or has resolved compliance issue(s) to CareOregon's satisfaction. Any discontinued funding that has been withheld will not be disbursed.

X. General Provisions:

- A. **Force Majeure.** Neither Party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence provided such Party gives notice to the other Party, as soon as reasonably practicable, specifying the nature and the expected duration thereof. Failure of a Party to give notice shall not prevent such Party from relying on this Section except to the extent that the other Party has been prejudiced thereby. Notwithstanding the foregoing, any dates and obligations specified in this Agreement shall be subject to change, without liability on either Party, based on the current information available concerning COVID-19.
- B. **Amendments and Waivers.** No amendment, modification, discharge, or waiver of this Agreement shall be valid or binding without prior written consent (which shall not be unreasonably withheld) of the Party against whom enforcement of the amendment, modification, discharge, or waiver is sought. A waiver or discharge of any of the terms and conditions hereof shall not be construed as a waiver or discharge of any other terms and conditions hereof.
- C. **Confidentiality and Marketing.**
 - a. During the course of performance of this Agreement, Provider may be given access to information that relates to CareOregon's business activities, products, services, personally identifiable employee information, or protected health information ("PHI") of Members. All such information shall be deemed "Confidential Information". Provider may use the Confidential Information only in connection with the specific duties authorized pursuant to this Agreement. Provider agrees to

protect the confidentiality of all Confidential Information and specifically safeguard the health information of Members as it applies to activities related to this program.

- b. **HIPAA and HITECH.** Both parties agree to implement and maintain systems that protect PHI, as required by HIPAA and HITECH.
 - c. Provider agrees to notify CareOregon of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof.
 - d. In addition to the above, both Parties agree that all negotiations will remain confidential and that no press, news releases, or other publicity release or communication to the general public concerning the obligations contemplated herein will be issued without providing a written copy of the communication to the other Party and receiving the other Party's prior written approval, unless applicable law requires such disclosure. In addition, both Parties agree that they must obtain written permission prior to using the other Party's name, trade name, image, symbol, design, or trademark in any marketing, advertising, or promotional campaign in any medium or manner. Email approval by CareOregon or the Provider Contact will suffice as written approval.
 - e. The terms of this Section C. apply to any of Provider's Principals as defined supra and it is Provider's responsibility to assure that all such Principals comply with all such requirements. In addition, the terms of this Section shall survive the expiration or termination of this Agreement.
 - f. In addition to the above, Provider agrees to abide by the Confidentiality Provision contained in the Provider Health Care Services Agreement signed by and between CareOregon and Provider; Such Confidentiality Provision of the Provider Health Care Services Agreement is thus incorporated by reference and made a part hereof.
- D. **Insurance.** Provider and CareOregon each agree to maintain at all times during this Agreement and at their own cost and expense, commercial general liability insurance, errors and omissions insurance, and workers compensation insurance coverage in amounts standard to its industry. If the Oregon Tort Claims Act and article XI, Section 10 of the Oregon Constitution is applicable to either CareOregon or the Provider, this section is modified by its terms.
- E. **Indemnity; Defense.** Each party hereby agrees to defend, indemnify and hold harmless the other party, its officers, directors, and employees from and against third party claims, loss, liability, expense judgements or settlement contribution arising from injury to person or property, arising from negligent act or omission on its part or its officers, directors, volunteers, agents, or employees in connection with or arising out of: (a) services performed under this Agreement, or (b) any breach or default in performance of any such party's obligations in this Agreement including, without limitation, any breach of any warranty or representation. In the event that either party, its officers, directors, or employees are made a party to any action or proceeding related to this Agreement then the indemnifying party, upon notice from such party, shall defend such action or proceeding on behalf of such party at the indemnifying party's sole cost and expense. Each party shall have the right to designate its own counsel if it reasonably believes the other party's counsel is not representing the indemnified party's best interest. Indemnification duties under this Agreement shall be at all times limited by the tort claim limits provided in the Oregon Tort

Claims Act and the Oregon Constitution. This indemnity shall survive termination of this Agreement.

- F. **Compliance and Licensure.** Provider and CareOregon shall, at all times during the term of this Agreement comply with all applicable federal, state, and local laws, rules and regulations, and shall maintain in force any licenses and obtain applicable permits and consents required for performance of services under this Agreement. The Parties shall provide to each other copies of such applicable current valid licenses and/or permits upon request. The Parties represent and warrant that, to the best of their knowledge, officers, directors, employees, subcontractors, agents and other representatives are not excluded from participating in any federal health care programs, as defined under 42 U.S.C. 1320-a7b (f), and to their knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. Each party agrees to notify the other of the commencement of any such exclusion or investigation with seven (7) business days of first learning of it. The parties represent that it and its employees are not excluded from Federal healthcare programs and is not included in the Office of Inspector General (OIG) and General Services Administration (GSA) exclusion lists. Additionally, if an employee is identified to be on such lists, that employee will immediately be removed from any work related directly or indirectly to all work pursuant to this Agreement. The parties shall have the right to immediately unilaterally terminate this Agreement upon learning of any such exclusion and shall keep each other apprised of the status of any such investigation.
- G. **Relationship of the Parties.** CareOregon and Provider are independent entities who are contracting with each other solely for the purpose of effecting the provisions of this Agreement for services. No provision of this Agreement is intended to create nor shall be construed to create an employment, agency, joint venture, partnership, or any other business or corporate relationship between the Parties hereto other than that of independent contractors.
- H. **No Third-Party Benefit.** This Agreement shall not create any rights in any third parties who have not entered into this Agreement, nor shall this Agreement entitle any such third party to enforce any rights or obligation that may be possessed by such third party.
- I. **Assignment or Delegation.** Except as otherwise specifically provided for herein, the parties shall not assign or delegate any or all of their rights or responsibilities under this Agreement without the prior written consent of the other party.
- J. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

<Signature page to follow>

**Agreed to on behalf of Clackamas County, by
and through its Health Centers Division:**

**Agreed to on behalf of CareOregon,
Inc.:**

Signature

Name: _____

Title: _____

Date: _____

Signature

Name: Eric C. Hunter

Title: Chief Executive Officer

Date: _____

EXHIBIT A

Contact Information for Notices and Report Submissions

- A. Both Parties agree that the individual(s) named below shall serve as contact person(s) for purposes of carrying out this Agreement. Such contact person(s) shall be authorized to act on behalf of their respective parties as to matters pertaining to this Agreement.
- B. Effective upon execution of this Agreement, the initial contact person(s) shall be those set forth below. Each Party shall notify the other, in writing, as to the name, and e-mail address for any replacement for such designated contact person.

Provider Contact: James Wilson
E-mail: Jwilson2@clackamas.us

CareOregon Contact:
Paymentmodel@careoregon.org
and
Sarah Reynolds
E-mail: reynoldss@careoregon.org

November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project
for Human Immunodeficiency Virus (HIV) Testing and Counseling Services

Purpose/Outcomes	Provide HIV testing, counseling, and outreach to Clackamas County population.
Dollar Amount and Fiscal Impact	The maximum Agreement value is \$75,244.
Funding Source	Funding provided by the State of Oregon - Oregon Health Authority. No County General Funds are involved.
Duration	Effective July 01, 2020 and terminates on June 30, 2021
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on November 10, 2020 by AN
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This is Subrecipient and processed through Grants Management
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	9912

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of a Sub-recipient Professional Services Agreement with Cascade AIDS Project for HIV Testing and Counseling Services. The County receives pass through funding through the Local Public Health Authority Agreement (LPHA) with the State of Oregon. This funding is a mix of federal and state funding. The County contracts with Cascade AIDS Project to manage the HIV program. This Agreement is retroactive due to an extensive review of scope of work with Program Management and Cascade AIDS to ensure we were meeting the needs of the program and the requirements of the grant.


This Agreement has a maximum value of \$75,244. This Agreement is effective July 1, 2020 and continues through June 30, 2021.

Page 2 Staff Report
November 25, 2020
Agreement #9912

RECOMMENDATION:

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

Respectfully submitted



Richard Swift, Director
Health, Housing, and Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9912	Division: PH	<input checked="" type="checkbox"/> Subrecipient
Board Order #:	Contact: Weber, Jeanne	<input type="checkbox"/> Revenue
	Program Contact: Summer, Anna	<input type="checkbox"/> Amend # \$
		<input checked="" type="checkbox"/> Procurement Verified
		<input checked="" type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Wednesday, November 25, 2020

CONTRACT WITH: Cascade AIDS Project (CAP)

CONTRACT AMOUNT: \$75,244.00

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? 7/1/2020 - 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: Andrew Naylor _____ Date Approved: Tuesday, November 10, 2020
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: **Cascade AIDS Project (CAP)** _____

BOARD AGENDA ITEM

NUMBER/DATE: _____ DATE: **11/25/2020** _____

PURPOSE OF

CONTRACT/AGREEMENT: **Provision of HIV Counseling & Testing**

H3S CONTRACT NUMBER: **9912** _____

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 21-009**

Project Name: **HIV Testing – Contract #9912**
Project Number: **40063**

This Agreement is between **Clackamas County**, a political subdivision of the State of Oregon, acting by and through its Department of Health, Housing and Human Services, Public Health Division ("COUNTY") and **Cascade AIDS Project (CAP)** ("SUBRECIPIENT"), an Oregon Nonprofit Organization.

Clackamas County Data

Grant Accountant: Sherry Olson	Program Manager: Anna Summer
Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5342 Email: SOlson4@co.clackamas.or.us	Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5382 Email: ASummer@co.clackamas.or.us

Subrecipient Data

Finance/Fiscal Representative: : Wenda Tai	Program Representative: Erin Butler
Cascade AIDS Project (CAP) 520 NW Davis St., Suite 215 Portland, OR 97209 Phone: (503) 278-3880 Email: wtai@cascadeaids.org	Cascade AIDS Project (CAP) 520 NW Davis St., Suite 215 Portland, OR 97209 Phone: (503) 223-5997 Email: ebutler@cascadeaids.org
DUNS: 867947061	

RECITALS

1. COUNTY has an Intergovernmental Agreement ("IGA") for the Financing of Public Health Services through its Public Health Division, the entity designated, pursuant to ORS 431.110, 431.115 AND 431.413 as the Local Public Health Authority for Clackamas County ("LPHA") and the State of Oregon acting by and through its Oregon Health Authority ("OHA") for the biennium period 2019-2021. SUBRECIPIENT desires to partner with COUNTY to fulfill the objectives of such IGA, which includes Program Element 07 for HIV Prevention Services. Funds provided under this Agreement for such Program Element may only be used in accordance with and subject to the requirements and limitations for the following services and appropriate costs associated with the delivery of such services (Services):
 - a. Confidential HIV counseling, rapid testing, and referral services;
 - b. Other HIV prevention services with evidence of effectiveness to identified high-risk populations in COUNTY's service area; and
 - c. Structural activities that facilitate the delivery of HIV prevention services to high-risk populations in COUNTY's service area.

2. Priority populations for service focus in Oregon are identified in the current Integrated HIV Prevention and Care Plan Guidance found at: <https://hab.hrsa.gov/sites/default/files/hab/Global/hivpreventionplan062015.pdf>. Funds awarded

under this Agreement may only be expended on Services included in COUNTY's HIV Prevention Program Model Plan that has been approved by the Department of Human Services ("DHS") HIV Prevention Program, with an emphasis focused predominantly on services for the high-risk populations identified above.

3. Project description: Expand HIV client-centered counseling, testing and referral services ("CTRS") and continue to provide outreach to CTRS to sexual and social networks of men who have sex with men ("MSM") and other priority populations who reside in Clackamas County.
4. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program. NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by COUNTY relating to the project incurred no earlier than **July 1, 2020** and not later than **June 30, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the 2020-2021 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority for the Financing of Public Health Services and the U.S. Department of Health and Human Services, that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the *Code of Federal Regulations*, Part 75. A copy of the applicable sections of the grant award has been provided to SUBRECIPIENT by COUNTY. A complete copy of the 2020-2021 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority will be provided upon request by SUBRECIPIENT. SUBRECIPIENT shall further comply with any requirements required by the State of Oregon, Department of Human Services, together with any and all terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is the 2020-2021 Intergovernmental Agreement, HIV Prevention Activities for Health Departments, **CFDA No. 93.940** issued to COUNTY by the State of Oregon issued to the State of Oregon by the U.S. Department of Health and Human Services. The maximum, not to exceed, grant amount COUNTY will pay is **\$75,244**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment or termination of the Agreement.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or

amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
- Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement, or;
 - Mutual agreement by COUNTY and SUBRECIPIENT.
 - Written notice provided by COUNTY determining funds are no longer available for this purpose.
 - Written notice provided by COUNTY that it lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances of funds shall remain with COUNTY.

7. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
- Has already accrued hereunder;
 - Comes into effect due to the expiration or termination of the Agreement; or
 - Otherwise survives the expiration or termination of this Agreement.
8. **Funds Available and Authorized.** COUNTY certifies that funds sufficient to pay for this Agreement have been obligated to COUNTY. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
10. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
- Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of SUBRECIPIENT.

- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Indirect Cost Recovery.** The Oregon Health Authority has approved an indirect cost rate of 11.33% for use by SUBRECIPIENT on this award, which is incorporated by reference into SUBRECIPIENT program budget in Exhibit B.
- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- k) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F, G & H), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System ("DUNS") as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts sub awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse ("FAC") within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for contained in the State of Oregon Grant Intergovernmental Agreement, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to COUNTY, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold RECIPIENT grant funds until compliance is met, terminate this Agreement and all associated amendments, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by SUBRECIPIENT in violation of this Agreement, to terminate this Agreement, and to pursue any right or remedy available to COUNTY at law, in equity, or under this Agreement.

11. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT's written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- g) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
 - Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or sub award under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this

Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any sub award made to public or private entities under this Agreement.

12. Federal and State Procurement Standards

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

13. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

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

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

- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

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

- **Exhibit A:** SUBRECIPIENT Statement of Program Objectives
- **Exhibit B:** SUBRECIPIENT Program Budget
- **Exhibit C:** Congressional Lobbying Certificate
- **Exhibit D:** Required Financial Reporting
- **Exhibit D.1** SUBRECIPIENT Reimbursement Request
- **Exhibit E:** Quarterly Performance Reports and State of Oregon HIV Prevention Program Work Plan for FY2021
- **Exhibit F:** Final Financial Report
- **Exhibit G:** Residual Supplies Inventory
- **Exhibit H:** Business Associate Agreement

Signature page follows

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

CLACKAMAS COUNTY

CASCADE AIDS PROJECT

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

Signing on Behalf of the Board,

By: _____
Rod Cook, Assistant Director
Health, Housing and Human Services

By:  _____
Tyler TerMeer, Executive Director CEO

Dated: _____

Dated 11-11-2020

By: _____
Recording Secretary

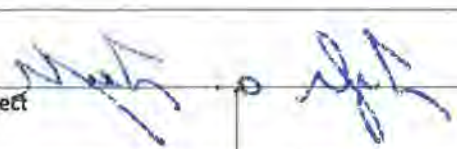
Dated: _____

Approved to Form

By:  _____
County Counsel

Dated: 11/12/2020

EXHIBIT A

Activity A: HIV Testing			
Contractor: Cascade AIDS Project			
Objective 1: Increase the number of POF (Population of Focus): MSM, PWID, and populations with serodiscordant sexual activity receiving HIV testing			
Baseline: 25% of the population of focus were tested for HIV in FY20		Current Year Target: At least 40% of the population of focus will be tested for HIV in FY21	
Objective 2: Reestablish regular HIV testing in Clackamas County during FY21			
Baseline: In 2020 a total number of 98 HIV test were conducted		Current Year Target: At least 60 HIV tests will be conducted	
Key activities	Lead(s) & Key Partners	Timeline	Comments:
Resume in person HIV testing in Clackamas county. Rapid HIV testing will be offered at no less than 5 unique sites.	Anna Saeger, Prevention Navigator- Matthew Lucas Manager of Prevition Services	11/1/2021	
Conduct HIV and Safer Sex education outreach via geo-social app (Grindr, Growlr, Scruff). At least 15 paid push messages (i.e. SHOUTS! on Growlr) will be sent to 2500 individual consumers of the sites listed.	Anna Saeger, Prevention Navigator	6/30/2021	
Provide at least 25 HIV home testing kits by mail to Clackamas county residents	Anna Saeger, Prevention Navigator	6/30/2021	MTL and Oraquick testing technology
Weekly HIV Counseling Rapid Testing and Confirmatory Testing performed two hours per week for a total of at least 40 hours of routine HIV testing.	Anna Saeger, Prevention Navigator	6/30/2021	

Activity B: Linkage to HIV Care			
Contractor: Cascade AIDS Project			
Objective 1: All newly diagnosed HIV-positive persons identified through CAP's Clackamas County HIV testing activities will be supported by CAP staff in order to access HIV medical care and other supportive services, including scheduling their first medical appointment, etc.			
Baseline: In FY20 100% of all newly diagnosed will receive linkage to care services within 30 days	Current Year Target: In FY21 100% of all newly diagnosed will receive linkage to care services within 30days		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
The prevention Navigator will consult with the CareLink Team about navigation and client services.	Anna Saeger, Prevention Navigator	6/30/2021	
Meet with the Manager of Clinical Services to discuss any changes or updates to the Prelim Positive protocol.	Anna Saeger, Prevention Navigator	11/30/2021	
Report all newly diagnosed HIV cases to DIS for client interview and linkage to care	Anna Saeger, Prevention Navigator	6/30/2021	

Activity C: PrEP/nPEP			
Contractor: Cascade AIDS Project			
Objective 1: At least 80% of HRN individuals tested through CAP's Clackamas County activities will receive PrEP or other prevention referral/ service			
Baseline: In FY20 74% of HRN received PrEP or other prevention referral/ service	Current Year Target: At least 80% of HRN individuals will receive PrEP or other referral /services		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
PrEP and PEP is promoted through posters, handouts and geosocial app outreach at 100% of testing and outreach events	Anna Saeger, Prevention navigator	6/30/2021	

PrEP and/or nPEP referrals are provided to at least 50 Clackamas county residents	Anna Saeger, Prevention navigator	6/30/2021	
The Manager of Prevention Services will conduct a data analysis quarterly of PrEP and PEP referrals in Clackamas County. Included in the data will be # of PrEP and PEP referrals, # of Clack Co residents who started PrEP, adherence to PrEP rate after 90 days and the number of Clackamas County residents getting care at CAP's other sites (PIVOT, PRISM)	Matthew Lucas, Manager of Prevention Services	Quarterly	
Objective 2: 75% of HRN testing in Clackamas County will receive an STD or HCV testing service (or referral when STD or HCV testing cannot be provided)			
Baseline: In FY20 93% of HRN received an STD or HCV service or referral	Current Year Target: In FY21, 98% of HRN will receive an STD or HCV service or referral		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
Offer an STD and or HCV test or referral when conducting HIV testing	Anna Saeger, Prevention Navigator	6/30/2021	
Create a one pager that has current STD/HCV testing options in Clackamas County	Anna Saeger, Prevention Navigator	6/30/2021	

Activity D: Community-level HIV Prevention

Contractor: Cascade AIDS Project

D1: Condom and lubricant distribution

Objective 1: Distribute at least 4,000 safer sex materials (condoms and lubricant) to at least 4 different sites in Clackamas County

Baseline: In FY20 about 14,000 safer sex materials (condoms and lubricant) were distributed at 8 sites	Current Year Target: At least 4,000 safer sex materials (condoms and lubricant) will be distributed in F21		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
Meet with CCPH at least quarterly to discuss needs in the community and plan to meet identified needs	Anna Saeger, Prevention Navigator	Quarterly	

Regularly follow-up and check in with existing community partners to assess need for safer sex materials; establish mechanism for meeting needs identified	Anna Saeger, Prevention Navigator	6/30/2021	Ex: Clackamas Service Center, Clackamas Outreach Connections, Love One, Fort Kennedy, Founders Clinic, Rahab Sisters, The Living Room, Youth E.R.A
Ensure that a safer sex packet (condoms, lubricant, "how-to" guide) is mailed along with every HIV testing kit to each participant	Anna Saeger, Prevention Navigator	6/30/2021	
D2: Social media & marketing			
Objective 1: Reach more people in FY21 than in FY20 through expanded social media and marketing efforts			
Baseline: In FY 20 we reached about 26,000 using the following metrics: engagement, people reached, HIV tests, total reach, total impressions	Current Year Target: In FY21, increase by 10% the number of people reached through social media and marketing using the following metrics: engagement, people reached, HIV tests, total reach, and total impressions		
Key Activities:	Lead(s) & Key Partners	Timeline	Comments:
Weekly updates to CAP's Community Testing Facebook page	Anna Saeger, Prevention Navigator	6/30/2021	
Daily app outreach including logging on and push messages	Anna Saeger, Prevention Navigator	6/30/2021	
Weekly push messages via geo social apps reporting testing sites. i.e. Sunnyside, outreach events	Anna Saeger, Prevention Navigator	6/30/2021	
D3: Community Mobilization			
Objective 1: Improve communication between CAP and CCPH to inform strategies for community mobilization			

Baseline: During FY20 recurring meetings with CCPH and CAP were not scheduled with the entire team	Current Year Target: To increase communication and planning strategies with CCPH by scheduling recurring meetings		Final Target:
Key Activities:	Lead(s) & Key Partners	Timeline	Comments:
Schedule a recurring meeting with CCPH to review progress on contract objectives, outreach strategies, discuss needs in the county.	Anna Saeger, Prevention Navigator-Matthew Lucas, Manager of Prevention Services	Quarterly	

D4: Engagement with Communities of Color			
Objective 1: Increase percentage of HIV tests provided to Communities of Color (race and/or ethnicity other than White) in Clackamas County			
Baseline: Testing outcomes in FY20 - 32% identified with a race and/or ethnicity other than White • 22% tested identify as Hispanic/Latino • 6.4% tested identify as Black/African American	Current Year Target: Increase HIV testing among Communities of Color overall by 5% compared to FY20		
Key Activities:	Lead(s) & Key Partners	Timeline	Comments:
Partner with culturally specific agencies to offer and conduct testing and prevention education	Anna Saeger, Prevention Navigator-Matthew Lucas, Manager of Prevention Services	6/30/2021	
Meet with CAP staff who hold culturally specific job titles to inquire about wants in the community they support	Anna Saeger, Prevention Navigator-Matthew Lucas, Manager of Prevention Services	6/30/2021	
Continue testing and outreach activities that support diverse communities	Anna Saeger, Prevention Navigator	6/30/2021	i.e. The Sunnyside Clinic, Youth ERA, & Clackamas Community College

EXHIBIT B: SUBRECIPIENT BUDGET

HIV Prevention - FY21 Subcontractor Line Item Budget	Contract Amount: \$ 75,244
Complete all yellow shaded areas and cell values colored blue.	

County: Clackamas
Subcontractor: Cascade Aids Project (CAP)

IMPORTANT:
 1. This form must be completed by staff responsible for program budgets and fiscal monitoring.
 2. If your agency is subcontracting for services, a separate line item budget is required for each subcontractor.

Budget Categories	Description	(A) Services / Costs Sub-Total
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A) Personnel	Name & Title	Annual Salary & Fringe (Direct Services)	FTE based on 2080 hr work year	Rate / hr	Hrs / mo	# of mo. budgeted	Total
<i>Example</i>	<i>Jane Doe, R.N.</i>	<i>\$38,750.00</i>	<i>0.50</i>	<i>#DIV/0!</i>	<i>0.00</i>	<i>12</i>	<i>#DIV/0!</i>
1	Director of Healthcare Operations	\$	1.25%	\$41.62	2.17	12	\$ 1,082
2	Manager of Clinical Health Services	\$	10.00%	\$26.90	17.33	12	\$ 5,595
3	Bilingual Prevention Navigator	\$	5.00%	\$30.29	8.67	12	\$ 3,150
4	Prevention Services Coordinator	\$42,971.08	10.00%	\$20.66	17.33	12	\$ 4,297

	5	Prevention Navigator	\$42,971.08	60.00%	\$20.66	104.00	12	\$	25,783
	6	Bilingual Prevention Navigator	\$42,971.08	1.25%	\$20.66	2.17	12	\$	537
		Total	\$334,439.48	87.50%	\$160.79	151.67		\$	40,445
B) Fringe Benefits		Personnel Costs		Fringe Benefit Rate %					Total:
		\$40,444.51		30%					\$ 12,133
C) Travel	Item	Include calculations for lodging, per diem, mileage, location of travel, number of people traveling and purpose of travel. Mileage rate may not exceed \$0.58 / mile. Do not budget mileage on county owned cars.							
		Detail							
	1	Program Mileage for Clackamas County HIV Prevention activities including HIV testing and condoms distribution at IRS rate of \$.58/mile. Costs based on previous year's expenditures and estimated total miles driven for HIV prevention contract specific activities for one program year (514 miles x \$.58/mile).						\$	298
	2	Program Parking for Clackamas County HIV Prevention activities including HIV testing and condoms distribution at agency rate of \$16/day. Costs based on previous year's expenditures and estimated total days driven for one program year. (\$16 per day x 30 days)						\$	480
	3	Per Diem - Per Diem costs for Prevention Navigator to attend phlebotomy training required for confirmatory HIV testing (in case of new hire)						\$	281
	4	Lodging - Lodging Costs for Phlebotomy Training. City varies on current availability of training. Locations in FY21 have been Phoenix, Houston, & Denver.						\$	414
		Total						\$	1,473
D) Equipment	Item	Equipment is defined as costing \$5000 or greater and having a useful life of at least one year. Equipment purchases must be preapproved.							
		Detail							
	1							\$	-
	3							\$	-
		Total						\$	-

List supply detail including office & medical supplies. If using an allocation method, detail how costs are allocated, (i.e. FTE, sq. footage, etc.). For supplies, list item, quantity and cost. Preprinted, purchased materials are considered a supply item, direct printing costs of materials, is to be listed in section G, Other. The purchase of furniture is not allowed in this award.			
	Item	List item and cost	
E) Supplies	1	Clinical Supplies - For HIV Testing including gauze, phlebotomy supplies, bandages, lancets, disposable test pads, surface sanitation wipes, etc. Phlebotomy supplies are for confirmatory HIV testing.	\$ 306
	2	Safer Sex Supplies - Specialty condoms, insertive condoms, and lube for distribution in Clackamas County	\$ 730
	3	HIV Test Kits - Total cost for 125 Aleré Determine Combo (\$10 per test) & 60 Inti One Minute tests (\$15 per test). Tests are budgeted over the forecasted amount tests performed to account for running controls, invalid tests, and practice tests.	\$ 2,150
	4	Central Supplies - General office supplies (e.g. pens, paper, note pads, etc.) based on FTE for program (\$226.67 x 1.2)	\$ 394
	5		
			Total
List all consultant costs and area in which consultative services to be provided			
		Summarize cost for each consultant	
F) Consultants	1		\$ -
	2		\$ -
		Total	\$ -
List costs for staff training or trainings that the LPHA will be providing, marketing / advertising costs for all replication and distribution of materials, telephone, and other direct costs not already indicated. Printing costs, postage and office equipment rental. Note: food and beverages are only allowable when used as an incentive or as an integral part of an intervention. Incentives must be detailed, including individual costs, purpose of the incentive, and how incentive is to be used and tracked. For negotiable incentives, e.g., gift cards, a copy of cash handling procedures must be submitted with any request for incentive use. Any costs that are allocated costs must include allocation method.			
	Item	Detail	
G) Other			

	1	Staff Training - Agency trainings calculated at actual FTE (\$200 x FTE) plus \$500 for Phlebotomy training & certification. Agency trainings include HIV Prevention Specific Trainings, Trauma Informed Care, Motivational Interviewing, etc.	\$	675
	2	Phone & Internet- Basic telephone & internet service for agency allocated at .875 FTE (plus cell phone reimbursement for 1 staff (M. Grover) x \$35 x 12 mos. X 0.60 FTE	\$	646
	3	Postage Meter Lease - Agency postage media lease charges allocated per FTE	\$	25
	4	Copies & In-House Printing - Agency copier lease & in-house printing charges FTE based (\$350 x FTE) for general staff documents as well as testing forms, flyers, prevention messaging (e.g. PrEP, HIV 101), etc. Costs are shared across programs.	\$	306
	5	Printing - Expenses for Clackamas County HIV Prevention print materials that require external printing. Covers the printing cost of HIV result tent cards, palm cards, and other materials intended to promote HIV testing site information and prevention messages, including PrEP, particularly among MSM and other HRN. Total costs are based on previous year's expenditures and cost per item to print.	\$	125
	6	Advertising for HIV Testing Recruitment & HIV Prevention Messaging - Total program promotion costs for Clackamas County HIV Prevention activities allocated towards percentage of budget. This includes things such as social media promotion, geo-social networking app direct messaging, banner advertisements, etc. Emphasis on promotion of HIV testing sites and PrEP navigation services among MSM and other HRN. Total costs are based on historical cost of targeted social marketing and program promotion and are pulled from last year's expenditures.	\$	320
	7	Volunteer Resources - Costs include Volunteer Coordinator, volunteer database costs, volunteer staff training, volunteer recruitment, background investigation of all potential new volunteers, volunteer training, and printing of volunteer materials. The expenses of operating CAP's volunteer support are allocated using a calculation of the prior fiscal year's actual volunteer hours spent on this program's activities compared to total volunteer hours. Specific programs are charged accordingly to their actual use of volunteers.	\$	638
		Total	\$	2,735
H) Contractual		List all subcontracts, submit a separate line item budget for each contractor		
	Item	Subcontracted Agency		
	1		\$	-
	2		\$	-
	3		\$	-
		Total	\$	-
Sum of A - H				

EXHIBIT C
CONGRESSIONAL LOBBYING CERTIFICATE

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

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

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

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

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

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

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

Organization Name

Cascade AIDS Project (CAP)

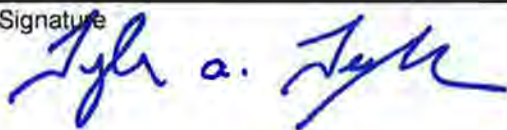
Award Number or Project Name

HIV Testing - Contract #9912

Name and Title of Authorized Representative

Tyler TerMeer, Executive Director

Signature



Date

11-11-2020

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

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #21-009 Contract #9912
SUB-RECIPIENT: CASCADE AIDS PROJECT (CAP)	

COMPENSATION AND RECORDS

- A. COUNTY shall compensate SUBRECIPIENT for satisfactorily completing activities described in EXHIBIT A, above.
- B. Total payments to SUBRECIPIENT shall not exceed **\$75,244**.
- C. COUNTY agrees to pay SUBRECIPIENT true and verifiable expenses on a monthly basis after payment is received from the State of Oregon.
- D. Method of Payment: To receive payment, SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses as outlined below:

SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses by the tenth day of the month following that in which service was performed. Requests shall be submitted to Clackamas County Public Health ("CCPHD"), Attn: Sherry Olson 2051 Kaen Road, Suite 367, Oregon City, Oregon 97045, or electronically to: SOlson4@co.clackamas.or.us. When submitting electronically, designate SUBRECIPIENT name and contract **Agreement #21-009 Contract #9912** in the subject of the e-mail.

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

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

SUBRECIPIENT shall complete the State of Oregon HIV Prevention Program Work Plan for FY2021 (Exhibit E) **quarterly**. CCPHD will complete their section of the Work Plan and send the Work Plan electronically via E-mail to SUBRECIPIENT by the tenth day of the month. SUBRECIPIENT will complete its sections and return to CCPHD by the 20th of the month. **Completed Work Plan due to Oregon Health Authority ("OHA") 30 DAYS AFTER QUARTER END.**

Reporting Periods:

07/01/2020 - 09/30/2020, 10/01/2020 - 12/31/2020, 01/01/2021 - 03/31/2021, 04/01/2021 – 06/30/2021

EXHIBIT D
REQUIRED FINANCIAL REPORTING AND REIMBURSEMENT REQUEST

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #21-009 Contract #9912
SUB-RECIPIENT: CASCADE AIDS PROJECT (CAP)	

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- A. COUNTY shall compensate SUBRECIPIENT for satisfactorily completing activities described in EXHIBIT A, above.
- B. Total payments to SUBRECIPIENT shall not exceed **\$75,244**.
- C. COUNTY agrees to pay SUBRECIPIENT true and verifiable expenses on a monthly basis after payment is received from the State of Oregon.
- D. Method of Payment: To receive payment, SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses as outlined below:

SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses by the tenth day of the month following that in which service was performed. Requests shall be submitted to Clackamas County Public Health ("CCPHD"), Attn: Sherry Olson 2051 Kaen Road, Suite 367, Oregon City, Oregon 97045, or electronically to: SOlson4@co.clackamas.or.us. When submitting electronically, designate SUBRECIPIENT name and contract **Agreement #21-009 Contract #9912** in the subject of the e-mail.

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

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

SUBRECIPIENT shall complete the State of Oregon HIV Prevention Program Work Plan for FY2021 (Exhibit E) **quarterly**. CCPHD will complete their section of the Work Plan and send the Work Plan electronically via E-mail to SUBRECIPIENT by the tenth day of the month. SUBRECIPIENT will complete its sections and return to CCPHD by the 20th of the month. **Completed Work Plan due to Oregon Health Authority ("OHA") 30 DAYS AFTER QUARTER END.**

Reporting Periods:

07/01/2020 - 09/30/2020, 10/01/2020 - 12/31/2020, 01/01/2021 - 03/31/2021, 04/01/2021 – 06/30/2021

- E. Record and Fiscal Control System: All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of seven (7) years after receipt of final payment under this contract; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- F. Access to Records: COUNTY, the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of SUBRECIPIENT, which are directly pertinent to the contract for making audit, examination, excerpts, and transcripts.

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

(Sample of Request for reimbursement form on next page)

**EXHIBIT D1: SUBRECIPIENT REQUEST FOR
 REIMBURSEMENT CLACKAMAS COUNTY PUBLIC HEALTH
 DIVISION**

Organization:			CLAIM PERIOD: Jul-20	Note: This form derives from the approved budget in your grant Agreement. All expenditures must have adequate supporting documentation.	
Service:					
Program Contact:					
Agreement Term: 7/01/20 through 6/30/21					
Agreement Number: 21-009					
	Approved Grant Amount	Monthly Grant Expenditure	Total Monthly Expenditure	YTD Grant Expenditure	Balance
Category					
Personnel (List salary, FTE & Fringe costs for each position)					
[Funded Position Name - Salary]	\$ -	\$ -	\$ -	\$ -	\$ -
[Funded Position Name - Fringe]	\$ -	\$ -	\$ -	\$ -	\$ -
Total Personnel Services	\$ -	\$ -	\$ -	\$ -	\$ -
Supplies					
Phone, computer	\$ -	\$ -	\$ -	\$ -	\$ -
Travel					
Mileage (.54/milex200 miles)	\$ -	\$ -	\$ -	\$ -	\$ -
Additional (please specify)					
Client assistance (bus tickets, etc.)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Programmatic Costs	\$ -	\$ -	\$ -	\$ -	\$ -
Indirect Rate (X%)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Grant Costs	\$ -	\$ -	\$ -	\$ -	\$ -

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

CERTIFICATION

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

Prepared by:				
Authorized SUBRECIPIENT Official:				
Date:				
Department Review:				
Project Officer Name:				
Department:				
Signature:				
Department: forward to Grant Accountant for review and processing				Grant Accountant Initial/Date:

EXHIBIT E
MONTHLY AND FINAL PERFORMANCE REPORT

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #21-009 Contract #9912
SUBRECIPIENT: CASCADE AIDS PROJECT (CAP)	

OHA will send the HIV Prevention Program Work Plan to SUBRECIPIENT and CCPHD. SUBRECIPIENT will complete the Work Plan and send to CCPHD 10 days prior to the OHA due date (30 DAY AFTER QUARTER END)

Reporting Periods:

07/01/2020- 09/30/2020, 10/01/2020- 12/31/2020, 01/01/2021 - 03/31/2021, 04/01/2021 – 06/30/2021

**CLACKAMAS COUNTY AND CASCADE AIDS PROJECT (CAP)
 SUBRECIPIENT AGREEMENT EXHIBIT F: FINAL FINANCIAL REPORT**

Project Name: HIV Testing and Counseling	Agreement #: 21-009
Federal Award #:	Date of Submission: XX/XX/XX
Subrecipient: CASCADE AIDS PROJECT (CAP)	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

Final Financial Report

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

Total Federal Funds authorized on this agreement:	
Year-to-Date Federal Funds requested for reimbursement on this agreement:	
Total Federal Funds received on this agreement:	
Balance of unexpended Federal Funds (Line 1 minus Line 3):	

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

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

CLACKAMAS COUNTY AND CASCADE AIDS PROJECT (CAP) SUBRECIPIENT GRANT AGREEMENT EXHIBIT G: RESIDUAL SUPPLIES INVENTORY

Project Name: HIV TESTING AND COUNSELING	Agreement #: 21-009
Federal Award: #	Date of Submission: XX/XX/XX
Subrecipient: CASCADE AIDS PROJECT (CAP)	
Is this program continuing beyond the expiration of this agreement?: Y/N	
If yes, does the subrecipient request to continue to use all or part of the supplies? Y/N (If yes, identify all such supplies below by marking it with a highlighter) OR Does the subrecipient request the use of the supplies on other federally supported activities? Y/N If subrecipient does not request continued use of items of equipment, the federal agency will issue disposition instructions. Other agency-specific requirements may apply.	

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

Attach more sheets if necessary

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

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

Subrecipient's Certifying Official's telephone: _____

**EXHIBIT H
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into as of **July 1, 2020** ("Effective Date") by and between **Clackamas County Health, Housing and Human Services, Public Health Division** ("Covered Entity") and **Cascade AIDS Project ("CAP")** ("Business Associate") in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations ("HIPAA").

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement ("Agreement");

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

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

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

Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 "Breach" is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member's course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 "Covered Entity" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 "Designated Record Set" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 "Effective Date" shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.8 "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.

- 1.10 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 "Protected Information" shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity's behalf.
- 1.12 "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 "Unsecured Protected Health Information" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate

- on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
 - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
 - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
 - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

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

- 3.1 Business Associate agrees to make uses, disclosures, and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the

Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV – NOTICE OF PRIVACY PRACTICES

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

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. In plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
 - c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

- 6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted

or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

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

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

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

6.3 **Effect of Termination.**

- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.

- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate's breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

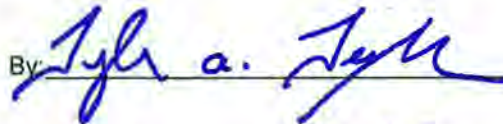
The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

Business Associate

Covered Entity

Cascade AIDS Project (CAP)

Clackamas County

By: 

By: _____

Title: ~~Executive Director~~ *CEO*

Title: *Director, H3S*

Date: *11-11-2020*

Date: _____

November 25th, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval to Accept Federal Grant Award for a Comprehensive Opioid, Stimulant,
and Substance Abuse Site-Based Program Grant (COSSAP)

Purpose/Outcomes	Approval to accept Federal grant from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, to retain and enhance the Law Enforcement Assisted Diversion (LEAD) program which helps to address low-level drug street crime in Clackamas County.
Dollar Amount and Fiscal Impact	\$900,000.00
Funding Source	U.S. Dept of Justice, Office of Justice Programs Grant Award 2020-AR-BX-0056: Catalog of Domestic Assistance (CFDA) 16.838
Duration	Effective October 1, 2020 terminates September 30, 2023
Previous Board Action	052021-A1
Strategic Plan Alignment	<ol style="list-style-type: none"> 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. 2. Ensure safe, healthy and secure communities.
Counsel Review	This Federal Grant Award has been reviewed and approved by County Counsel on November 3, 2020:KR
Procurement Review	Was the item processed through Procurement? No Federal Grant Award
Contact Person	Adam Freer 562-676-7675
Contract No.	

BACKGROUND:

The Administration Division of the Health, Housing, and Human Services Department requests the approval to accept Federal Grant Award for a Comprehensive Opioid, Stimulant, and Substance Abuse Site-Based Program (COSSAP) Grant. This grant will allow for the continuation and expansion of the Law Enforcement Assisted Diversion (LEAD) program in Clackamas County.

LEAD is a program developed to address low-level drug street crime in Clackamas County. The goal of LEAD is to improve community health and safety by using specific human services tools and coordinating them with law enforcement. LEAD has demonstrated itself as a particularly effective tool for reaching houseless program participants struggling with addictions to divert them from the criminal justice system. LEAD provides an opportunity to divert individuals, offering a hand up through case management connecting them to resources to improve their circumstances and providing innovative techniques unique to individual circumstances to break down barriers to achieving their own health and safety.

Building on the existing LEAD program, this grant will fund coordination of LEAD Plus, which will strive to connect existing systems and initiatives *to achieve a coordinated and comprehensive response to substance use disorder strategic planning across the County.*

The program demonstrated significant positive outcomes in the first year of its operation. The rates of arrests, new criminal charges, a decrease in nights in jail, and failure to appear in court all declined significantly for the participants in the program, all of which represents significant cost savings to the County. The LEAD case managers have also been successful in assisting clients meet a wide spectrum of needs, including employment, accessing benefits, obtaining housing or shelter, getting substance use disorder treatment, and resolving outstanding legal issues. The LEAD team is currently serving 98 individuals.

RECOMMENDATION:

Staff recommends Board approval of award and authorization for Richard Swift, H3S Director to sign the agreement and future amendments to the Agreement on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, H3S Deputy For

Richard Swift, Director
Health, Housing & Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9946	Division: CFCC	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Radford, Stephanie	<input checked="" type="checkbox"/> Revenue
	Program Contact: Freer, Adam	<input type="checkbox"/> Amend # \$
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Wednesday, November 25, 2020

CONTRACT WITH: U.S. Dept of Justice - OJP

CONTRACT AMOUNT: \$900,000.00

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? 10/1/2020 - 9/30/2023

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, November 3, 2020

OR

This contract is in the format approved by County Counsel as part of the H3S contract standardization project.

SIGNATURE OF DIVISION REPRESENTATIVE: Adam L. Freer

Date: 11.4.20

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 (H3S) - Children,
Family & Community Connections (CFCC)**

PURCHASING FOR: **Contracted Services**

OTHER PARTY TO

CONTRACT/AGREEMENT: **U.S. Dept of Justice (USDOJ), Office of Justice
Programs (OJP), Bureau of Justice Assistance (BJA)**

BOARD AGENDA ITEM

DATE: **11/25/2020**

NUMBER/DATE:

PURPOSE OF

CONTRACT/AGREEMENT:

This grant will fund the **LEAD Plus** program. LEAD (Law Enforcement Assisted Diversion) is an existing program developed to address low-level drug street crime in Clackamas County. The goal of LEAD is to improve community health and safety by using specific human services tools and coordinating them with law enforcement. LEAD has demonstrated itself as a particularly effective tool for reaching houseless program participants struggling with addictions to divert them from the criminal justice system. LEAD provides an opportunity to divert individuals, offering a hand up through case management connecting them to resources to improve their circumstances and providing innovative techniques unique to individual circumstances to break down barriers to achieving their own health and safety.

Building on the existing LEAD program, **LEAD Plus** will provide resources to connect and strengthen collaboration across the many substance abuse response programs across the county. This coordinated and comprehensive response will maximize their impact.

H3S CONTRACT NUMBER: 9946



Department of Justice (DOJ)
Office of Justice Programs
Bureau of Justice Assistance

Grant

1. RECIPIENT NAME AND ADDRESS (Including Zip Code) Clackamas County 2051 Kaen Road Oregon City, OR 97045-1819		4. AWARD NUMBER: 2020-AR-BX-0056	
2a. GRANTEE IRS/VENDOR NO. 936002286		5. PROJECT PERIOD: FROM 10/01/2020 TO 09/30/2023 BUDGET PERIOD: FROM 10/01/2020 TO 09/30/2023	
2b. GRANTEE DUNS NO. 096992656		6. AWARD DATE	7. ACTION Initial
3. PROJECT TITLE LEAD Plus Program for Clackamas County Oregon		8. SUPPLEMENT NUMBER 00	
		9. PREVIOUS AWARD AMOUNT \$ 0	
		10. AMOUNT OF THIS AWARD \$ 900,000	
		11. TOTAL AWARD \$ 900,000	
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).			
13. STATUTORY AUTHORITY FOR GRANT This project is supported under FY20(BJA - COSSAP) Pub. L. No. 116-93, 133 Stat 2317, 2409			
14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16.838 - Comprehensive Opioid Abuse Site-Based Program			
15. METHOD OF PAYMENT GPRS			
[REDACTED] AGENCY APPROVAL [REDACTED]		[REDACTED] GRANTEE ACCEPTANCE [REDACTED]	
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Katharine T. Sullivan Principal Deputy Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Richard Swift Health, Housing & Human Services Director	
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL	19A. DATE
[REDACTED] AGENCY USE ONLY [REDACTED]			
20. ACCOUNTING CLASSIFICATION CODES FISCAL YEAR FUND CODE BUD. ACT. DIV. REG. SUB. POMS AMOUNT X B AR 80 00 00 900000		21. VARUGT3947	



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SPECIAL CONDITIONS

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.



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SPECIAL CONDITIONS

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2020 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2020 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2020 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

3. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.



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SPECIAL CONDITIONS

5. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

6. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

7. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.



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8. Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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9. Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or



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any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

10. Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

11. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

12. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.



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13. Unreasonable restrictions on competition under the award; association with federal government

SCOPE. This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award, whether by the recipient or by any subrecipient at any tier, and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

1. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no recipient (or subrecipient, at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), grant recipient or -subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.



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14. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

15. Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

16. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

17. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

18. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.



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SPECIAL CONDITIONS

19. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

20. Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

21. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

23. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.



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24. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

25. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2020) The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at <https://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm>, and are incorporated by reference here. Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26. Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.



Department of Justice (DOJ)
Office of Justice Programs
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**AWARD CONTINUATION
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Grant**

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AWARD DATE

SPECIAL CONDITIONS

27. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.



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28. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

29. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

30. Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

31. Verification and updating of recipient contact information

The recipient must verify its Point of Contact(POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.

32. The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).



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33. The award recipient agrees to participate in a data collection process measuring program outputs and outcomes. The data elements for this process will be outlined by the Office of Justice Programs.
34. Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://it.ojp.gov/gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.
35. The recipient agrees to submit to BJA for review and approval any curricula, training materials, proposed publications, reports, or any other written materials that will be published, including web-based materials and web site content, through funds from this grant at least thirty (30) working days prior to the targeted dissemination date. Any written, visual, or audio publications, with the exception of press releases, whether published at the grantee's or government's expense, shall contain the following statements: "This project was supported by Grant No. 2020-AR-BX-0056 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.
36. Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.
37. Copyright; Data rights

The recipient acknowledges that OJP reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for Federal purposes: (1) any work subject to copyright developed under an award or subaward (at any tier); and (2) any rights of copyright to which a recipient or subrecipient (at any tier) purchases ownership with Federal support.

The recipient acknowledges that OJP has the right to (1) obtain, reproduce, publish, or otherwise use the data first produced under any such award or subaward; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. "Data" includes data as defined in Federal Acquisition Regulation (FAR) provision 52.227-14 (Rights in Data - General).

It is the responsibility of the recipient (and of each subrecipient (at any tier), if applicable) to ensure that the provisions of this condition are included in any subaward (at any tier) under this award.

The recipient has the responsibility to obtain from subrecipients, contractors, and subcontractors (if any) all rights and data necessary to fulfill the recipient's obligations to the Government under this award. If a proposed subrecipient, contractor, or subcontractor refuses to accept terms affording the Government such rights, the recipient shall promptly bring such refusal to the attention of the OJP program manager for the award and not proceed with the agreement in question without further authorization from the OJP program office.



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38. The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

39. Recipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <https://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

40. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

41. Any organization using Office of Justice Programs grant funds, in whole or in part, to collect, aggregate, and/or share data on behalf of a government agency, must guarantee that the agency that owns the data and its approved designee(s) will retain unrestricted access to the data, in accordance with all applicable law, regulations, and BJA policy: a) in an expeditious manner upon request by the agency; b) in a clearly defined format that is open, user-friendly, and unfettered by unreasonable proprietary restrictions; and c) at a minimal additional cost to the requestor (which cost may be borne by using grant funds).

42. With respect to this award, federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. (An award recipient may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

This limitation on compensation rates allowable under this award may be waived on an individual basis at the discretion of the OJP official indicated in the program announcement under which this award is made.



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43. Applicants must certify that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at www.lep.gov.
44. Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
45. Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service:

"This Web site is funded [insert "in part," if applicable] through a grant from the [insert name of OJP component], Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)."

The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.
46. Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.
47. The recipient agrees to budget funds for two staff representatives to attend one three-day national meeting in Washington, D.C. each year for the life of the grant. (If a national meeting is not planned, funds must be used to attend a BJA approved training.) In addition, the recipient agrees to participate in BJA training events, technical assistance events, or conferences held by BJA or its designees, upon request.
48. The recipient is authorized to incur obligations, expend, and draw down funds for travel, lodging, and per diem costs only, in an amount not to exceed \$5,000, for the sole purpose of attending a required OJP conference associated with this grant award. The grantee is not authorized to incur any additional obligations, or make any additional expenditures or draw downs until the awarding agency and the Office of the Chief Financial Officer (OCFO) has reviewed and approved the recipient's budget and budget narrative, and a Grant Adjustment Notice (GAN) has been issued to remove this special condition.
49. Recipient may not obligate, expend, or drawdown funds until the Bureau of Justice Assistance, Office of Justice Programs has reviewed and approved the Budget Narrative portion of the application and has issued a Grant Adjustment Notice (GAN) informing the recipient of the approval.



Department of Justice (DOJ)

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

Memorandum To: Official Grant File

From: Orbin Terry, NEPA Coordinator

Subject: Categorical Exclusion for Clackamas County

Awards under the Comprehensive Opioid, Stimulant, and Substance Abuse Site-based Program (COSSAP) will be used to develop, implement, or expand comprehensive programs in response to illicit opioids, stimulants, or other substances of abuse.

None of the following activities will be conducted whether under the Office of Justice Programs federal action or a related third party action:

- 1) New construction.
- 2) Renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species.
- (3) A renovation that will change the basic prior use of a facility or significantly change its size.
- (4) Research and technology whose anticipated and future application could be expected to have an effect on the environment.
- (5) Implementation of a program involving the use of chemicals.

Additionally, the proposed action is neither a phase nor a segment of a project which when reviewed in its entirety would not meet the criteria for a categorical exclusion. Consequently, the subject federal action meets the Office of Justice Programs' criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of Title 28 of the Code of Federal Regulations.



Department of Justice (DOJ)
Office of Justice Programs
Bureau of Justice Assistance

**GRANT MANAGER'S MEMORANDUM, PT. I:
PROJECT SUMMARY**

Grant

PROJECT NUMBER
2020-AR-BX-0056

PAGE 1 OF 1

This project is supported under FY20(BJA - COSSAP) Pub. L. No. 116-93, 133 Stat 2317, 2409

1. STAFF CONTACT (Name & telephone number)

Elizabeth White
(202) 598-7402

2. PROJECT DIRECTOR (Name, address & telephone number)

Adam Freer
Division Director
2051 Kaen Rd.
Oregon City, OR 97045
(562) 676-7675

3a. TITLE OF THE PROGRAM

Comprehensive Opioid, Stimulant, and Substance Abuse Site-based Program: Local or Tribal Applications

3b. POMS CODE (SEE INSTRUCTIONS
ON REVERSE)

4. TITLE OF PROJECT

LEAD Plus Program for Clackamas County Oregon

5. NAME & ADDRESS OF GRANTEE

Clackamas County
2051 Kaen Road
Oregon City, OR 97045-1819

6. NAME & ADDRESS OF SUBGRANTEE

7. PROGRAM PERIOD

FROM: 10/01/2020 TO: 09/30/2023

8. BUDGET PERIOD

FROM: 10/01/2020 TO: 09/30/2023

9. AMOUNT OF AWARD

\$ 900,000

10. DATE OF AWARD

11. SECOND YEAR'S BUDGET

12. SECOND YEAR'S BUDGET AMOUNT

13. THIRD YEAR'S BUDGET PERIOD

14. THIRD YEAR'S BUDGET AMOUNT

15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse)

The Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP) was developed as part of the Comprehensive Addiction and Recovery Act (CARA) legislation. COSSAP's purpose is to provide financial and technical assistance to states, units of local government, and Indian tribal governments to develop, implement, or expand comprehensive efforts to identify, respond to, treat, and support those impacted by illicit opioids, stimulants, and other drugs of abuse.

The objective of Category 1 is to encourage and support the development of comprehensive, locally driven responses to opioids, stimulants, and other substances that expand access to supervision, treatment, and recovery support services across the criminal justice system; support law enforcement and other first responder diversion programs for nonviolent drug offenders; promote education and prevention activities; and address the needs of children impacted by substance abuse.

This project serves the 424,747 residents of Clackamas County, which consists of urban, suburban, and rural areas spanning 1,879 square miles (larger than the state of Rhode Island). The primary goals of LEAD Plus are to continue and enhance the implementation of the LEAD program and add a new layer of coordination that connects the many opioid and substance abuse efforts in the county into a truly comprehensive and integrated approach. Key partners included in this project include the Clackamas County District Attorney's Office, Clackamas County Sheriff's Office, Milwaukie Police Department, the Indigent Defense Corporation, homeless/houseless service providers, and substance abuse treatment providers. There are no priority considerations with this project.

CA/NCA



Department of Justice (DOJ)

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

Dr. Adam Freer Ph.D
Clackamas County
2051 Kaen Road
Oregon City, OR 97045-1819

Dear Dr. Freer:

On behalf of Attorney General William P. Barr, it is my pleasure to inform you that the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), has approved the application by Clackamas County for an award under the OJP funding opportunity entitled "Comprehensive Opioid, Stimulant, and Substance Abuse Site-based Program: Local or Tribal Applications." The approved award amount is \$900,000. These funds are for the project entitled LEAD Plus Program for Clackamas County Oregon.

The award document, including award conditions, is enclosed. The entire document is to be reviewed carefully before any decision to accept the award. Also, the webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm) is to be consulted prior to an acceptance. Through that "Legal Notices" webpage, OJP sets out -- by funding opportunity -- certain special circumstances that may or will affect the applicability of one or more award requirements. Any such legal notice pertaining to award requirements that is posted through that webpage is incorporated by reference into the award.

Please note that award requirements include not only award conditions, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. Because these requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds), it is vital that all key staff know the award requirements, and receive the award conditions and the assurances and certifications, as well as the application as approved by OJP. (Information on all pertinent award requirements also must be provided to any subrecipient of the award.)

Should Clackamas County accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Please direct questions regarding this award as follows:

- For program questions, contact Elizabeth White, Program Manager at (202) 598-7402; and
- For financial questions, contact the Customer Service Center of OJP's Office of the Chief Financial Officer at (800) 458-0786, or at ask.ocfo@usdoj.gov.

We look forward to working with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Katharine T. Sullivan".

Katharine T. Sullivan
Principal Deputy Assistant Attorney General

Encl.



Department of Justice (DOJ)

Office of Justice Programs

Office of Civil Rights

Washington, DC 20531

Dr. Adam Freer Ph.D
Clackamas County
2051 Kaen Road
Oregon City, OR 97045-1819

Dear Dr. Freer:

Congratulations on your recent award. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, require recipients of federal financial assistance to give assurances that they will comply with those laws. In addition to those civil rights laws, many grant program statutes contain nondiscrimination provisions that require compliance with them as a condition of receiving federal financial assistance. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with OJP and other DOJ awards, see <https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm>

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria. These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a non-discriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEO requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5). Please submit information about any adverse finding to the OCR at the above address.

We at the OCR are available to help you and your organization meet the civil rights requirements that are associated with OJP and other DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to let us know.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Alston".

Michael L. Alston
Director

cc: Grant Manager
Financial Analyst

November 25th, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Amendment #8 to Agreement #7462 a Revenue Agreement with CareOregon for Pharmacist Services to members enrolled with the Oregon Health Plan (OHP)

Purpose/Outcomes	Provides Clackamas County Health Centers Division (CCHCD) reimbursement for Pharmacist Services serving OHP patients treated at CCHCD clinics.
Dollar Amount and Fiscal Impact	CCHCD is eligible to receive payment for services furnished to persons enrolled in OHP. This is a no maximum agreement.
Funding Source	No County funds. This is a revenue agreement with CareOregon.
Duration	December 1, 2020 – no expiration.
Previous Board Action	The Board last reviewed and approved this contract on January 9, 2020 Agenda item – A10: 010920-A10.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Counsel Review	1. November 3, 2020 2. KR
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. Revenue contract, no procurement needed.
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	7642_08

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of Amendment #8 to agreement #7642 with CareOregon for the purpose of providing Pharmacist Services.

This agreement will establish a schedule of payments for professional services rendered by pharmacists to OHP/Medicaid Plans and Medicare Advantage Plan recipients under this Agreement. CareOregon will use the formulas and other methodologies set forth in this Agreement.

This is a revenue contract for CCHCD. The total amount of the agreement is unknown because the number of authorized patients cannot be projected with certainty. No County General Funds are involved. The Amendment #8 is effective December 1, 2020 and will continue until terminated.

RECOMMENDATION:

Staff recommends approval of this amendment.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services Department

Healthy Families. Strong Communities.

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 7642 Board Order #:	Division: HC Contact: Council, Amy Program Contact: Cockrell, Deborah	<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Amend # \$ <input type="checkbox"/> Procurement Verified <input type="checkbox"/> Aggregate Total Verified
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Non BCC Item
 BCC Agenda
 Date: Wednesday, November 25, 2020

CONTRACT WITH: CareOregon, Inc.

CONTRACT AMOUNT: No Maximum

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 12/1/2020 - No Expiration	<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: Tuesday, November 3, 2020
 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

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

ORIGINATING COUNTY

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

PURCHASING FOR: Contracted Services _____

OTHER PARTY TO

CONTRACT/AGREEMENT: CareOregon, Inc. _____

BOARD AGENDA ITEM

NUMBER/DATE: _____ **DATE: 11/25/2020** _____

PURPOSE OF

CONTRACT/AGREEMENT: CCHCD will provide Primary Care, Dental, and Chemical Dependency Services to CareOregon's referred OHP patients.

Amendment #8 is needed to update Schedule of Payment for OHP/Medicaid Plans & OHP/Medicaid Plans and Medicare Advantage Plan.

H3S CONTRACT NUMBER: 7642 _____

AMENDMENT #8

To The

CAREOREGON PROVIDER AGREEMENT

Between

CAREOREGON, INC.

and

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

This is an Amendment to the CareOregon Provider Agreement (hereinafter referred to as “Agreement”) that was effective June 1, 2016 between CareOregon, Inc. (herein referred to as “CareOregon”) and Clackamas County (hereinafter referred to as “Provider”).

CareOregon and Provider agree that the Agreement between the parties be amended as follows:

1. Exhibit H, Pharmacist Services, Schedule of Payment For OHP/Medicaid Plans is hereby replaced with Exhibit H, Pharmacist Services, Schedule of Payment For OHP/Medicaid Plans.
2. Exhibit H-1, Pharmacist Services, Schedule of Payment For OHP/Medicaid Plans and Medicare Advantage Plan is hereby replaced with Exhibit H-1, Pharmacist Services, Schedule of Payment for Medicare Advantage Plan.

IN WITNESS WHEREOF, the parties have executed the terms of this Amendment to be effective on **December 1, 2020**. All other terms and conditions of the Agreement shall remain in full force and effect.

[See following page]

CAREOREGON, INC.

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

Signature: _____

Signature: _____

Name: Eric C. Hunter

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____

Tax ID: _____

EXHIBIT H

PHARMACIST SERVICES

SCHEDULE OF PAYMENT FOR OHP/MEDICAID PLANS:

This schedule establishes payment for professional services rendered by pharmacists to OHP/Medicaid Recipients under this Agreement. CareOregon will use the formulas and other methodologies set forth in this Addendum and the Fee Schedule Specifications, as amended from time to time as stated herein. Except as stated below with respect to Non-Material Changes, CareOregon may make changes to this Addendum and the Fee Schedule Specifications with 30 days prior written notice. CareOregon may make Non-Material Changes to the Fee Schedule Specifications immediately upon notice to Provider. “Non-material Changes” shall mean routine updates to CPT or other nationally recognized codes (for example, codes are replaced, retired, or split into two codes).

1. Pharmacist must obtain a DMAP provider identification number and be credentialed by CareOregon in order to submit and receive payment.
2. Pharmacists must follow documentation requirements as outlined by the CPT manual, Board of Pharmacy rules, and Guideline note 64 of the DMAP Prioritized List as applicable.
3. CareOregon will authorize payment if all of the above have been met based on the following fee schedule:

CareOregon Fee Schedule	
Conversion Factor	\$35.8228
Fee Schedule Structure:	
CareOregon will pay the covered services using relative value units based on the 2014 Resource-based Relative Value Scale (RBRVS) CMS RVU File RVU14D released on 08/19/2014. The Geographic Practice Cost Index (GPCI) will not be used.	
Special Carve-out Segments:	
Procedure Codes:	
99605 Medication therapy management services provided by a pharmacist, individual, face-to-face with patient, initial 15 minutes, with assessment, and intervention if provided; initial 15 minutes, new patient	\$65.01
99606 Initial 15 minutes, established patient	\$60.01
99607 Each additional 15 minutes	\$28.33

DEFAULT REIMBURSEMENT

For Covered Services that have no established value on the RBRVS fee schedule and are not carved out in this Exhibit; CareOregon will reimburse Provider for Covered Services at 100% of applicable published DMAP/OHP Fee Schedule rates in effect on the date of service. For Covered Services that have no DMAP/OHP Fee Schedule rate, CareOregon will apply the CareOregon payment policy in effect at the date of services.

TERMINATION

Either party may terminate this Exhibit with a written, 30-day notice.

CONFIDENTIALITY

This Exhibit and the Fee Schedule Specifications contain confidential and proprietary information and they are considered a trade secret of CareOregon. To the extent authorized by Oregon law, neither party will disclose this or any other proprietary information or trade secret without the express written approval of the other party.

OTHER

Any copays, coinsurance, deductibles or any other cost sharing, if any, shall be offset against the allowed amount for Covered Services, without regard to whether Provider has collected such amounts. Provider's Payment may be reduced by the amount of any applicable cost sharing, depending on the form of Member's benefit plan.

EXHIBIT H-1

PHARMACIST SERVICES

SCHEDULE OF PAYMENT FOR MEDICARE ADVANTAGE PLAN:

This schedule establishes payment for professional services rendered by pharmacists to CareOregon Advantage Recipients under this Agreement. CareOregon will use the formulas and other methodologies set forth in this Exhibit and the Fee Schedule Specifications, as amended from time to time as stated herein. Except as stated below with respect to Non-Material Changes, CareOregon may make changes to this Addendum and the Fee Schedule Specifications with 30 days prior written notice. CareOregon may make Non-Material Changes to the Fee Schedule Specifications immediately upon notice to Provider. “Non-material Changes” shall mean routine updates to CPT or other nationally recognized codes (for example, codes are replaced, retired, or split into two codes).

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2. Pharmacists must follow documentation requirements as outlined by the CPT manual, Board of Pharmacy rules, and Guideline note 64 of the DMAP Prioritized List as applicable.
3. CareOregon will authorize payment if all of the above have been met based on the following fee schedule:

CareOregon Fee Schedule	
Special Carve-out Segments:	
Procedure Codes:	
99605 Medication therapy management services provided by a pharmacist, individual, face-to-face with patient, initial 15 minutes, with assessment, and intervention if provided; initial 15 minutes, new patient	\$65.01
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TERMINATION

Either party may terminate this Exhibit with a written, 30-day notice.

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This Exhibit and the Fee Schedule Specifications contain confidential and proprietary information and they are considered a trade secret of CareOregon. To the extent authorized by Oregon law, neither party will disclose this or any other proprietary information or trade secret without the express written approval of the other party.

OTHER

Any copays, coinsurance, deductibles or any other cost sharing, if any, shall be offset against the allowed amount for Covered Services, without regard to whether Provider has collected such amounts. Provider's Payment may be reduced by the amount of any applicable cost sharing, depending on the form of Member's benefit plan.



DAN JOHNSON
DIRECTOR

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

November 25, 2020

Board of Commissioners
Clackamas County
Members of the Board:

Approval of Contract Amendment No. 2 with the National Safety Council for the purposes of
Safe Systems Approach to Rural Road to Zero

Purpose/ Outcomes	The funds will support our Drive to Zero work focused on two Health Equity Zones: Molalla and Canby. This project will showcase how a holistic Safe Systems Approach to traffic safety can be effective in reducing crashes, particularly serious and fatal crashes in a rural community. This Safe Systems Approach will combine proven low-cost engineering countermeasures with behavioral change focused education followed with targeted enforcement in collaboration with regional law enforcement partners.
Dollar Amount and Fiscal Impact	The grant is amended for an additional \$21,281 to increase the total award to \$153,561 from \$132,280.00. There is no match requirement.
Funding Source	National Highway Traffic Safety Administration and National Safety Council
Duration	At time of contract execution and terminates on June 30, 2021.
Previous Board Action	The application was approved by the County Administrator. The Board approved the initial contract on October 17, 2019.
Strategic Plan Alignment	<p>1. How does this item align with your department's Strategic Business Plan goals? Ensure safe, healthy and secure communities.</p> <p>2. How does this item align with the County's Performance Clackamas goals? The Drive to Zero Program - has a mission to reduce fatal and serious injury crashes. The goal of the program mirrors the County's MFR goal: By 2035, reduce the number of fatalities resulting from crashes on roads in Clackamas County to zero. This grant will support direct road improvements along with outreach and communications that will seek to engage community partners in this work.</p>
Counsel Review	Reviewed and approved by Counsel on 11/10/20 NB
Procurement Review	<p>1. Was this item processed through Procurement? NO</p> <p>2. If no, provide brief explanation: Item is a grant amendment</p>
Contact Person	Joseph Marek, Traffic Engineering Supervisor– Department of Transportation and Development - 742-4705

BACKGROUND:

The Department of Transportation and Development received authorization from the County Administrator to enter into contract with the National Safety Council to accept a grant award of \$132,280 to showcase how a holistic Safe Systems Approach to traffic safety can be effective in

making strides in reducing crashes, particularly serious and fatal crashes in a rural community. This Safe Systems Approach will combine low-cost engineering using proven countermeasures along with education focused on behavioral change followed with targeted enforcement in collaboration with regional towns. Layered throughout the project will be the intentional collaboration with partners in public health and schools to tackle issues of alcohol and drug use, build new opportunities with rural transit options to move teens and older adults, and to work hard to bring affordable driver's education and child protection to those who can least afford access.

The County's Drive to Zero initiative is an inspiring goal. To be successful, we need active partners throughout the county that will engage in the implementation of various elements and work toward the behavioral change that is necessary. The TSAP and the embodiment of Drive to Zero needs effective communications that are centered on county stories told by county people. We hope that target audiences see themselves in these stories and add to the collection of stories of how together, as a county, we can achieve this inspiring vision. Ultimately, the problem we are trying to impact is the number of fatalities and serious injuries due to traffic crashes in the county.

This amendment would increase the amount of the grant award by \$21,281, for a total amount of \$153,561. There is no match requirement associated with this grant award.

RECOMMENDATION:

Staff recommends the Board approval of this contract and authorizes Dan Johnson, DTD Director to sign on behalf of Clackamas County.

Respectfully submitted,

Joseph Marek

Joseph Marek, Traffic Engineering Supervisor
Department of Transportation and Development



**AMENDMENT NO 2.
TO SUBAWARD AGREEMENT
Between
NATIONAL SAFETY COUNCIL
&
COUNTY OF CLACKAMAS**

This Amendment No. 2 (the "Amendment"), dated Friday, October 16, 2020 , is attached to and made part of the Subaward Agreement dated October 17, 2019 ("Agreement") as amended by the Amendment No.1 between the National Safety Council ("NSC") and County of Clackamas ("Subrecipient"). Capitalized terms in this Amendment have the same meaning giving to them in the Subaward Agreement.

The parties wish to amend the terms of the Agreement as set forth below and agree that the following constitutes modifications of the terms and conditions of the Agreement.

Modifications:

The Subaward Amount is hereby amended to \$153,561 from the previous amount of \$132,280. As previously agreed in Amendment #1, the project completion date is June 30, 2021.

All other terms and conditions of the Agreement remain unchanged and effective. This Amendment does not affect, alter or invalidate any provision, term and condition of the Agreement. By signature below, the parties acknowledge their agreement and acceptance of this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum #2 to the Subaward Agreement between the National Safety Council and County of Clackamas dated October 17, 2019.

COUNTY OF CLACKAMAS

NATIONAL SAFETY COUNCIL

By: _____

DocuSigned by:
By: John Udelhofen
4A480F3BF2BD495...

Name: _____

Name: John Udelhofen

Title: _____

Title: Chief Financial Officer

Date: _____

Date: 10/19/2020



DAN JOHNSON
DIRECTOR

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

November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with the Oregon Department of
Transportation for Right of Way Services for the
South End Road at Milepost 3.8 Project**

Purpose/Outcomes	Defines the roles and responsibilities of the County and ODOT relating to acquiring right of way for the South End Road at Milepost 3.8 project.
Dollar Amount and Fiscal Impact	Total Project Phase Cost Estimate: \$88,891.92. Road Fund Match (10.27%): \$9,538.10
Funding Source	Federal Emergency Relief Program (ERP) and County Road Funds.
Duration	Execution until completion of the project
Previous Board Action	01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects 08/16/18: BCC Approval of Supplemental Project Agreement No. 32607 for 2017 Emergency Relief Program Project Funding 05/16/19: Approval of a Contract with David Evans and Associates, Inc. for the South End Road at Milepost 3.8
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience roads in good condition." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" by constructing retaining walls to mitigate slope instability.
Counsel Review	Reviewed Date: 11/16/2020 NB
Procurement Review	1. Was this item processed through Procurement? NO 2. If no, provide brief explanation: This is an IGA
Contact Person	Sharan LaDuca, Sr. Right of Way Agent 503-742-4675

Background:

Clackamas County obtained Federal Emergency Relief Program (ERP) funds to stabilize the roadway and slope on South End Road at Milepost 3.8. The road was damaged in March of 2017 as a result of heavy rains that occurred during the spring of 2017. A state emergency declaration, which included Clackamas County, was signed by the governor allowing Clackamas County to be eligible for the ERP funding.

Clackamas County constructed temporary repairs to the areas of roadway prism failure and deterioration in the spring of 2017. A more permanent solution is required to mitigate the slope instability and it is anticipated that the permanent solution will consist of construction of two

retaining walls approximately 800 feet in total length. The County received \$2,740,000 in funding thru the ERP, requiring a 10.27 percent Road Fund match.

The attached proposed agreement is a customary step in the project delivery process for federally funded projects. This agreement is specifically for right of way services for the South End Road at Milepost 3.8 project. The agreement acknowledges Clackamas County's obligations to acquire right of way in accordance with the Uniform Act, and the Oregon Department of Transportation's (ODOT) responsibility to certify that right of way acquisition has been performed accordingly. The agreement allows ODOT an amount not to exceed \$5,000 for their efforts.

Recommendation:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement for Right of Way Services for the South End Road at Milepost 3.8 Project.

Respectfully submitted,

Sharan LaDuca

Sharan LaDuca,
Senior Right of Way Agent

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES
South End Road at MP 3.8**

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain South End Road (is a County Road under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Agreement number 30923 and Supplemental Project Agreement 32607. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
5. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

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

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in Agreement No. 32607, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services

State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$5,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 30, 2029, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is David Mendelson, Right of Way Project Manager, 123 NW Flanders Street, Portland, OR 97209 503-731-8451, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
 - a. Agency staff,
 - b. State staff,

- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. *Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. *Other right of way related services procured by Agency from any source of qualified contractors or consultants.

* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

- 4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
- 5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_\(LPA\)_Consultant_Templates_and_Guidance_Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs).
- 6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
- 7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
- 8. Agency's right of way contact person for this Project is Joel Howie, Civil Engineering Supervisor, 150 Beaver Creek Road, Oregon City, OR 97045, 503-742-4658, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.

2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

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

3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a

period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

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

8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits and Agreement No. 32607 constitute the entire agreement between the Parties on the subject matter hereof. There are no

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

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

Signature Page to Follow

Clackamas County, by and through
its elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Date _____

Agency Contact:

Joel Howie
150 Beaver Creek Road
503-742-4658
JHowie@co.clackamas.or.us

State Contact:

David Mendelson
(Insert physical mailing address)
509-731-8451
David.Mendelson@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region (insert Region number) Right of Way
Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By (insert N/A if not applicable)
Assistant Attorney General

Date _____

APPROVED

(If Litigation Work Related to Condemnation is
to be done by State)

By (insert N/A if not applicable)
Chief Trial Counsel

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

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

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

A. Preliminary Phase

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

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, as described in this Section, Agency) shall provide State with a status report of the Project monthly.
 - b. Title to properties acquired shall be in the name of the Agency).
 - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
 - If contamination is found, a recommendation for remediation will be presented to State.

- e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
 - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
4. Appraisal:
- a. Agency shall conduct the valuation process of properties to be acquired.
 - b. Agency shall perform the Appraisal Reviews to set Just Compensation.
 - c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.
5. Negotiations:
- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
 - b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
 - c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.
6. Relocation:
- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
 - b. Agency shall make all relocation and moving payments for the Project.
 - c. Agency shall facilitate the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If State is working as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

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

E. Condemnation

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

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all

recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

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

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- | | |
|--|---|
| 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency; | 2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or |
|--|---|

local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-- PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the

certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered

Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower

Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of

materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all

necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such 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 Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in

the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

\$100,000 and that all such subrecipients shall certify and disclose accordingly.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM
REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

(Instructions, please delete before completing form)Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this ____ day of _____, 20__



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with DiExSys, LLC for Traffic Safety Software

Purpose/Outcome	Complete Roadway Safety Analyses/Implement Cost Effective Safety Solutions to Eliminate Fatal and Serious Injury Crashes
Dollar Amount and Fiscal Impact	\$195,000 total Contract for a period of 5 years.
Funding Source	Road Fund (26%); Drive to Zero General Fund (74%)
Duration	Expires November 30, 2025.
Previous Board Action/Review	No previous action
Strategic Plan Alignment	Build a strong infrastructure; Ensure safe, healthy and secure communities
Counsel Review	1. Date of Counsel review: 11-5-2020 2. Initials of County Counsel performing review. ARN
Procurement Review	3. Was the item processed through Procurement? yes X no <input type="checkbox"/> 4. If no, provide brief explanation:
Contact Person	Joseph Marek – 503-970-8987
Contract No.	#3421

Background:

The BCC adopted Transportation Safety Plan calls for the elimination of Fatal and Serious Injury Crashes by 2035. To accomplish this goal as part of the Drive to Zero Program, very strategic roadway safety investments need to be made. The Highway Safety Manual methodologies and Level-of-Service-of-Safety provide a comprehensive method to analyze roadway networks to accomplish the County's safety goals, but it needs to be in an easy to use software platform. The County needs to be strongly data driven, making investments to maximize crash reduction over time.

This software deployment will have an initial purchase, cost for data integration and annual maintenance/upgrade fee for use. Within this proposal, we have included initial purchase and ongoing subscription/maintenance for up to five (5) years with up to two renewals. Purchase will be split between Road Fund (16%) and Drive-to-Zero General Fund (74%).

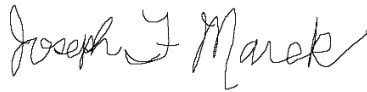
Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on August 18, 2020. Proposals were opened on September 17, 2020. The County received four (4) Proposal: DiExSys, LLC; Source Soft Solutions; StreetLight Date, Inc.; and urban SKD. An evaluation committee of four DTD personnel scored DiExSys, LLC proposal with the most points.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Traffic Safety Software Contract with DiExSys, LLC.

Sincerely,

A handwritten signature in cursive script that reads "Joseph F. Marek".

Joseph F. Marek, PE, PTOE

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3421**

This Goods and Services Contract (this “Contract”) is entered into between **DiExSys, LLC** (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”) on behalf of Department of Transportation and Development for the purposes of providing **Traffic Safety Software (RFP 2020-58)**.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **November 30, 2025**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP 2020-58 Traffic Safety Software, issued August 18, 2020, attached and hereby incorporated by reference as Exhibit “A.” 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”, and the Contractor’s Proposal attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County’s Representative for this contract is: **Joe Marek**, 503-742-4705 email: joemar@clackamas.us

III. COMPENSATION

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The initial Compensation for licenses, system integration, and a 2-day training shall not exceed \$85,000.00. There is an additional \$10,000.00 authorized for two 1-day follow-up refresher trainings. The training fees include travel expenses, per diem for instructors and all class materials. Thereafter, the annual license fee remains at \$25,000.00 per year until Contract expiration. The total Contract compensation shall not exceed **\$195,000.00** over the life of the Contract.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. 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. Invoices shall be submitted to the County Representative at: Joe Marek via email: joemar@clackamas.us

IV. CONTRACT PROVISIONS

1. ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence and 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. Such books and records shall be maintained by Contractor 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 FUNDS. County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

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 federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract 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 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.

7. HAZARD COMMUNICATION. Contractor 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. 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; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the 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; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

Required – Cyber Liability: combined single limit, or the equivalent, of not less than \$1,000,000.00 per occurrence, with an annual aggregate limit of \$2,000,000.00

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the County 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 the County, its 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 Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

C. Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

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

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), 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. 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.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery,

facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. 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 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.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

16. 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.

17. 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. 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 section and Sections 1, 8, 13, 15, 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.

18. 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.

19. TAX COMPLIANCE CERTIFICATION. 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.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such

failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, 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 or objects or other tangible things needed to complete the work.

22. 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.

23. 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.

24. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

25. 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.

26. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, 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.

27. 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.

28. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a

part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. 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 material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

29. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

30. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

31. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

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

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

DiExSys, LLC
8606 W. Mountain View Lane
Littleton, CO 80125

Clackamas County



11/4/2020

Authorized Signature

Date

Chair

Kononov, Jake / Principal

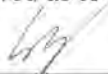
Name / Title (Printed)

Recording Secretary

1656006-94 FLLC / Colorado
Oregon Business Registry #

Date

Approved as to Form:



11/05/2020

County Counsel

Date

EXHIBIT A
RFP 2020-58 TRAFFIC SAFETY SOFTWARE
ISSUED: AUGUST 18, 2020



REQUEST FOR PROPOSALS #2020-58

FOR

Traffic Safety Software

BOARD OF COUNTY COMMISSIONERS

JIM BERNARD, Chair

SONYA FISCHER, Commissioner

KEN HUMBERSTON, Commissioner

PAUL SAVAS, Commissioner

MARTHA SCHRADER, Commissioner

**Gary Schmidt
County Administrator**

**George Marlton
Chief Procurement Officer**

**Brant Sylvester
Analyst**

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: September 17, 2020

TIME: 2:00 PM, Pacific Time

**PLACE: Clackamas County Procurement Division
Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045**

SCHEDULE

Request for Proposals Issued.....	August 18, 2020
Protest of Specifications Deadline.....	August 25, 2020, 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	September 02, 2020, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	September 17, 2020, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award

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SECTION 1 NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners will receive sealed Proposals per specifications until **2:00 PM, September 17, 2020** (“Closing”), to provide Traffic Safety Software. No Proposals will be received or considered after that time.

The resulting contract from this RFP requires the implementation to begin in November 2020 with all software up and running by June 2021.

RFP Documents can be downloaded from ORPIN at the following address:

<http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-58-20.

Prospective Proposers will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Proposers are responsible for obtaining any Addenda, clarifying questions, and Notices of Award from ORPIN. Sealed Proposals are to be sent to Clackamas County Procurement Services – Attention George Marlton, Chief Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045 or may be emailed to procurement@clackamas.us.

Contact Information

Procurement Process and Technical Questions: Brant Sylvester, bsylvester@clackamas.us

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor who's Proposal shall be best for the public good.

Clackamas County encourages proposals from Minority, Women, and Emerging Small Businesses.

SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

2.1 Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

2.2 Requests for Clarification and Requests for Change: Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

2.3 Protests of the RFP/Specifications: Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check ORPIN for any notices, published addenda, or response to clarifying questions.

2.5 Submission of Proposals: Proposals must be submitted in accordance with Section 5.

All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Certification Form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

2.6 Post-Selection Review and Protest of Award: County will name the apparent successful Proposer in a Notice of Intent to Award published on ORPIN. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers shall be given seven (7) calendar days from the date on the Notice of Intent to Award to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an

adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for award, i.e. the protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

2.7 Acceptance of Contractual Requirements: Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

2.8 Public Records: Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.345(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

“This information constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” (ORS 192.345). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

2.10 RFP Proposal Preparation Costs and Other Costs: Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

2.11 Clarification and Clarity: County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

2.12 Right to Reject Proposals: County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

2.13 Cancellation: County reserves the right to cancel or postpone this RFP at any time or to award no contract.

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

2.15 Oral Presentations: At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

2.16 Usage: It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

2.17 Review for Responsiveness: Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

2.18 RFP Incorporated into Contract: This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

2.19 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

2.20 Prohibition on Commissions and Subcontractors: County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.21 Ownership of Proposals: All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

2.22 Clerical Errors in Awards: County reserves the right to correct inaccurate awards resulting from its clerical errors.

2.23 Rejection of Qualified Proposals: Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

2.24 Collusion: By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

2.25 Evaluation Committee: Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

2.26 Commencement of Work: The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

2.27 Best and Final Offer: County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial Proposal received. Therefore, each Proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

2.28 Nondiscrimination: The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

2.29 Intergovernmental Cooperative Procurement Statement: Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to the County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any Proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

SECTION 3 SCOPE OF WORK

3.1. INTRODUCTION

Clackamas County is seeking Proposals from vendors to provide Traffic Safety Diagnostic and Management Software as described here in.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.

3.2 BACKGROUND

Clackamas County (“County”) has set a goal to eliminate fatal and serious injury crashes by 2035. Deployment of safety infrastructure countermeasures is a key component of reducing these life-altering crashes. Choosing locations for safety countermeasure deployment is heavily data driven, requiring use of crash data, roadway inventory, traffic volume, posted speed and functional classifications to analyze the road network in search of the most cost-effective projects. The complex process of determining locations for safety improvements is based upon the concepts and procedures outlined in the Highway Safety Manual, a comprehensive set of processes and procedures for the practitioner to use to screen and analyze a roadway network in search of the most cost-effective safety countermeasure. The foundational tenet is the Safety Management Process including:

1. Network Screening
2. Diagnosis
3. Countermeasure Selection
4. Economic Appraisal
5. Project Prioritization
6. Safety Effectiveness Evaluation

The County is searching for an easy-to-use software package that is Highway Safety Manual compliant that can be used on a Windows platform located on individual computers and access data from either an individual computer or network. To more comprehensively evaluate safety on County roadways, the software package is required to use Level of Service of Safety (“LOSS”) which uses crash rate, crash frequency along with the use of Safety Performance Function’s (“SPF”).

3.3. SCOPE OF WORK

3.3.1. Scope:

The scope of work for this project includes the purchase and deployment of an easy-to-use Traffic Safety Management software package based on the Highway Safety Manual software and using the Level of Service of Safety (LOSS) methodology (see <https://safety.fhwa.dot.gov/rsdp/downloads/fhwasal6027.pdf> and AASHTO Highway Safety Manual) and diagnostic analysis and pattern recognition to identify potential safety improvements. Any software solution must use this methodology or equivalent and be compliant with said manuals and use the data algorithms located within this manual or equivalent.

The software shall consist of the ability to analyze highway segments and intersections. While completing this purpose this software must be capable of meeting the following requirements:

- a. Reports – The software must be able to generate reports that at a minimum include:
 - Summary of all input data and/or input screens

- Summary of analysis methodology and reasoning processes
 - Detailed summary of safety assessment, findings and safety options/countermeasures that may reduce crashes along with the predicted change.
- b. Detailed summary Benefit to Cost of safety countermeasures.
- c. Standards – The Software must comply with all standards set forth in the Highway Safety Manual and use LOSS, which uses crash rate, crash frequency along with crash severities predicted by Safety Performance Functions (SPF).
- d. Software General Capabilities – Software must include the following:
- Software can be cloud, network or individual computer-based
 - Capability to perform detailed safety analysis on roadway segments and intersections using safety performance functions
 - Provide general analysis tools with user friendly graphical interface and ability to integrate with Google Earth capabilities.
 - Have the ability to Utilize Crash filters on analysis and reports
 - Ability to conduct network screening
 - Contain a detailed roadway information module containing Model Inventory Roadway Elements (MIRE) based on County road data.
 - Ability to conduct detailed economic analysis of all roadways
 - Use of normative percentages
 - Ability to conduct direct safety diagnostics
 - Ability to conduct pattern recognition analysis
 - Use of Empirical Bayes correction for regression to the mean
- e. Integration – Software must have:
- Ability to integrate Oregon DOT’s crash data
 - Ability to integrate the County’s roadway inventory, traffic data and traffic count data
- f. Maintenance and Support:
- Maintenance & Support must begin first business day following software deployment on County-owned computers.
 - Provide remote training for up to twenty (20) County and other public personnel including representatives from Traffic Safety, law enforcement and public health.
 - Support to be via email and telephone support Monday through Friday – 8:00-5:00 PM with response time of one (1) hour or less
- g. Documentation needed to be provided under the proposed contract:
- Full PDF Software manual with license to distribute copies to all County Users
- h. Data to be migrated and or added into the system shall be included but not limited to:
- Oregon DOT crash data for all of the County – last 10 years and will be continually uploaded annually throughout the life of the contract.
 - Annual average daily traffic within the County
 - Road functional classifications within the County
 - Road widths, bike lane widths, shoulder widths, and clear zone widths for all public roads within the County
 - Number of lanes for all public roads within the County
 - Divided/undivided for all public roads within the County
 - Signalized/not signalized intersections within the County
 - Curb/no curb on all public roads
 - Stripe/no stripe on all public roads
 - Edge line/no edge line on all public roads
- i. Expandability – Must Accommodate annual updates of roadway data, traffic count data and crash data from both Clackamas County and the Oregon DOT.

- j. Software Licensing:
 - Enterprise level license and support for five (5) years, with the option for additional renewals thereafter. If Software is not cloud based the Licenses shall cover unlimited software installation on County-owned computers. Regardless of local or cloud based, the Licenses shall cover all maintenance and support needed to keep software running throughout the life of the contract.
- k. Protected Information:
 - There is no protected information as part of the program data or outputs
- l. Overall Cost must include the following:
 - Software purchase
 - One time data integration/implementation
 - Annual License Fee & Maintenance
 - Training on software use
 - Annual crash data and roadway data update integration feed

3.3.2. Implementation Schedule:

The following implementation schedule is proposed:

- a. Contract Execution in October of 2020
- b. Software setup and data integration, importing Oregon-specific SPF’s and development of new SPF’s by vendor – (can allow up to six (6) months to complete this step)
- c. Software deployment on or around April 2021. (1 month)
- d. Remote training for 20+ individuals/users.
- e. Software implementation fully completed by June 2021.

3.3.3. Term of Contract:

The term of the contract shall start on the effective date once both parties have signed the contract and continue for a base period of five (5) years, with the option for additional renewals thereafter. These renewals will be on a year by year basis and the contractor will be required to submit an updated quote for the renewal 60 days prior to the expiration of the current period.

3.3.4 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer’s willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Professional Services Contract, for this RFP can be found at <https://www.clackamas.us/finance/terms.html>.

Personal Services Contract (unless checked, item does not apply)

The following paragraphs of the Professional Services Contract will be applicable:

- Article I, Paragraph 5 – Travel and Other Expense is Authorized
- Article II, Paragraph 27 – Confidentiality
- Article II, Paragraph 28 – Criminal Background Check Requirements
- Article II, Paragraph 29 – Key Persons
- Exhibit A – On-Call Provision

The following insurance requirements will be applicable:

- ☒ **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.
- ☒ **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.
- ☒ **Automobile Liability:** combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
- ☒ **Cyber Liability:** combined single limit, or the equivalent, of not less than \$1,000,000.00 per occurrence, with an annual aggregate limit of \$3,000,000.00

**SECTION 4
EVALUATION PROCEDURE**

4.1 An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

4.2 Evaluation Criteria

<u>Category</u>	<u>Points available:</u>
Proposer’s General Background and Qualifications	0-15
Implementation Plan	0-20
Software Capabilities	0-30
Software Service Level Agreement	0-15
Fees	0-15
References	0-5
Available points	0-100

4.3 Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

SECTION 5 PROPOSAL CONTENTS

5.1. Vendors must observe submission instructions and be advised as follows:

5.1.1. Complete Proposals may be mailed to the below address or **emailed** to Procurement@clackamas.us. The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal. If the Proposal is mailed, an original copy and an electronic copy (on compact disk or jump drive) must be included. The Proposal (hardcopy or email) must be received by the Closing Date and time indicated in Section 1 of the RFP.

5.1.2. Mailing address including Hand Delivery, UPS and FEDEX:

Clackamas County Procurement Division – Attention George Marlton, Chief Procurement Officer
Clackamas County Public Services Building
2051 Kaen Road
Oregon City, OR 97045

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

5.1.4. Proposal may not exceed a total of **40 pages (single-sided)**, inclusive of all exhibits, attachments or other information.

Provide the following information in the order in which it appears below:

5.2. Proposer's General Background and Qualifications:

At a minimum

- Description of the firm.
- Credentials/experience of key individuals that would be assigned to this project.
- Description of providing similar Safety Software/Services to public entities of similar size within the past five (5) years.
- Description of the firm's ability to meet the requirements in Section 3.
- Description of what distinguishes the firm from other firms performing a similar service.

5.3. Implementation Plan

Provide a detailed implementation plan within your proposal to include a Gantt chart outlining the timeline. The plan should follow the milestones outlined in the Scope of Work however, if any deviations are made, the change must be called out in the proposal and a detailed reasoning for the change must be included. The proposal must also specifically outline the roles and responsibilities of your firm and what is expected of the County for all activities related to implementation.

5.4. Software Capabilities

Contractor must provide a clear, detailed list of all the software capabilities that the proposed software has and provide individual confirmation for every capability required/listed in Section 3 of this RFP. Additionally all capabilities listed within the proposal **MUST** be included in the total cost outlined in the Fees page.

If your software solution provides additional functions and features outside the scope of this RFP, you may provide information on those optional functions and features that the County may elect to purchase initially or in

the future. If these over-and-above type functions are proposed, pricing must be clearly broken out from the total cost of the base software solution.

5.5. Software Service Level Agreement

- Provide detail of how software is maintained and updated based on new research and development of new SPF's.
- Provide detail of annual software update method and timeframe.
- Provide your Service Legal Agreement that provides details of the technical support plan offered within the proposal to include, issue response and resolution times.

5.6. Fees

Provide a detailed fee schedule of all features/options listed in the proposal. Said fee schedule must list a total not to exceed price for the base period and break out clear set pricing for the optional renewal. This total price must reflect all fees associated with every feature/function/option that is listed within the proposal. Additionally the fee for the software must be structured as enterprise licensing pricing vs. per license/user. Fees should be sufficiently descriptive to facilitate acceptance of a Proposal. Additionally the fee schedule must include the following information and clearly identify the costs associated with each of these items:

- Subscription/Licensing Annual Cost
- All Implementation Fees
- Renewal Fee Maximum Escalation (Percentage or fixed amount after the initial term).
- Any other fees not contemplated above

5.7. References

Provide at least three (3) references from clients your firm has served similar to the County in the past three (5) years, for similar services, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references. Please note the required three references may not be from County staff, but additional references may be supplied. Points awarded for this criteria are based on both the providing of references as well as information gleaned from the provided contacts. Evaluation Committee members may contact references at their sole discretion.

5.8. Completed Proposal Certification (see the below form)

PROPOSAL CERTIFICATION
RFP # 2020-58 Traffic Safety Software

Submitted by: _____
(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 _____

Contractor's Authorized Representative:

Signature: _____ Date: _____

Name: _____ Title: _____

Firm: _____

Address: _____

City/State/Zip: _____ Phone: () _____

e-mail: _____ Fax: _____

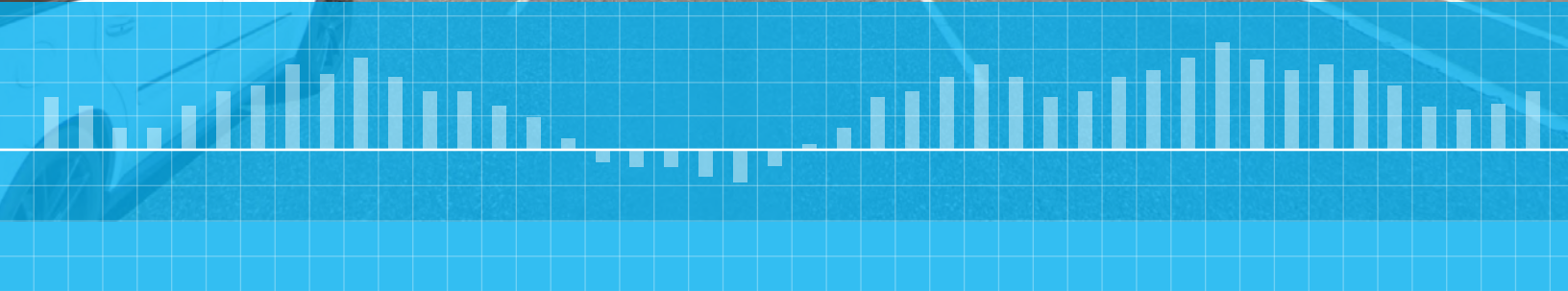
Contract Manager:

Name _____ Title: _____

Phone number: _____

Email Address: _____

**EXHIBIT B
CONTRACTOR'S PROPOSAL**



CLACKAMAS COUNTY

Traffic Safety Diagnostic and Management Software and Services

RFP #2020-58





September 14, 2020

George Marlton, Chief Procurement Officer
Clackamas County Procurement Division
Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045

Re: Traffic Safety Diagnostic and Management Software and Services — RFP #2020-58

Dear Mr. Marlton:

We are honored to have an opportunity to offer our services in delivering Traffic Safety Diagnostic and Management Software to Clackamas County. DiExSys is a Certified Emerging Small Business (ESB) Enterprise.

We are a safety analytics company, our expertise is in integrating the science of road safety, statistical modeling and quantitative risk analysis with highway and traffic engineering, transportation planning, economics, GIS and IT. Our engineers and scientists specialize in effectively translating state-of-the-art safety analysis techniques into applied practical methodology used by transportation planners, engineers, and law enforcement personnel.

DiExSys is the developer and sole source provider of the Vision Zero Suite (VZS), an HSM compliant safety management system. DiExSys VZS meets or exceeds all of the software requirements described in the RFP.

Our team has a proven record of successfully delivering similar Traffic Safety Diagnostic and Management Software/ Services 19 times over the last 5 years. Our principals and employees have made and continue to make significant scientific contributions to the AASHTO Highway Safety Manual (HSM).

We founded our company in 2006 to do one thing: work alongside our clients toward a shared vision of preventing injury and deaths on our roads. This remains our singular purpose today. Road Safety is our business and our passion.

DiExSys is committed to delivering Safety Diagnostic and Management Software and Services on schedule as described in the RFP and without exceptions to the Clackamas County standard Professional Services Contract.

I certify that to the best of my knowledge all of the information submitted with this proposal is true and complete.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jake Kononov", is positioned above the typed name.

Jake Kononov, PhD, PE
DiExSys, Principal
jake.kononov@diexsys.com
303-910-1401



5.2 | General Background and Qualifications

Description of the Firm

DiExSys stands for Diagnostic Expert Systems, we founded our company in 2006 to do one thing: work alongside our clients toward a shared vision of preventing injury and deaths on our roads. This remains our singular purpose today. *Road Safety is our business and our passion.*

Our engineers and scientists provide expert advice, policy guidance, and decision support analysis on highway safety and traffic operations related matters to numerous Departments of Transportation, cities, counties and public road authorities throughout the US and abroad. We hold the strong belief that professional authority rests on substantive scientific knowledge and that only when such knowledge is obtained can the transportation engineer act with social responsibility. Our culture is rooted in applied research, safety analytics and the pursuit of safety insights and breakthrough innovation. DiExSys has a proven record of translating state-of-the-art statistical techniques into applied methodology used by practicing engineers and planners at DOTs, cities and counties.



DiExSys is the developer and sole source provider of Vision Zero Suite (VZS), a Highway Safety Manual (HSM)-compliant safety management system that harnesses the power of predictive analytics and diagnostic pattern recognition to produce the augmented intelligence needed for effective road safety management. DiExSys VZS guides our clients on their journey toward our shared vision of zero traffic fatalities.

Credentials/Experience of Key Individuals Assigned to this project

DiExSys' founders and employees are leading experts in the science of road safety analytics. Our engineers and scientists are critical thinkers, comprised of nationally and internationally recognized experts in highway and traffic engineering, crash analysis, statistical modeling, traffic operations, software development, artificial intelligence and geographic information systems. Our team has made and continues to make significant scientific contributions to the first and draft second editions of the AASHTO Highway Safety Manual (HSM).

DiExSys principals developed the concept and pioneered practical use of Level of Service of Safety (LOSS) and diagnostic pattern recognition methodologies in highway safety management. DiExSys founders authored foundational TRB papers on LOSS and diagnostics incorporated into HSM and presently used nationwide.



Jake Kononov, PhD, PE

Jake Kononov, PhD, PE will function as Project Manager responsible for all aspects of implementing HSM-compliant VZS safety analysis software at Clackamas County.

Dr Kononov has successfully managed 19 (nineteen) similar projects across the country. Jake is the founding Principal of DiExSys and is an internationally known expert in highway safety. His research on Safety Performance Functions (SPF), LOSS and diagnostics has been incorporated into first and draft second editions of the AASHTO Highway Safety Manual. As a practicing engineer, Dr. Kononov performed thousands of diagnostic examinations using statistical methods starting in 2001. Jake has over 30 years of experience in all aspects of highway and traffic engineering. As a Principal of DiExSys, he has provided expert advice, policy guidance, and decision support analysis on highway safety and traffic operations related matters to numerous Departments of Transportation, Cities and Counties and Public Road Authorities throughout the U.S. Dr. Kononov is an author of numerous research papers on road safety published by the TRB, Swedish National Road and Transport Institute (VTI), German Road Research Institute (BAST), Italian Society of Highway Infrastructure (SIIV) and Public Works Magazine. He is the lead author of Best Paper of the Year awarded by the TRB Committee on Safety Data Analysis and Evaluation. Dr. Kononov is a registered Professional Engineer in Montana, Colorado and Wyoming.

PhD Transportation Engineering, Emphasis on Highway Safety, University of Colorado

MS Transportation Engineering, University of Colorado in Denver

BS Civil Engineering, University of Colorado in Denver

5.2 | General Background and Qualifications

Dr. Kononov is also an Associate Professor Adjunct at the Graduate School of Civil Engineering at the University of Colorado in Boulder. He served on the following TRB committees and NCHRP study panels:

- Chairman of the TRB Standing Committee on Safety Management (2006-2014)
- Member of the TRB Standing Committee on Safety Data, Design, Analysis and Evaluation (2001-2015)
- Member of the TRB Standing Committee on Highway Safety Performance (2011-2014)
- NCHRP Review of Truck Characteristics as Factors in Roadway Design. Study Panel Chairman
- NCHRP System-wide Impact of safety and Traffic Operations Design Decisions on RRR Projects. Study Panel Member
- NCHRP Synthesis on Statistical Methods for Highway Safety Analysis. Study Panel Member



Bryan Allery, PE

Bryan Allery, PE will be in charge of System's Integration and Data Management. Managing DiExSys integration and data management team Bryan has successfully completed integration of crash and roadway databases into VZS for 19 (nineteen) deployments of VZS across the country.

BS Geological Engineering

Colorado School of Mines, Golden, CO

He is also a founding Principal of DiExSys and has over 25 years of experience in transportation engineering, over 7 years at CALTRANS, and over 17 years at CDOT. Bryan is a nationally recognized expert on traffic records, accident analysis, and safety program management. He has extensive experience in development and deployment of Safety Management Systems and related computer programming. Bryan is a highly experienced transportation engineer in the areas of design, construction management, materials, geometric design, and traffic engineering. He has served as a research study panel member at the National Cooperative Highway Research Program (NCHRP). Bryan, together with Dr. Kononov, has coauthored a number of research papers on road safety. His experience at the Colorado DOT included: Responsibility for the conceptual development and implementation of strategies and programs to improve highway safety, planning and budgeting of statewide safety improvement programs (HSIP), overseeing assessment of safety needs and making recommendations for safety improvements on the statewide resurfacing program (budget \$100,000,000), reconstruction, realignment, and major widening projects, managing the process of optimization of investments into safety improvements to maximize program-wide accident reduction within constraints of available budgets, and providing expert advice and supporting analysis on safety related matters to six engineering regions. Bryan is a Registered Professional Engineer in Colorado and California.



Evan Kirby, GISP

Evan Kirby will be in charge of GIS applications and mapping on this project. Working with Bryan Allery and Jake Kononov, he prepared GIS mapping and related system integration on VZS deployments in several states. Evan

BS Geography and Environmental Conservation

University of Colorado, Boulder, CO

is a GIS applications, design and development expert with 24 years of professional experience that recently joined DiExSys as an owner. He is highly skilled in all aspects of ArcGIS and has been supporting projects with DiExSys in several states over the past 7 years. Evan has managed GIS analyses on a wide array of CDOT projects, including the Statewide Freight and Passenger Rail Plan, Statewide Transit Plan, Statewide Level of Service of Safety and Crash Pattern Mapping, the I-70 Mountain Corridor Programmatic EIS, CDOT's Statewide Travel Map and the Statewide Effects of Energy Development on the Transportation System Research Study. His interdisciplinary background in both the public and private sectors provides him with a wide range of GIS expertise. Evan has worked with DiExSys in several states to develop processes for the creation of GIS datasets from and data inputs into Vision Zero Suite (VZS). In Montana and Alabama, Evan used tabular outputs from statewide analysis of crash patterns and Level of Service of Safety (LOSS) from VZS and developed scripts to format the data to and to enable mapping of the model results in GIS.

5.2 | General Background and Qualifications



Catherine S. Durso, PhD

Dr. Durso will function as a Principal Statistician on the project. She is highly experienced with development of Accident Prediction Models, Advanced Diagnostic Tools, Variable Speed Limits (VSL) and Artificial Intelligence Algorithms. She is also actively

involved in applying statistical analysis to the problems of roadway safety and traffic operations. She has over 20 years of experience in the area of applied statistics and mathematical modeling with focus on highway safety analytics. Dr. Durso has coauthored a number of research papers on highway safety with Jake Kononov, Bryan Allery and Jim Williams.

**PhD & MS – Mathematics
Massachusetts Institute of Technology
(MIT) Cambridge, MA**

**BS Mathematics, Princeton University,
Princeton, NJ**



James S. Williams, P.E.

Jim Williams, PE will assist with Systems Integration, perform SPF modeling and development of diagnostic norms

Jim is Senior Safety Analyst at DiExSys. He has over 30 years of experience in all aspects of Transportation Engineering. During his career at DiExSys he developed hundreds of crash prediction models (SPFs) of segments and intersections for CDOT, Montana DOT and Louisiana DOT. Jim has pioneered new modeling techniques which resulted in improved goodness of fit in SPF modeling. He has a strong background in predictive analytics and is intimately familiar with crash records and databases. During his time at CDOT, Jim worked in the staff traffic and cost estimating unit, where he designed sophisticated databases to provide decision support analysis. Jim is an experienced user of VZS.

**BS Mathematics
University of Colorado, Boulder, CO**



Richard Sarchet, MS., P.E.

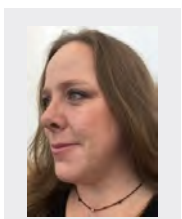
Rich Sarchet, PE will serve as Senior Safety Engineer on the project responsible for training and safety analysis. Rich joined DiExSys as a Senior Transportation Safety Engineer 5 years ago. He has over 20 years of transportation engineering experience at CDOT, with 15 of those years

focused on safety and traffic operations. From 2011 through 2015 Rich worked as Region 3 Traffic Operations Engineer addressing multidisciplinary problems of safety and mobility combining expertise in rural and urban environments. He has evaluated hundreds of intersections, interchanges, freeways and arterial segments and identified thousands of opportunities for crash reduction and optimization of traffic operations.

**MS Civil Engineering, Transportation Focus
University of Colorado, Denver, CO**

**BS Civil Engineering
University of Colorado, Denver, CO**

**BS Business Administration, Management
University of Northern Colorado, Greeley, CO**



Marcia Rutherford, GIS Technician

Marcia Rutherford is a GIS Technician and will provide GIS support for the project. She is very familiar with roadway systems and crash profiles on state highways and county roads from her experience with geocoding crashes,

assigning mileposts and conducting GIS Analysis for Arapahoe and Douglas Counties crash data in Colorado. She has 2 years of transportation related experience.

**Classes in Surveying and AUTOCAD at
Arapahoe Community College**

GIS Training from ESRI

5.2 | General Background and Qualifications

Description of providing similar Safety Software/Services to public entities of similar size within the past five (5) years.

Development of jurisdiction-specific safety knowledge base is comprised of developing predictive tools in the form of SPF/LOSS and diagnostic tools in the form of stratified diagnostic norms for segments and intersections. DiExSys has developed jurisdiction-specific safety knowledge bases, integrated databases, deployed VZS seventeen times and conducted training and support for the following state Departments of Transportations, Cities and Counties:

1 Colorado DOT (CDOT)

Counties in Colorado

- 2** Arapahoe
- 3** Douglas
- 4** Jefferson
- 5** Mesa
- 6** Weld

Cities in Colorado

- 7** Arvada
- 8** Aurora
- 9** Castle Rock
- 10** Colorado Springs
- 11** Denver
- 12** Englewood
- 13** Greenwood Village
- 14** Lakewood
- 15** Louisville

Other DOTs

- 16** Louisiana DOT (LADOTD)
- 17** Alabama DOT (ALDOT)

Montana DOT (**18**) and Wyoming DOT (**19**) hired DiExSys to develop their safety knowledge bases and build state-specific versions of VZS, however they decided to hire DiExSys to provide statewide safety engineering consulting services using VZS rather than license and use VZS themselves.

We provided similar Safety Software/Services to public entities of similar size or larger 19 times over the last 5 years.

Description of the firm's ability to meet the requirements in Section 3.

Entire DiExSys team of safety professionals is committed to successful execution of the contract within the 6-month timeframe specified in the RFP. DiExSys' team has many years of experience working together on similar efforts.

We offer in depth technical expertise and extensive practical experience in all aspects of the project. We have requisite production capacity to guarantee effective and timely completion. All 7 members of our team will work on Clackamas County's Safety Software Implementation Project.

Jake Kononov, PhD, PE will function as Project Manager responsible for all aspects of implementing HSM-compliant VZS safety analysis software at Clackamas County. Dr Kononov has successfully managed **19 (nineteen)** similar projects across the country.

Bryan Allery, PE will be in charge of System's Integration and Data Management. Working together with Jake Kononov and managing DiExSys integration and data management team Bryan has successfully completed integration of crash and roadway databases into VZS for **19 (nineteen)** similar deployments.

Evan Kirby, GISP will be in charge of GIS applications and mapping of VZS deployment on this project. Working with Bryan Allery and Jake Kononov he worked on GIS mapping and related system integration on VZS deployments in several states.

Catherine Durso, PhD will function as a Principal Statistician on the project. She is highly experienced with development of Accident Prediction Models and Advanced Diagnostic Tools. She has collaborated on safety modeling with Dr Kononov and Bryan Allery since 2009.

Jim Williams, PE will assist with Systems Integration, perform SPF modeling and development of diagnostic norms. During his career at DiExSys he developed hundreds of crash prediction models (SPFs) of segments and intersections for CDOT, Montana DOT and Louisiana DOT. Jim has pioneered new modeling techniques which resulted in improved goodness of fit.

5.2 | General Background and Qualifications

Rich Sarchet, PE will function as a Senior Safety Engineer on the project responsible for developing training materials and safety analysis of Clackamas County in-class examples. He has evaluated hundreds of intersections, interchanges, freeways and arterial segments and identified thousands of opportunities for crash reduction.

Marcia Rutherford, a GIS Technician working with Evan Kirby, will provide GIS support and quality control for the project. She is very familiar with roadway systems and crash profiles on state highways and county roads from her experience with Geocoding crashes, assigning mileposts and conducting GIS Analysis.

We are familiar with Oregon crash database structures, Linear Reference Systems and existing inventory of Oregon SPFs.

In addition to our experience with development and deployment of safety management systems we are highly experienced in training engineers, technicians, planners and law enforcement officials how to use it. DiExSys has a proven record of translating state-of-the-art statistical techniques into applied methodology used by the practitioners at DOTs, cities and counties.

DiExSys VZS meets or exceeds all of the software requirements and provides all of the capabilities specified under subsection 3.3.1 of the Scope.

Our experience with successfully delivering similar Traffic Safety Diagnostic and Management Software/Services 19 times over the last 5 years virtually eliminates budgetary and schedule-related risks normally associated with custom designed enterprise-wide software deployment projects.

Description of what distinguishes the firm from other firms performing a similar service

We founded our company in 2006 to do one thing: work alongside our clients toward a shared vision of preventing injury and deaths on our roads. This remains our singular purpose today. Our professional commitment to road safety is complete and to our knowledge there is not another company like ours in the country.

DiExSys is a Road Safety Analytics company. In contrast to typical transportation engineering firms or IT companies, we have the expertise to integrate the science of road safety, statistical modeling and quantitative risk analysis with highway and traffic engineering, transportation planning, economics, GIS and IT. We specialize in road safety and we fill a critical gap between making predictions and making decisions leading to crash reduction. DiExSys engineers and scientists harness the power of predictive analytics and diagnostic pattern recognition to produce the augmented intelligence needed for effective road safety management, and to guide our clients on their journey toward a shared vision of zero traffic fatalities.

DiExSys provides the highest level of technical expertise in safety engineering, predictive analytics and statistical modeling in concert with many years of practical experience of enterprise-wide deployment of safety management systems.

We have invented the concept of Level of Service of Safety (LOSS) as well as diagnostic pattern recognition methods used in safety management by DOTs and consulting firms across the country. Our team has made and continues to make significant scientific contributions to the AASHTO Highway Safety Manual (HSM).

Our engineers and scientists are critical thinkers, comprised of nationally and internationally recognized experts in highway and traffic engineering, crash analysis, statistical modeling, traffic operations, artificial intelligence and geographic information systems.

Road safety is our passion and our business, and we are focused on it with laser-like intensity.

Transportation professionals across the US, Canada, Italy, Australia and Japan make use of our applied research findings and methodology to design and build safer roads.

It is often said that you can't schedule a breakthrough, yet DiExSys has a history of delivering breakthrough solutions for our clients. DiExSys has the experience, drive and expertise to create transportation safety solutions that are both innovative and practical.



5.3 | Implementation Plan

Provide a detailed implementation plan within your proposal to include a Gantt chart outlining the timeline. The plan should follow the milestones outlined in the Scope of Work however, if any deviations are made, the change must be called out in the proposal and a detailed reasoning for the change must be included. The proposal must also specifically outline the roles and responsibilities of your firm and what is expected of the County for all activities related to implementation.

DiExSys will proceed with implementation exactly as described in Section 3.3.2 Implementation Schedule in the Scope of Work.

System Integration will be completed as follows:

- Clackamas County will provide DiExSys with electronic files of its linear referencing system (LRS), roadway features inventory and traffic data for all roads and the most recent 10-years of crash data. If the County does not maintain its own linear referencing, ORDOT's All Roads Network of Linear Referenced Data (ARNOLD) will be used as a framework. Data from ORDOT's Model Inventory of Roadway Elements (MIRE) database may also be used to supplement inventory information.
- DiExSys will validate and translate roadway inventory, traffic and crash databases to the format required for VZS analysis
- Following the conversion of the data tables the Consultant will ensure accuracy of the translation by applying quality control protocols. A thorough data cleanse will be performed that will include a uniform street naming convention to enable accurate query of streets within Vision Zero Suite.

Encoding of Existing Oregon-specific SPF's into Clackamas County VZS

DiExSys will encode SPF's developed by the Oregon DOT and made available on ODOT website for the following facilities:

- Rural 2-Lane Highways
- Rural Multi-Lane Highways
- Rural and Urban Intersections

Development of New SPF and Diagnostic Norms by DiExSys

If Clackamas county data sample size is found sufficiently large DiExSys will develop new SPF models for selected segments and intersections.

DiExSys will develop stratified diagnostic norms to enable direct diagnostics and pattern recognition analysis for existing and new SPF's.

Deployment

DiExSys will deploy VZS on all county-owned computers designated by the County. The County will allocate IT staff to ensure or provide administrative privileges and designate a protocol for deployment preferred by the County IT professionals. All of this work is expected to be completed during Day 1 of training, which does not require use of VZS.

Training

DiExSys LLC will initially instruct a 2-day VZS Training Class for the Clackamas County employees. This training class will offer a methodological foundation and analytical framework for the explicit consideration of safety in highway design, traffic operations and transportation planning using VZS software. It will provide a practical approach to solving a complex problem of road safety by integrating elements of geometric design, traffic operations, statistics and risk analysis. Clackamas County engineers, planners and law enforcement staff taking the course will gain a comprehensive understanding of the relationships between geometric design and road safety, safety performance of various roads, principles of diagnostics and pattern recognition, benefit cost analysis and optimization strategies. Throughout the course, real life case histories, including roads in Clackamas County will be used to illustrate the application of the introduced concepts. Day 1 will be used to learn modern safety analysis methodology and Day 2 to learn how to use VZS software.

5.3 | Implementation Plan

Training will include the following:

- Philosophy of explicit consideration of safety in highway design, traffic operations and transportation planning.
- Review of selected design standards from the safety perspective
- Problems with using crash rates
- How to measure safety
- Oregon Safety Performance Functions and Level of Service of Safety
- Relationship between safety and congestion and safety to the Number of Lanes
- Regression to the Mean (RTM) bias and its correction using Empirical Bayes Method
- Diagnostic analysis using statistical pattern recognition with Oregon-specific diagnostic tables
- Overview of DiExSys Vision Zero Suite
- Safety assessment analysis and report preparation
- Review and analysis of case histories in Clackamas County using Oregon predictive and diagnostic tools
- Network Screening

It is anticipated that an additional 2 separate 1-day Refresher Training sessions will be required over the contract term.

It is assumed that Clackamas County will provide training facilities and computers for the participants. If, due to policy changes resulting from COVID-19, it will be required by the State of Oregon or Clackamas County to conduct training remotely, then DiExSys will prepare class materials to be delivered remotely to all participants and provide instructions via GoToMeeting or other means preferred by the County.

Gantt Chart with implementation timeline is provided in **Figure 1**

Task Description	Month					
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
System Integration	█					
Encoding of Oregon SPF's			█			
Development of New SPF's and Norms				█		
Deployment						█
Training						█

Figure 1 Implementation Timeline

Support will commence immediately following deployment.

5.4 | Software Capabilities

Contractor must provide a clear, detailed list of all the software capabilities that the proposed software has and provide individual confirmation for every capability required/listed in Section 3 of this RFP. Additionally, all capabilities listed within the proposal MUST be included in the total cost outlined in the Fees page.

DiExSys VZS is individual computer based software with capabilities for data to reside on the network server if preferred by the County. VZS is HSM compliant and provides all capabilities specified in Section 3.3.1. of the Scope. Detailed description of all capabilities is as follows:

a. Reports – The software must be able to generate reports that at a minimum include:

- Summary of all input data and/or input screens
- Summary of analysis methodology and reasoning processes

VZS meets and exceeds above requirements, it generates numerous reports including but not limited to Summary of all input data and output screens. A sample input/output summary report using Oregon State Route 25 MP 14.00-18.00 as an example is provided in **Figure 2**.

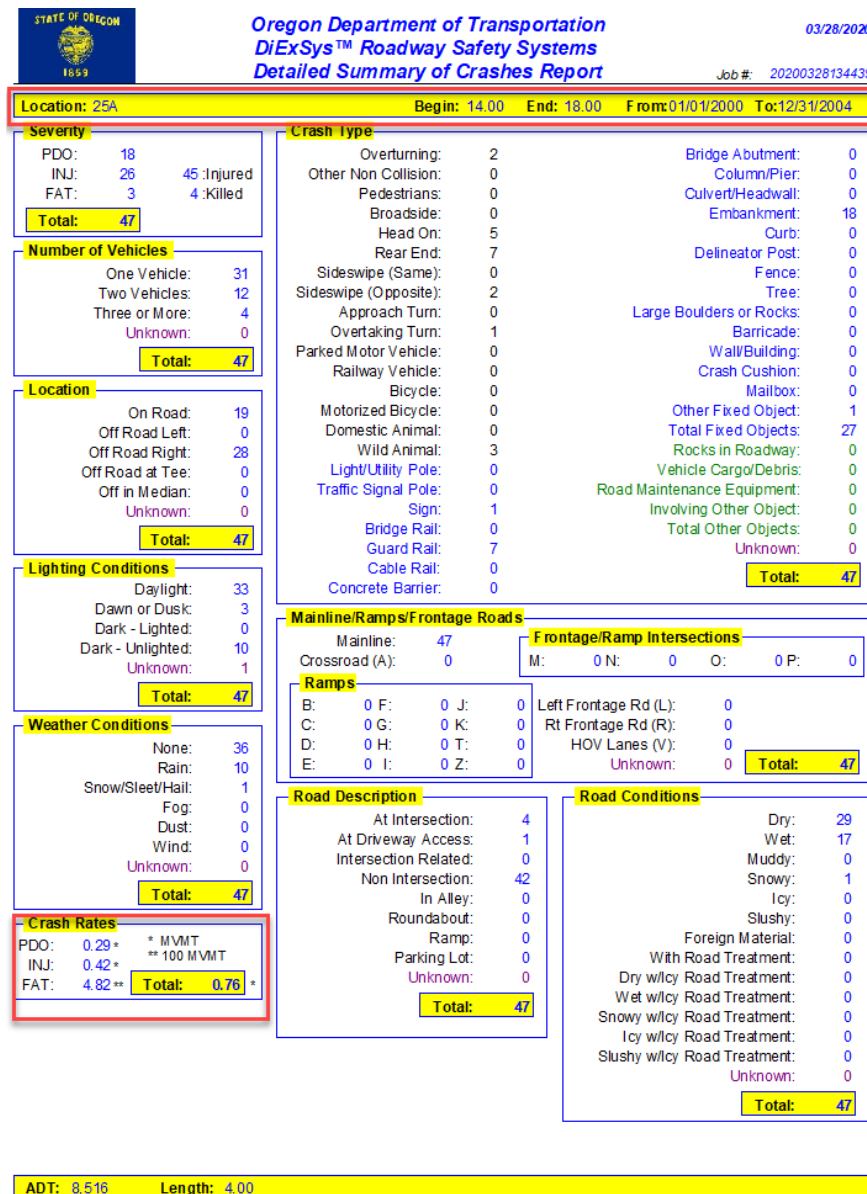


Figure 2 Detailed Input/output Summary Report

5.4 | Software Capabilities

In this case crash rate was used (lower left-hand corner of **Figure 2**) to describe analysis methodology and reasoning process. Similarly, an SPF/LOSS analysis report for the same segment is provided in **Figure 3** showing safety performance profile along the segment using a sliding window method. **Loss_s** connotes LOSS for severity and **Loss_t** connotes LOSS for frequency for Oregon SR25 MP 14-18. The LOSS report demonstrates that safety performance of SR25 MP 14.00-18.00 is within LOSS I-II range reflecting low to low-to-moderate potential for crash reduction from the frequency and severity standpoints.

Hwy	Csec	Bmp	Emp	Beg_date	End_date	Pdo	Inj	Fat	Total	Aadt	Pct_dev_s	Loss_s	Pct_dev_t	Loss_t	Score
25	A	14.00	14.00	01/01/2000	12/31/2004	5	9	0	14	8920	0.4886	2	0.2628	2	99.55
25	A	14.00	15.00	01/01/2000	12/31/2004	5	9	0	14	8920	0.4886	2	0.2628	2	99.55
25	A	14.10	15.10	01/01/2000	12/31/2004	6	9	0	15	8920	0.4886	2	0.2906	2	100.92
25	A	14.20	15.20	01/01/2000	12/31/2004	5	8	0	13	8920	0.4360	2	0.2353	2	81.38
25	A	14.30	15.30	01/01/2000	12/31/2004	5	7	0	12	8920	0.3776	2	0.2084	2	64.12
25	A	14.40	15.40	01/01/2000	12/31/2004	6	7	0	13	8920	0.3776	2	0.2353	2	65.26
25	A	14.50	15.50	01/01/2000	12/31/2004	6	8	0	14	8920	0.4360	2	0.2628	2	82.64
25	A	14.60	15.60	01/01/2000	12/31/2004	8	8	0	16	8920	0.4360	2	0.3186	2	85.48
25	A	14.70	15.70	01/01/2000	12/31/2004	8	7	0	15	8920	0.3776	2	0.2906	2	67.89
25	A	14.80	15.80	01/01/2000	12/31/2004	7	5	0	12	8920	0.2646	2	0.2084	2	38.04
25	A	14.90	15.90	01/01/2000	12/31/2004	7	4	1	12	8920	0.2646	2	0.2084	2	38.04
25	A	15.00	16.00	01/01/2000	12/31/2004	5	4	1	10	8920	0.2646	2	0.1570	1	36.09
25	A	15.10	16.10	01/01/2000	12/31/2004	5	5	2	12	8920	0.3776	2	0.2084	2	64.12
25	A	15.20	16.20	01/01/2000	12/31/2004	5	5	2	12	8851	0.3822	2	0.2117	2	64.82
25	A	15.30	16.30	01/01/2000	12/31/2004	5	5	2	12	8765	0.3881	2	0.2144	2	65.67
25	A	15.40	16.40	01/01/2000	12/31/2004	5	5	2	12	8679	0.3905	2	0.2187	2	66.03
25	A	15.50	16.50	01/01/2000	12/31/2004	4	3	2	9	8593	0.2791	2	0.1431	1	37.00
25	A	15.60	16.60	01/01/2000	12/31/2004	2	3	2	7	8507	0.2842	2	0.0988	1	36.25
25	A	15.70	16.70	01/01/2000	12/31/2004	2	3	2	7	8421	0.2856	2	0.1012	1	36.38
25	A	15.80	16.80	01/01/2000	12/31/2004	2	3	2	7	8335	0.2909	2	0.1037	1	36.98
25	A	15.90	16.90	01/01/2000	12/31/2004	3	4	1	8	8249	0.2963	2	0.1292	1	38.23
25	A	16.00	17.00	01/01/2000	12/31/2004	3	4	1	8	8163	0.3004	2	0.1323	1	38.69
25	A	16.10	17.10	01/01/2000	12/31/2004	2	2	1	5	8077	0.1818	1	0.0662	1	16.98
25	A	16.20	17.20	01/01/2000	12/31/2004	2	2	0	4	8060	0.1260	1	0.0492	1	9.72
25	A	16.30	17.30	01/01/2000	12/31/2004	2	4	0	6	8060	0.2432	2	0.0875	1	26.69
25	A	16.40	17.40	01/01/2000	12/31/2004	3	4	0	7	8060	0.2432	2	0.1108	1	27.26
25	A	16.50	17.50	01/01/2000	12/31/2004	3	5	0	8	8060	0.3057	2	0.1362	1	39.29
25	A	16.60	17.60	01/01/2000	12/31/2004	3	5	0	8	8060	0.3057	2	0.1362	1	39.29
25	A	16.70	17.70	01/01/2000	12/31/2004	2	6	0	8	8060	0.3686	2	0.1362	1	52.67
25	A	16.80	17.80	01/01/2000	12/31/2004	2	6	0	8	8060	0.3686	2	0.1362	1	52.67
25	A	16.90	17.90	01/01/2000	12/31/2004	2	6	0	8	8060	0.3686	2	0.1362	1	52.67
25	A	17.00	18.00	01/01/2000	12/31/2004	3	7	1	11	8060	0.4879	2	0.2197	2	87.10
25	A	18.00	18.00	01/01/2000	12/31/2004	3	7	1	11	8060	0.4879	2	0.2197	2	87.10

Figure 3 SPF/LOSS Report

- Detailed summary of safety assessment, findings and safety options/countermeasures that may reduce crashes along with the predicted change.

VZS is capable of providing a detailed summary of all analyses required for safety assessments, including assessment of the nature and magnitude of the safety problem using SPF/LOSS, options for effective countermeasures, extensive library of expected crash reduction factors, expected crash reduction with predicted change in safety performance over the life cycle of improvements. Additionally, VZS comes with report template files in the Microsoft word format to prepare Clackamas County safety assessment reports. VZS training includes preparation of the safety assessment reports.

5.4 | Software Capabilities

b. Detailed summary Benefit to Cost of safety countermeasures.

VZS is capable of providing detailed summaries of Benefit to Cost (B/C) analysis of safety countermeasures. **Figure 4** shows life cycle B/C analysis of possible deployment of cable rail on SR25 MP 14.00-18.00 with consideration of the maintenance cost in addition to initial construction, and **Figure 5** shows B/C analysis of possible shoulder widening on the same segment.

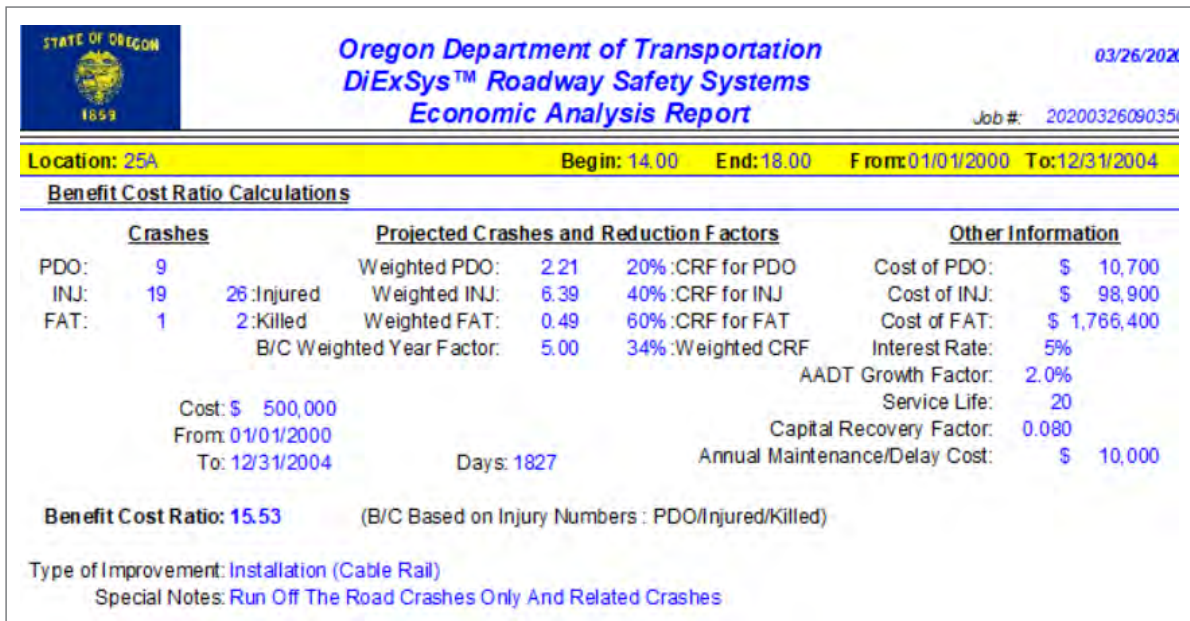


Figure 4 B/C Analysis Capability Cable Rail

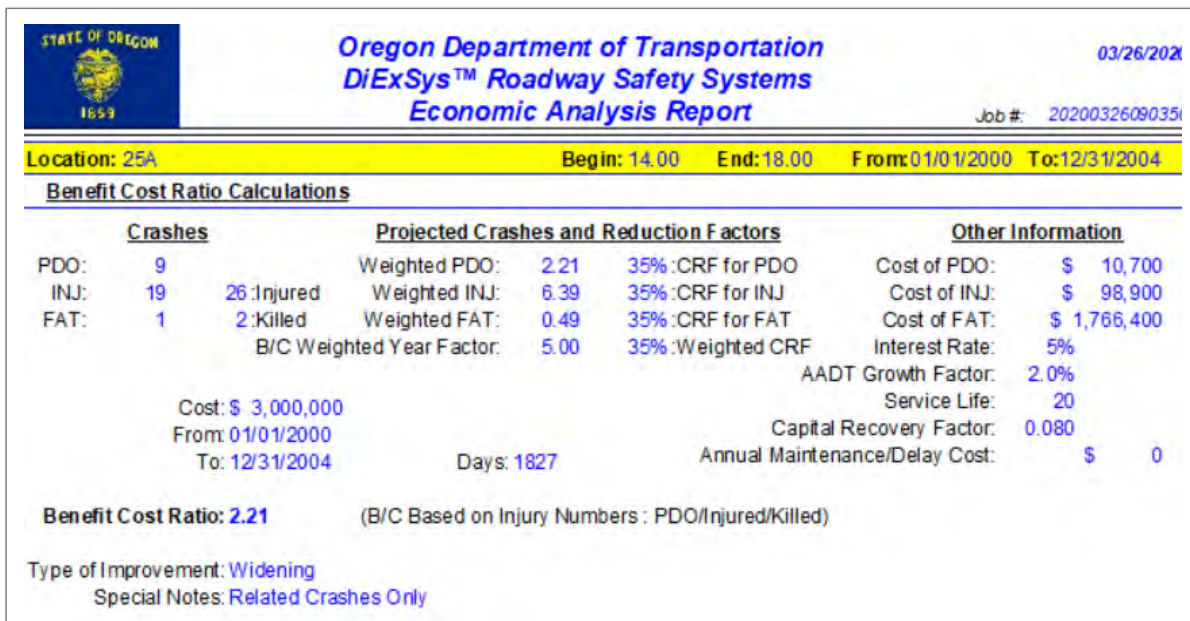


Figure 5 B/C Analysis Capability Widening

5.4 | Software Capabilities

c. Standards – The Software must comply with all standards set forth in the Highway Safety Manual and use LOSS, which uses crash rate, crash frequency along with crash severities predicted by Safety Performance Functions (SPF).

VZS is HSM compliant software capable of providing standard capabilities set forth in the HSM, including but not limited to: SPF/LOSS analysis, Correction for Regression to the Mean (RTM) bias using Empirical Bayes (EB) method, diagnostics using pattern recognition and direct diagnostics, crash modification factors, network screening, before and after study capabilities and project level analysis.

d. Software General Capabilities - Software must include the following:

- **Capability to perform detailed safety analysis on roadway segments and intersections using safety performance functions**

VZS has SPF analysis capabilities and SPF libraries for segments and intersections. **Figure 6** shows SPF interface for segments, and **Figure 7** shows SPF interface for intersections reflecting the need to use main line and side-road ADTs.



Figure 6 SPF Interface for Segments

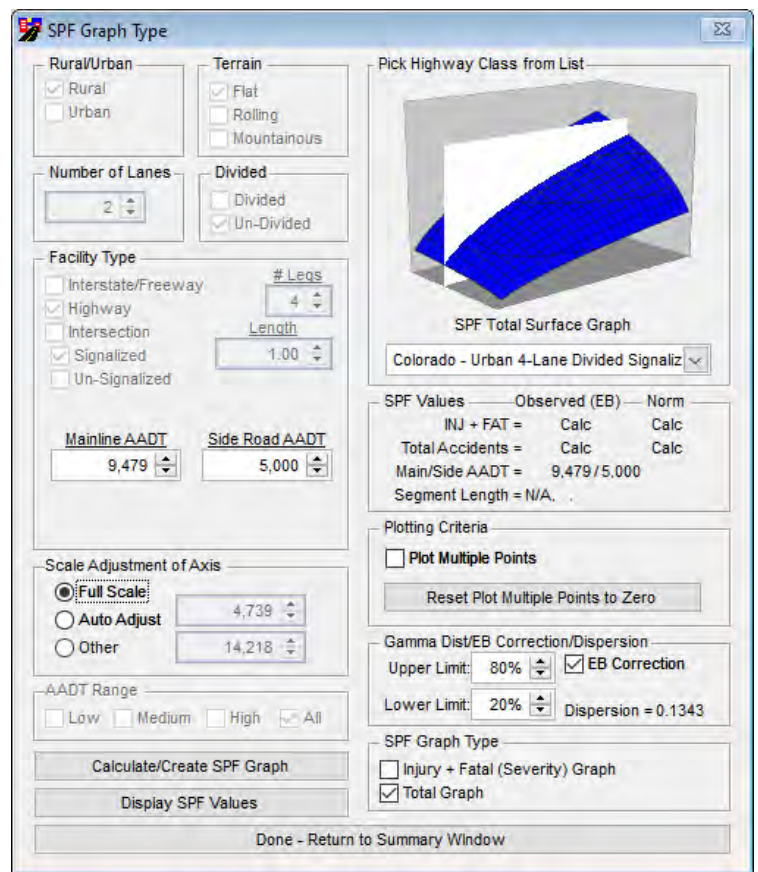


Figure 7 SPF Interface for Intersections

5.4 | Software Capabilities

Figure 8 shows frequency SPF/LOSS analysis corrected for RTM using the EB method for Oregon SR25 MP 15-20 and Figure 9 shows severity SPF analysis for the same route.

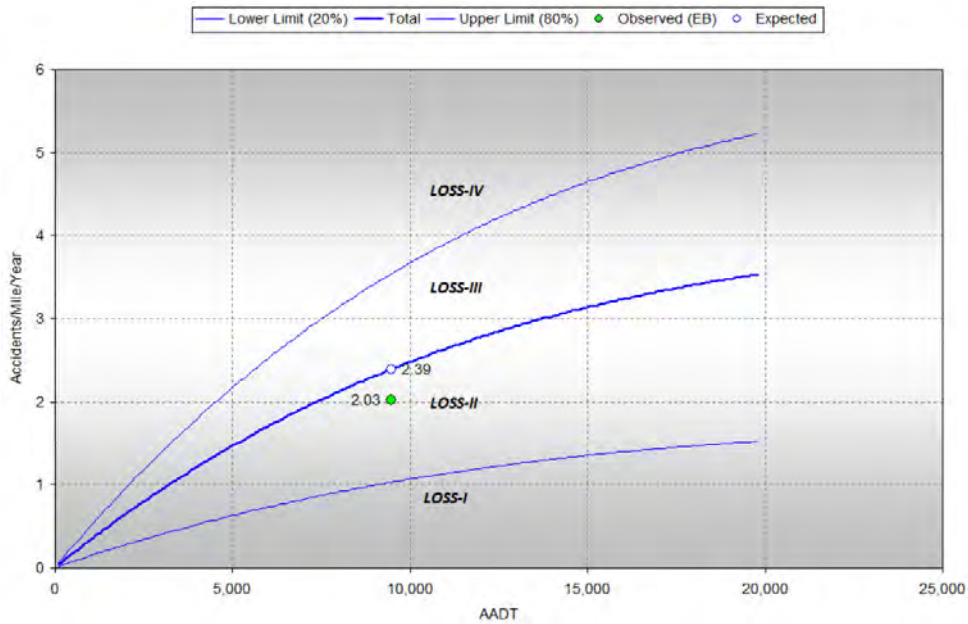


Figure 8 SPF Frequency Graph EB Corrected SR25 MP 15.00-20.00

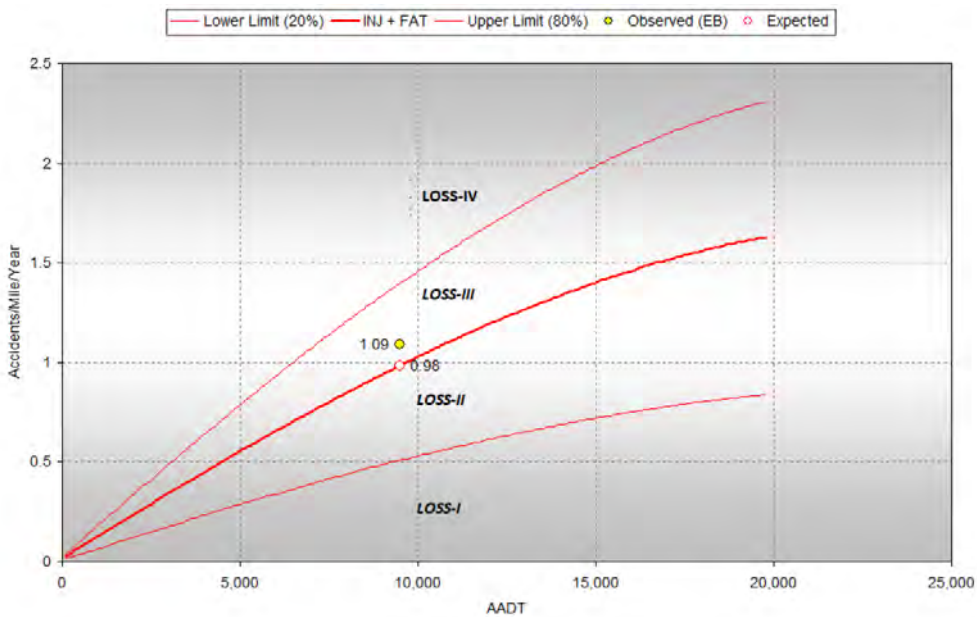


Figure 8 SPF Severity Graph EB Corrected SR25 MP 15.00-20.00

- Provide general analysis tools with user friendly graphical interface and ability to integrate with Google Earth capabilities.

VZS offers highly intuitive user-friendly graphical interface with one-click capability to instantly create analysis supporting graphics (Figure 9) directly transferable into safety assessments reports. Figures 10 and 11 show selected graphs generated by one-click graph function. Of course, the actual outputs are in much larger scale, and easily readable.

5.4 | Software Capabilities

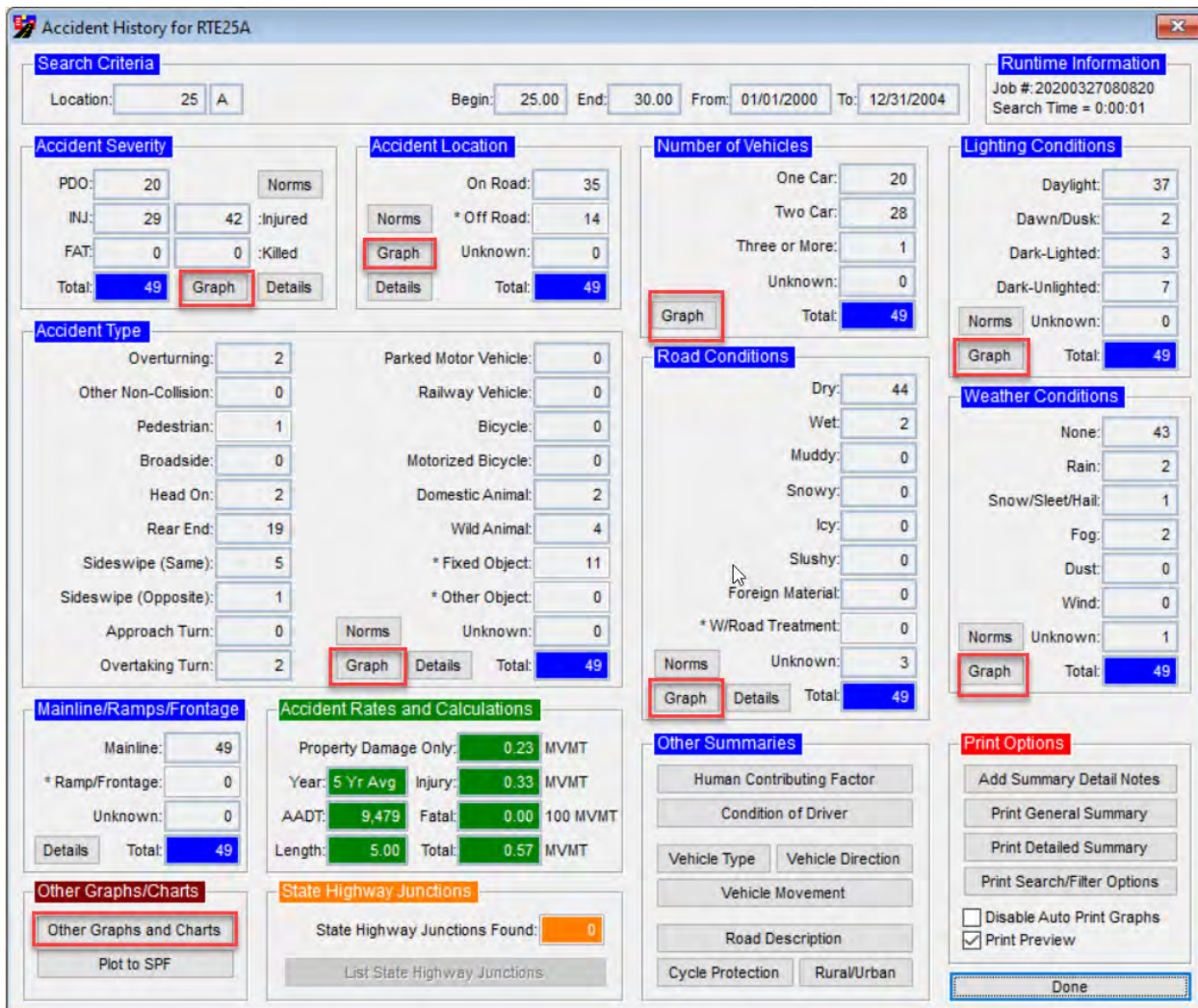


Figure 9 VZS Graphical Interface

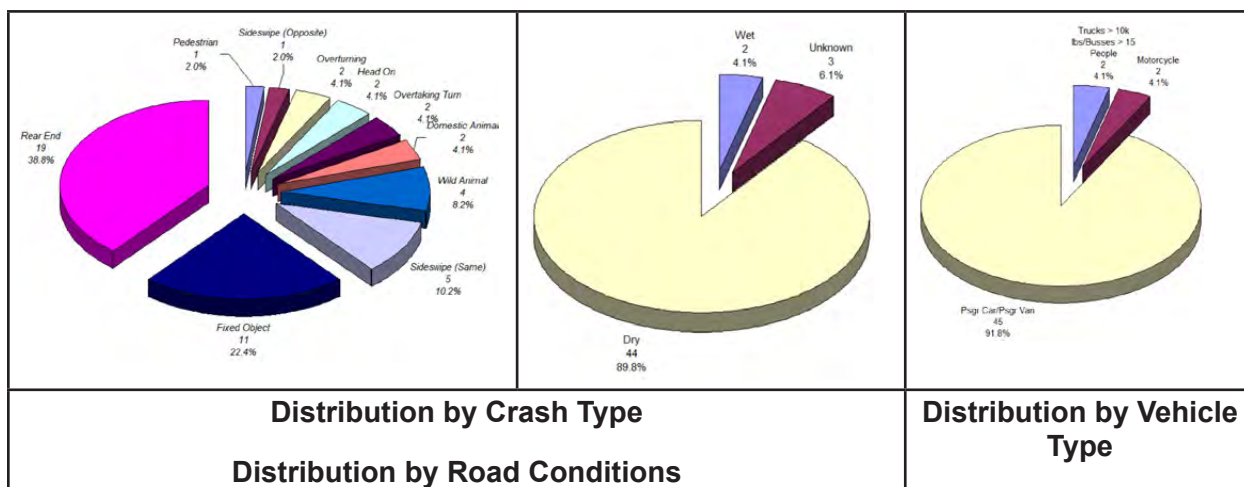


Figure 10 One-Click Graphics (Distributions by Crash Type, Road Condition and Vehicle Types)

5.4 | Software Capabilities

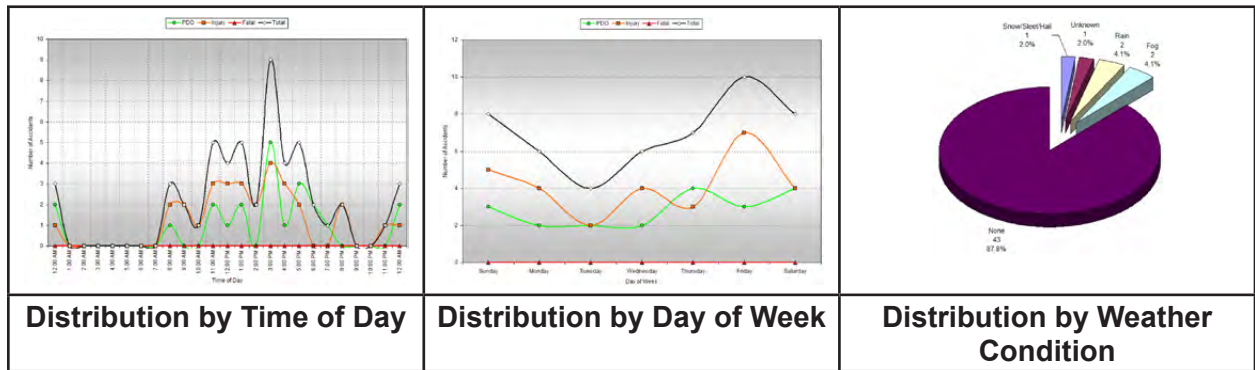


Figure 11 One-Click Graphics (Distributions by Time of Day, Day of Week and Weather Conditions)

VZS has capability to map crashes with crash attributes selected by the analyst directly into Google Earth or ESRI. **Figure 12** shows locations of Motorcycle crashes on a 2-lane mountainous road west of Denver.

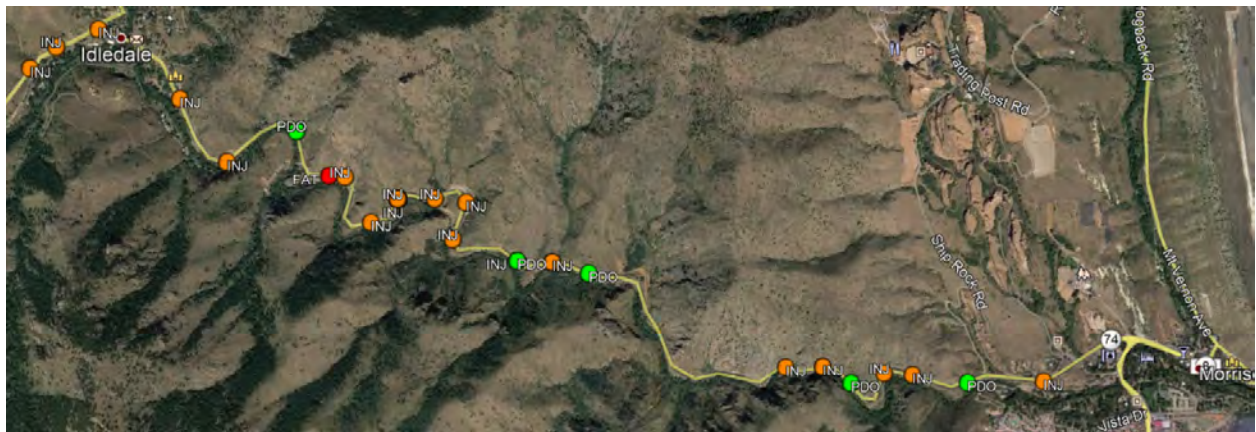


Figure 12 Google Earth Map of Motorcycle Crashes on SH74 in Colorado Directly Plotted by VZS

5.4 | Software Capabilities

Figure 13 displays crash attributes selected by the analyst at a specific location.

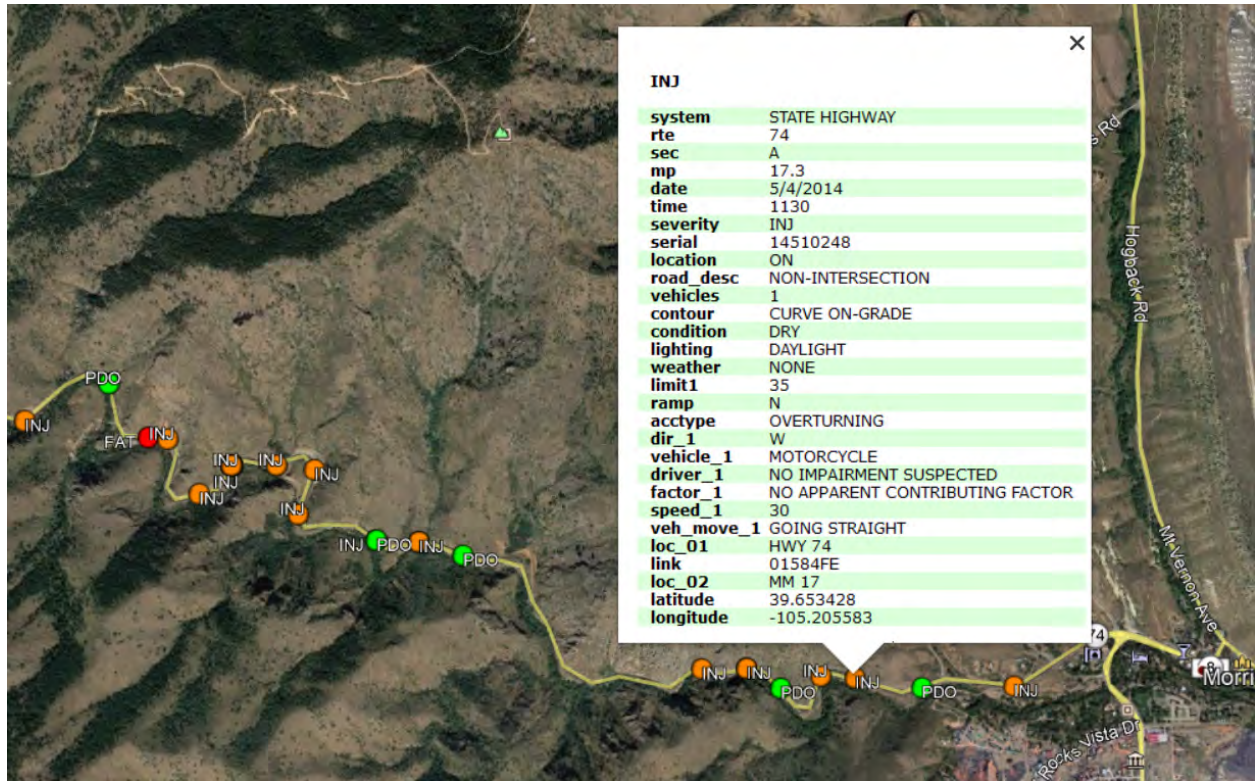


Figure 13 Display of Crash Attributes in Google Earth

- Have the ability to Utilize Crash filters on analysis and reports

VZS has the ability to utilize crash filters which was designed to be intuitive and easy to use. Once Crash Filters are selected on the main window (Figure 14) a menu of filters can be effectively used to select specific crash, roadway, vehicle or driver characteristics (Figure 15). VZS filters are used extensively to perform analysis and prepare reports.

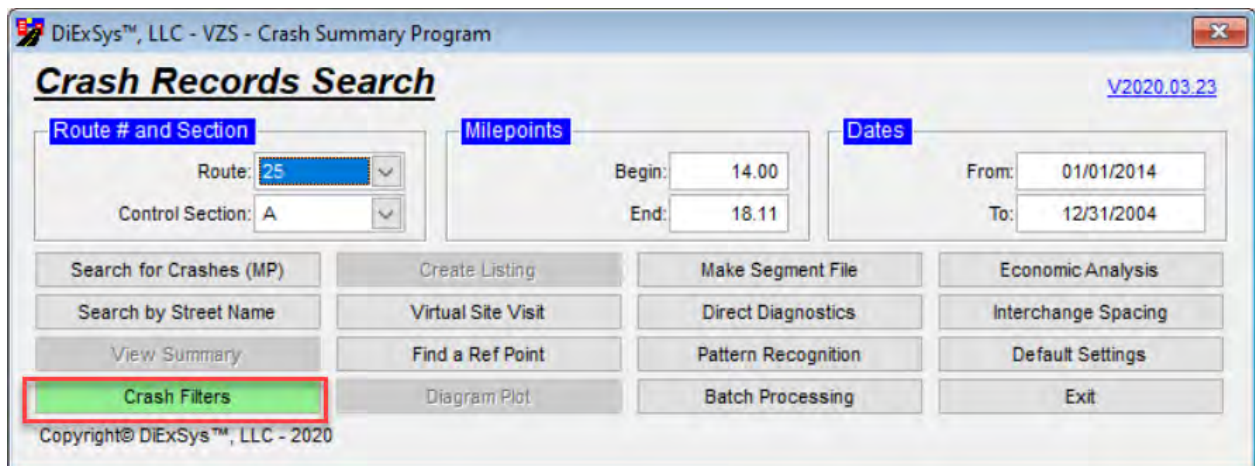
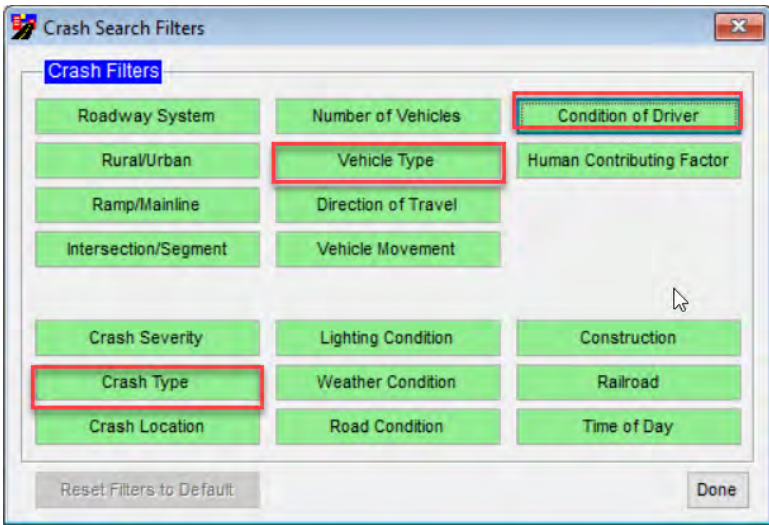


Figure 14 Select Crash Filters

5.4 | Software Capabilities

Figure 15 shows Filter Menu and the content of selected filters



Filter Menu

Crash Type Filter


Crash Type

<input checked="" type="checkbox"/> Accident Type	<input checked="" type="checkbox"/> Fixed Object	<input checked="" type="checkbox"/> Other Object
<input checked="" type="checkbox"/> Overtaking	<input checked="" type="checkbox"/> Light/Utility Pole	<input checked="" type="checkbox"/> Rocks in Roadway
<input checked="" type="checkbox"/> Other Non-Collision	<input checked="" type="checkbox"/> Traffic Signal Pole	<input checked="" type="checkbox"/> Vehicle Cargo/Debris
<input checked="" type="checkbox"/> Pedestrian	<input checked="" type="checkbox"/> Sign	<input checked="" type="checkbox"/> Other Object
<input checked="" type="checkbox"/> Roadside	<input checked="" type="checkbox"/> Bridge Rail	<input checked="" type="checkbox"/> Road Maintenance Equipment
<input checked="" type="checkbox"/> Head-On	<input checked="" type="checkbox"/> Guard Rail	<input checked="" type="checkbox"/> Unknown
<input checked="" type="checkbox"/> Rear-End	<input checked="" type="checkbox"/> Cable Rail	
<input checked="" type="checkbox"/> Sideswipe (Same Direction)	<input checked="" type="checkbox"/> Concrete Barrier	
<input checked="" type="checkbox"/> Sideswipe (Opposite Direction)	<input checked="" type="checkbox"/> Bridge Abutment	
<input checked="" type="checkbox"/> Approach Turn	<input checked="" type="checkbox"/> Column/Pier	Accident Types
<input checked="" type="checkbox"/> Overtaking Turn	<input checked="" type="checkbox"/> Culvert/Headwall	<input type="button" value="Set"/> <input type="button" value="Clear"/>
<input checked="" type="checkbox"/> Parked Motor Vehicle	<input checked="" type="checkbox"/> Embankment Cut/Fill Slope	Fixed/Other Objects
<input checked="" type="checkbox"/> Railway Vehicle	<input checked="" type="checkbox"/> Curb/Raised Median	<input type="button" value="Set"/> <input type="button" value="Clear"/>
<input checked="" type="checkbox"/> Bicycle	<input checked="" type="checkbox"/> Delaware Post	
<input checked="" type="checkbox"/> Motorized Bicycle	<input checked="" type="checkbox"/> Fence	
<input checked="" type="checkbox"/> Domestic Animal	<input checked="" type="checkbox"/> Tree/Shrubbery	
<input checked="" type="checkbox"/> Wild Animal	<input checked="" type="checkbox"/> Large Boulders or Rocks	
	<input checked="" type="checkbox"/> Barricade/Traffic Barrier	
	<input checked="" type="checkbox"/> Wall/Building	
	<input checked="" type="checkbox"/> Crash Cushion	
	<input checked="" type="checkbox"/> Mailbox	
	<input checked="" type="checkbox"/> Other Fixed Object	

Vehicle Type Filter

Vehicle Type

- Passenger Car/Passenger Van
- Passenger Car/Passenger Van w/Trailer
- Pickup Truck/Utility Van
- Pickup Truck/Utility Van w/Trailer
- SUV
- SUV w/Trailer
- Truck less than or equal to 10k lbs
- Truck greater than 10k lbs/Bus greater than 15 People
- Motor Home
- School Bus less than 15 People
- Bus less than 15 People
- Motorcycle
- Motorized Bicycle
- Farm Equipment
- Hit and Run/Unknown Vehicle
- Other
- Unknown



Condition of Driver Filter

Condition of Driver

- No Impairment Suspected
- Alcohol Involved
- RX, Medication, or Drugs Involved
- Illegal Drugs Involved
- Alcohol and Drugs Involved
- Driver/Pedestrian not Observed
- Unknown




Figure 15 Filter Menu and Selected Filters

5.4 | Software Capabilities

- **Ability to conduct network screening**

VZS provides network screening capabilities using frequency and severity SPFs models, while correcting for the RTM and assigning LOSS designation at the network or corridor levels. SPF/LOSS-based network screening identifies locations with elevated frequency and severity of crashes and ranks them by their potential for crash reduction. **Figure 16** shows a color-coded map of Montana resulted from the SPF/LOSS-based network screening. VZS also provides network screening capabilities using pattern recognition to identify crash patterns susceptible to correction, **Figure 17** shows patterns of alcohol-related crashes outside of Helena, Montana. Both methods are effective in identifying opportunities to improve safety and develop an effective program of projects.

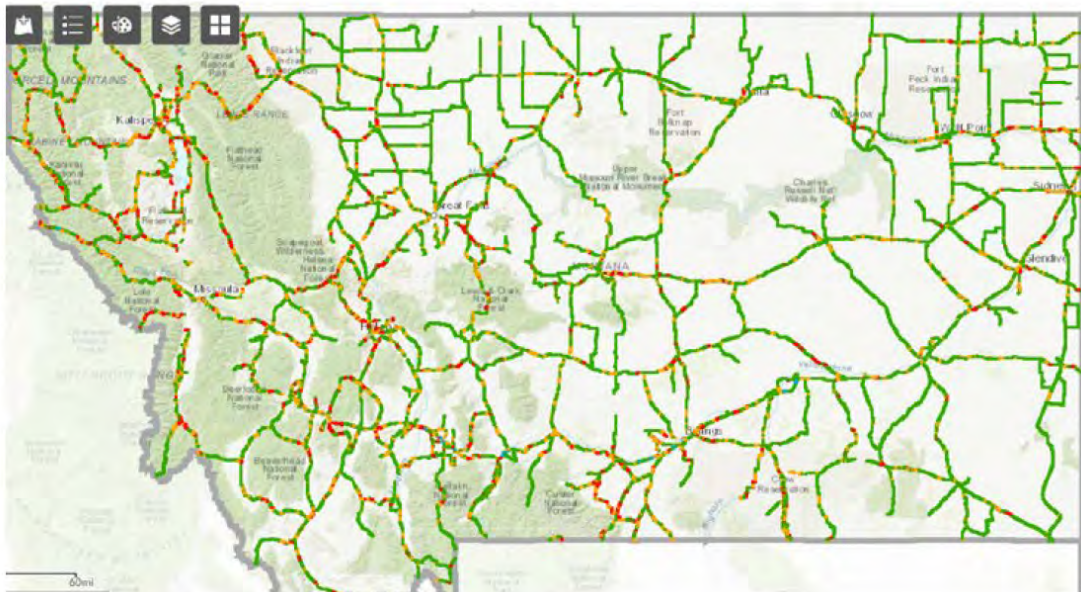


Figure 16 SPF/LOSS-based Networks Screening Map of Montana

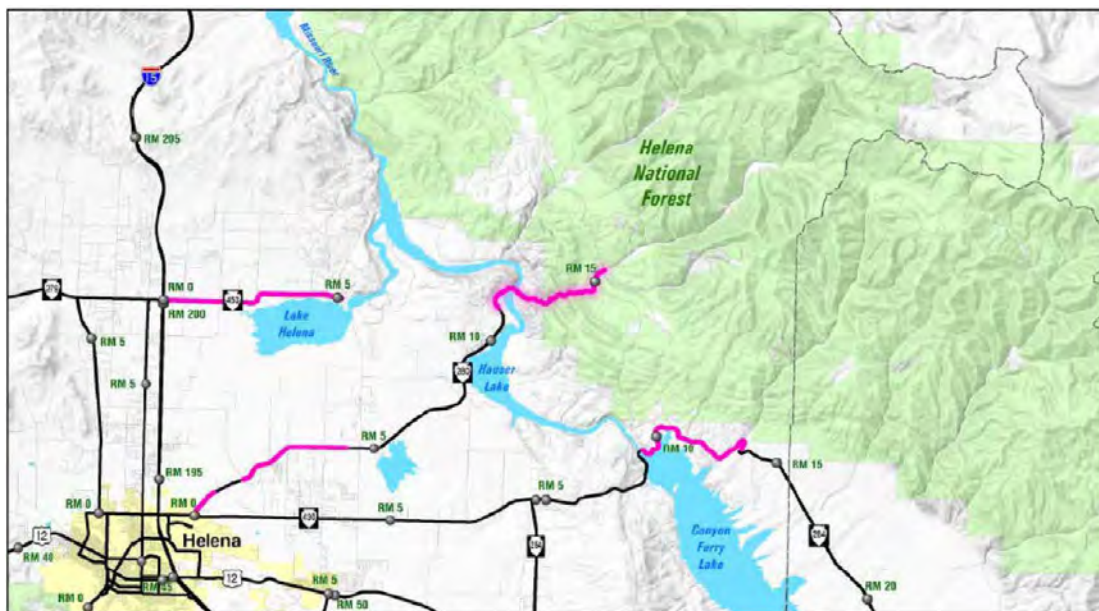


Figure 17 Crash Pattern-based Network Screening Map of Alcohol Crashes (Outside of Helena)

5.4 | Software Capabilities

Figure 18 shows results of SPF/LOSS-based network screening for Oregon State Route 25 MP 6.00-MP 40.00 using 2-Lane Highway SPF,1 mile sliding window and correcting for Regression to the Mean bias using Empirical Bayes Method. Frequency and severity SPFs were used to compute crash reduction potential score to rank all segments on the corridor.

HWY	CSEC	BMP	EMP	MIDPOINT	SEG LENGTH	PDO	INJ	FAT	TOTAL	AADT	SPF PREDICTED SEVERITY	LOSS - SEVERITY	SPF PREDICTED - FREQUENCY	LOSS - FREQUENCY	SPF MODEL TYPE	SCORE
25	A	28.43	29.43	28.93	1	23	25	0	48	11006	1.11	4	2.64	4	Rural 2L HWY	445.62
25	A	26.43	27.43	26.93	1	5	15	0	20	9220	0.96	4	2.35	4	Rural 2L HWY	244.53
25	A	19.30	20.30	19.80	1	7	11	0	18	8346	0.88	4	2.19	4	Rural 2L HWY	180.25
25	A	17.30	18.30	17.80	1	3	9	1	13	8060	0.95	4	2.14	3	Rural 2L HWY	154.50
25	A	24.43	25.43	24.93	1	6	8	1	15	9180	0.96	4	2.34	3	Rural 2L HWY	143.99
25	A	9.00	10.30	9.65	1	8	6	2	16	8920	0.93	4	2.30	3	Rural 2L HWY	130.03
25	A	14.30	15.30	14.80	1	6	8	0	14	8920	0.93	4	2.30	3	Rural 2L HWY	125.81
25	A	25.43	26.43	25.93	1	5	8	0	13	9178	0.96	3	2.34	3	Rural 2L HWY	123.51
25	A	18.30	19.30	18.80	1	6	7	0	13	8060	0.95	3	2.14	3	Rural 2L HWY	108.57
25	A	27.43	28.43	27.93	1	7	7	0	14	9838	1.01	3	2.45	3	Rural 2L HWY	107.90
25	A	15.30	16.30	15.80	1	5	5	2	12	8765	0.92	3	2.27	3	Rural 2L HWY	105.66
25	A	12.30	13.30	12.80	1	1	6	1	8	8920	0.93	3	2.30	2	Rural 2L HWY	98.22
25	A	21.30	22.43	21.87	1	0	6	1	7	9282	0.97	3	2.36	2	Rural 2L HWY	96.20
25	A	29.43	30.43	29.93	1	2	6	0	8	7051	0.76	3	1.93	2	Rural 2L HWY	84.29
25	A	22.43	23.43	22.93	1	2	5	1	8	9180	0.96	3	2.34	2	Rural 2L HWY	81.51
25	A	39.00	40.00	39.50	1	2	5	1	8	2900	0.33	4	0.92	4	Rural 2L HWY	70.32
25	A	40.00	40.00	40.00	1	2	5	1	8	2900	0.33	4	0.92	4	Rural 2L HWY	70.32
25	A	31.43	32.43	31.93	1	3	4	1	8	6508	0.71	3	1.82	2	Rural 2L HWY	69.98
25	A	11.30	12.30	11.80	1	5	5	0	10	8920	0.93	3	2.30	2	Rural 2L HWY	69.60
25	A	8.00	9.00	8.50	1	5	5	0	10	9149	0.95	3	2.34	2	Rural 2L HWY	69.08
25	A	7.00	8.00	7.50	1	3	5	0	8	9380	0.97	3	2.38	2	Rural 2L HWY	65.19
25	A	34.43	35.43	34.93	1	0	4	1	5	5020	0.56	3	1.47	2	Rural 2L HWY	64.79
25	A	38.43	39.43	38.93	1	2	5	0	7	2900	0.33	4	0.92	3	Rural 2L HWY	59.71
25	A	35.43	36.43	35.93	1	1	4	0	5	4806	0.53	3	1.42	2	Rural 2L HWY	51.87
25	A	30.43	31.43	30.93	1	1	4	0	5	6620	0.72	3	1.84	2	Rural 2L HWY	51.00
25	A	16.30	17.30	16.80	1	2	4	0	6	8060	0.85	2	2.14	2	Rural 2L HWY	49.99
25	A	10.30	11.30	10.80	1	1	3	1	5	8920	0.93	2	2.30	2	Rural 2L HWY	47.16
25	A	13.30	14.30	13.80	1	3	3	0	6	8920	0.93	2	2.30	2	Rural 2L HWY	34.85
25	A	23.43	24.43	23.93	1	3	1	2	6	9180	0.96	2	2.34	2	Rural 2L HWY	34.34
25	A	33.43	34.43	33.93	1	0	2	0	2	5020	0.56	2	1.47	2	Rural 2L HWY	24.44
25	A	6.00	6.00	6.00	1	2	2	0	4	12467	1.23	2	2.84	1	Rural 2L HWY	16.96
25	A	6.00	7.00	6.50	1	2	2	0	4	12467	1.23	2	2.84	1	Rural 2L HWY	16.96
25	A	32.43	33.43	32.93	1	3	1	0	4	5020	0.56	2	1.47	2	Rural 2L HWY	16.72
25	A	20.30	21.30	20.80	1	3	1	0	4	9096	0.95	2	2.33	2	Rural 2L HWY	12.22
25	A	37.43	38.43	37.93	1	1	0	0	1	2900	0.33	2	0.92	2	Rural 2L HWY	7.56
25	A	36.43	37.43	36.93	1	1	0	0	1	3134	0.36	2	0.98	2	Rural 2L HWY	7.50

Figure 18 Network Screening Table Oregon SR 25

5.4 | Software Capabilities

- Contain a detailed roadway information module containing Model Inventory Roadway Elements (MIRE) based on County road data.

VZS has the ability to contain Clackamas County MIRE data elements, it also has the flexibility to add new data elements if needed. **Figure 19** shows VZS MIRE interface and **Figure 20** shows a snapshot of a listing of MIRE data elements for Oregon SR 25 MP 6.00-MP 6.55.

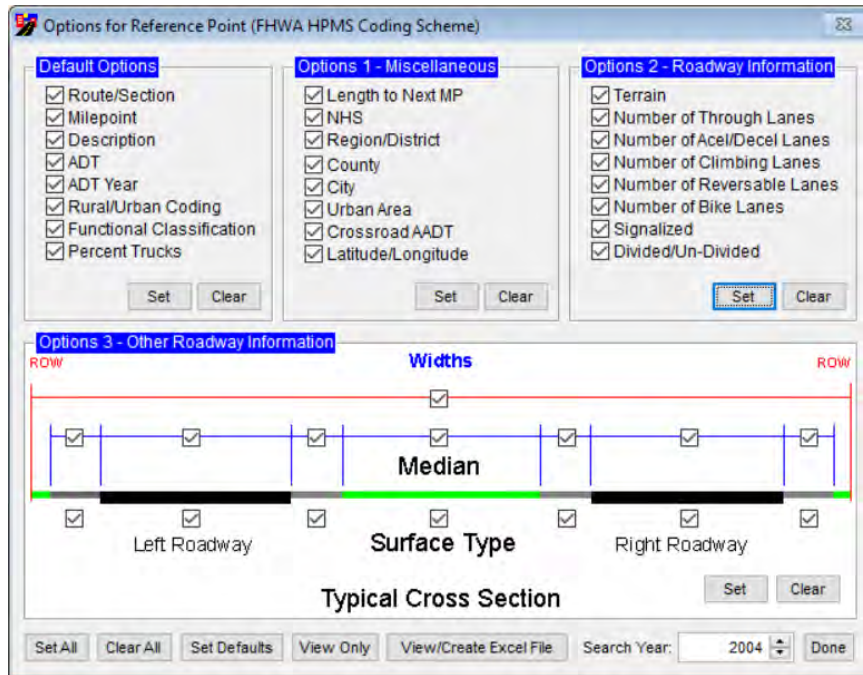


Figure 19 VZS MIRE Interface

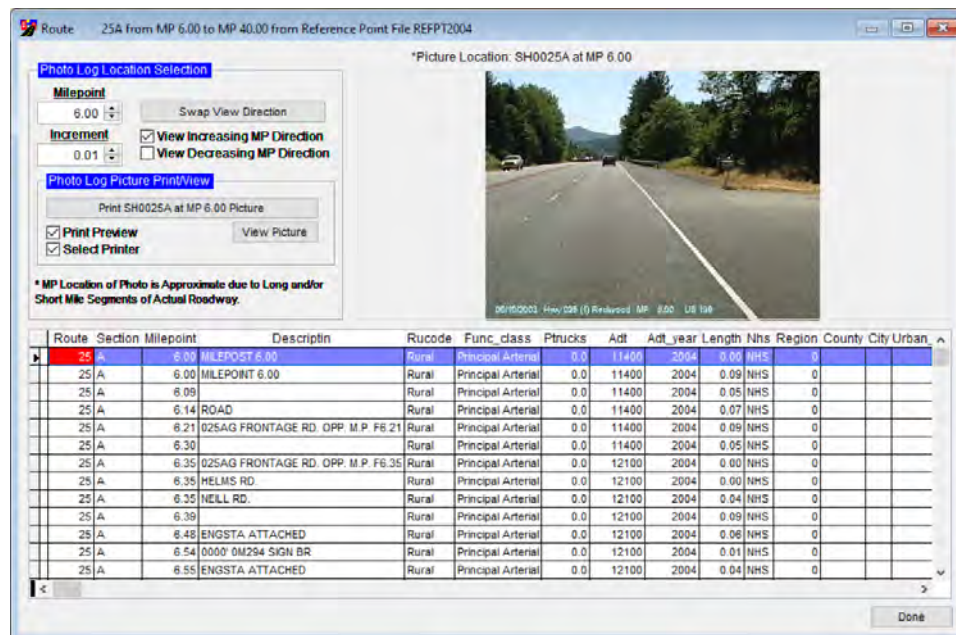


Figure 20 Listing of MIRE Data Elements Oregon SR25

5.4 | Software Capabilities

- **Ability to conduct detailed economic analysis of all roadways**

VZS has the ability to conduct detailed economic analysis of all roadways. It contains an extensive library of crash reduction factors and the ability to conduct Life Cycle Benefit/Cost Analysis which considers initial cost of construction as well as the cost of annual maintenance. The Economic Analysis Interface is designed to be highly intuitive (Figure 21). The cost of crashes is updated biannually when new costs are published by the National Safety Council. Crash reduction factors can be obtained from the library and when needed entered manually. VZS has the ability to generate easy to understand and use B/C reports for spot location, corridor or system level analyses (Figure 22).

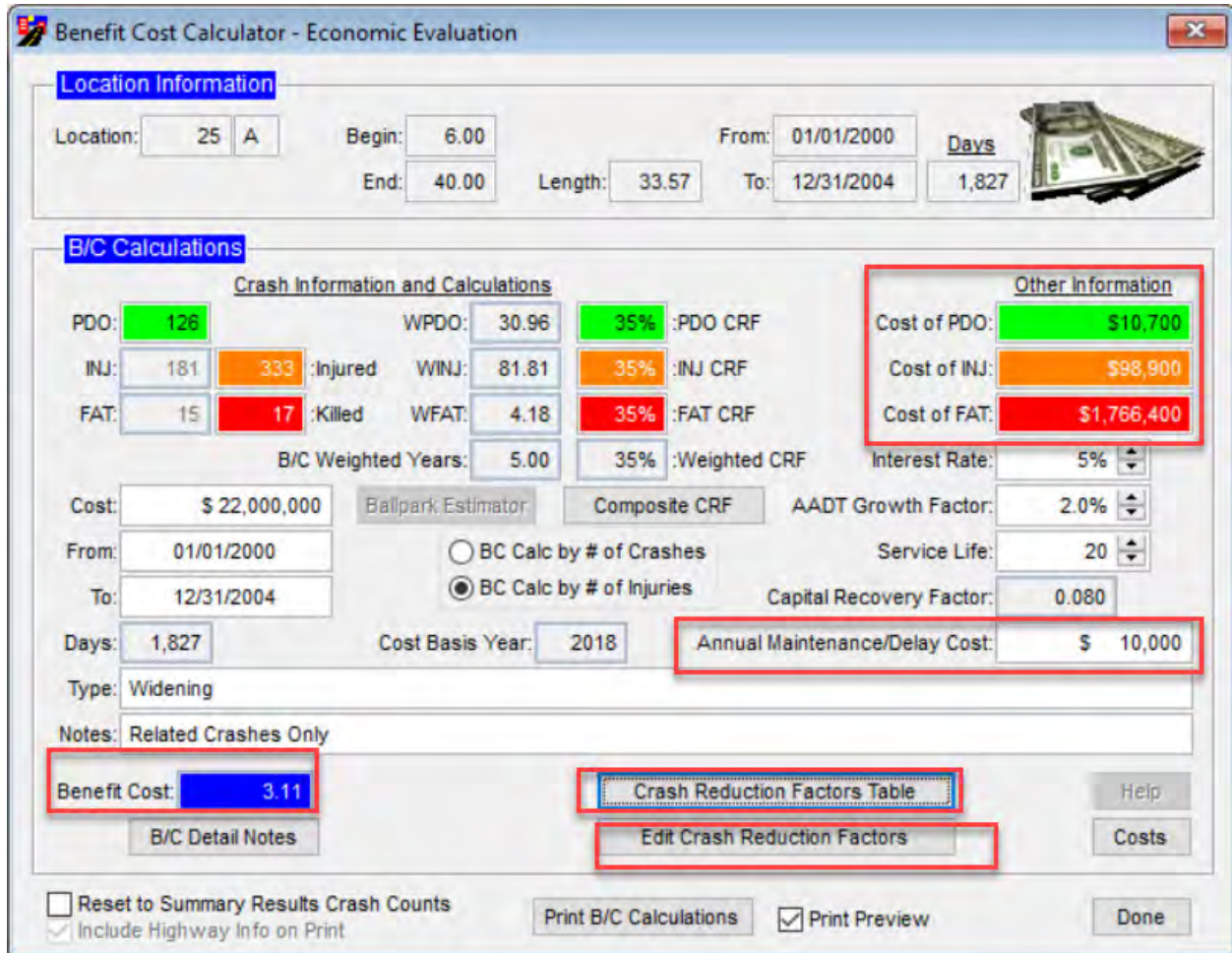


Figure 21 Economic Analysis Interface

5.4 | Software Capabilities

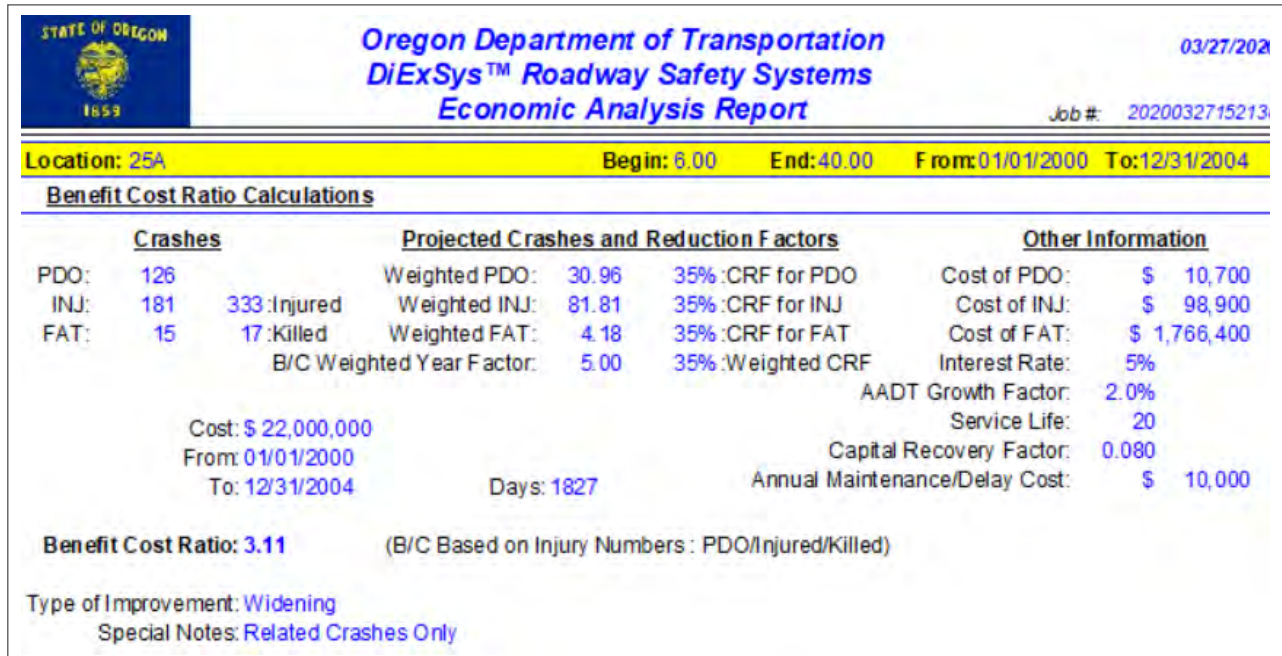


Figure 22 B/C Analysis Report

- Use of normative percentages

VZS is designed to use stratified normative percentages to enable diagnostic algorithms. It contains an extensive library of normative percentages. **Figure 23** shows the diagnostic user interface to select normative percentages for a specific facility type and **Figure 24** shows a library of normative percentages with its pull-down menu.



Figure 23 Diagnostic User Interface to Select Normative Percentages

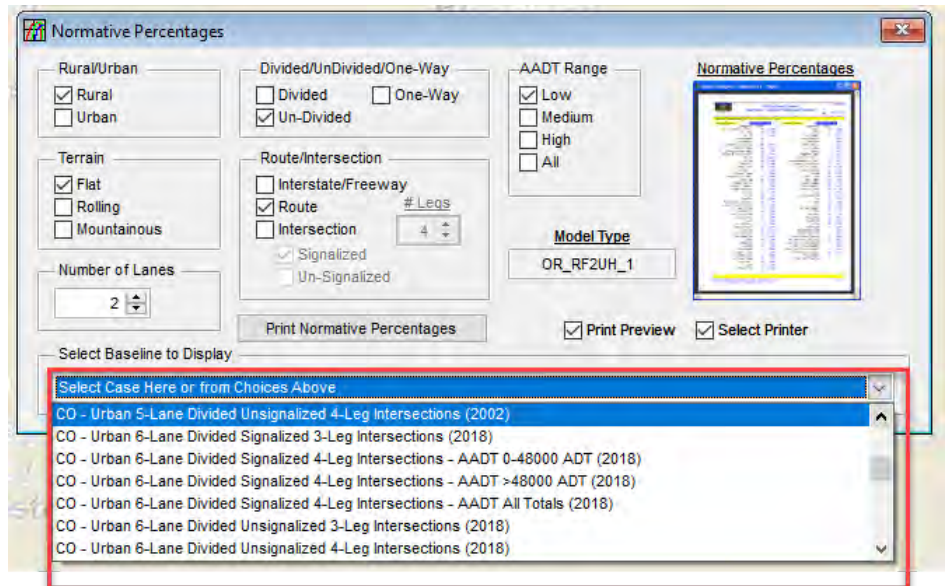


Figure 24 Library of Normative Percentages

5.4 | Software Capabilities

- **Ability to conduct direct safety diagnostics**

VZS is designed to provide direct diagnostics analysis capabilities for intersections and segments based on the methodology developed by Kononov. VZS' user interface and diagnostic module enable this augmented intelligence capability. **Figure 25** shows direct diagnostic button used to prepare the file for diagnostics on the main user interface and **Figure 26** shows direct diagnostic component of diagnostic module.

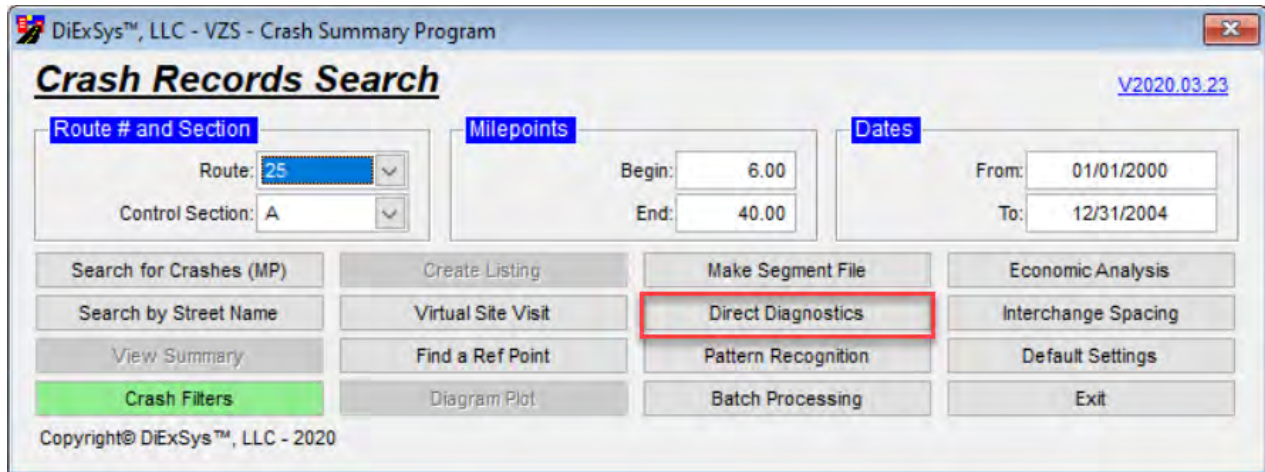


Figure 25 Direct Diagnostics on User Interface



Figure 26 Direct Diagnostics on Diagnostic Module

5.4 | Software Capabilities

- Ability to conduct pattern recognition analysis

VZS is designed to provide pattern recognition analysis capabilities for segments based on the methodology also developed by Kononov. VZS' user interface and diagnostic module enable this augmented intelligence capability.

Figure 27 shows the pattern recognition button used to prepare the file for pattern recognition analysis on the main user interface and **Figure 28** shows pattern recognition component of the diagnostic module.

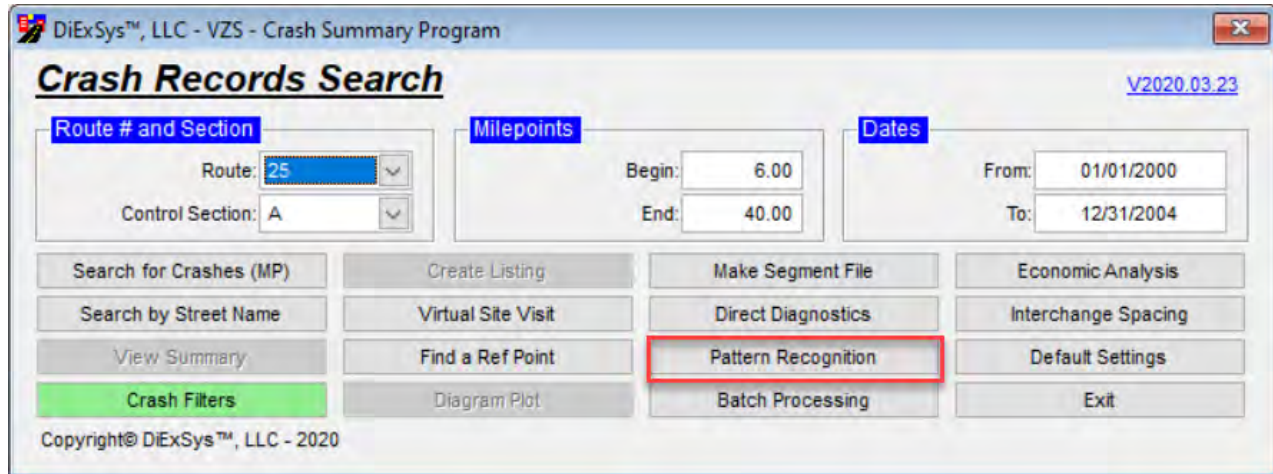


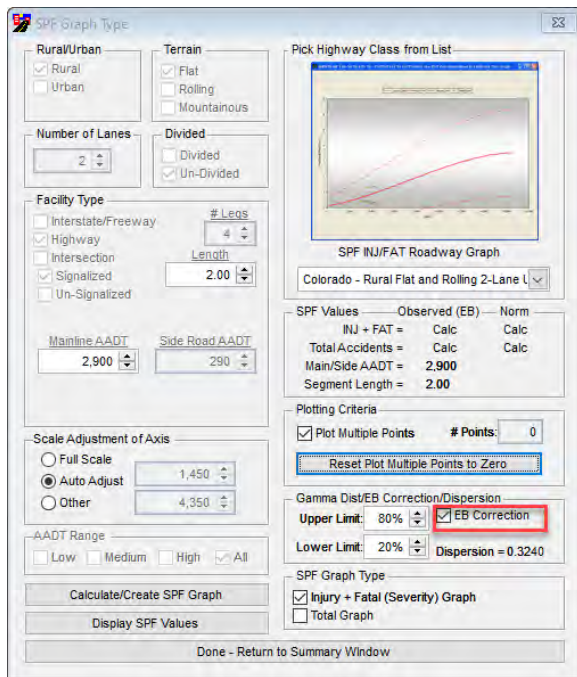
Figure 27 Pattern Recognition on User Interface



Figure 28 Pattern Recognition on Diagnostic Module

5.4 | Software Capabilities

- Use of Empirical Bayes correction for regression to the mean



VZS is designed to correct for Regression to the Mean (RTM) bias using the Empirical Bayes (EB) method, as a default mode for SPF/LOSS analysis. The EB Correction Box in **Figure 29** is checked, indicating that correction for RTM using the EB method will be applied automatically every time SPF/LOSS analysis is performed.

Figure 29 EB Correction Box Checked

If the EB Correction Box is unchecked, correction for RTM will not be applied and SPF will display raw or average number of observed accidents per mile per year for segments and per year for intersections. **Figure 30** shows safety performance from the crash severity standpoint of Oregon SR25 MP 38.00-40.00 with and without correcting for RTM using the EB method. As can be seen from **Figure 30** the correction for RTM is quite significant.

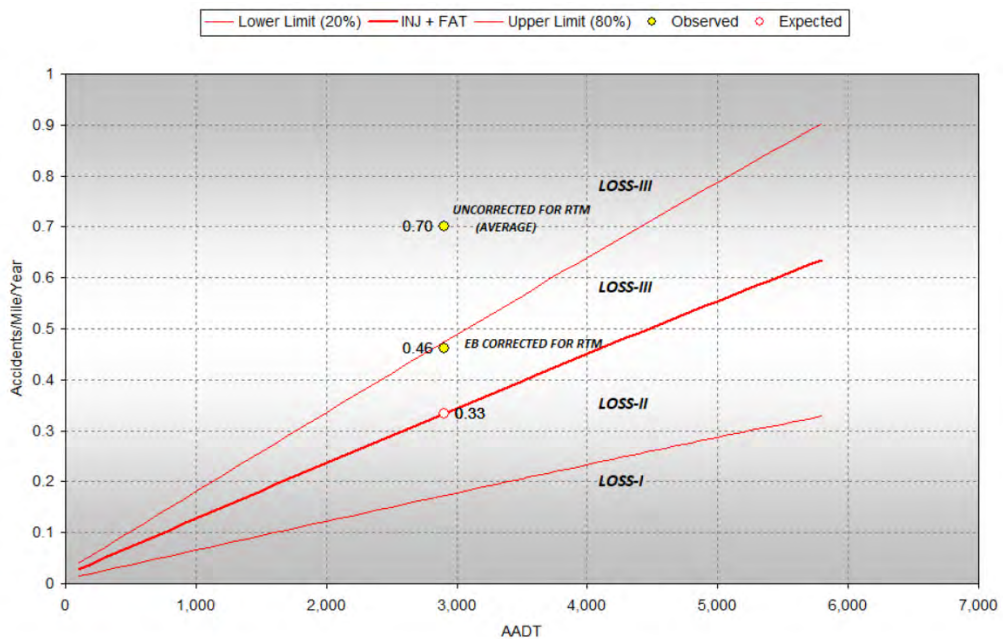


Figure 30 Oregon SR25 MP 38.00-40.00 Severity SPF with and without Correcting for RTM

5.4 | Software Capabilities

e. Integration - Software must have:

Ability to integrate Oregon DOT's crash data, Ability to integrate the County's roadway and traffic count data

VZS can presently integrate crash, roadway and traffic data for Oregon DOT and Clackamas County using a universal converter utility designed for this purpose.

Additional Capability

Even though the **ability to conduct observational before and after studies** is not explicitly identified in the software requirements, VZS is now able to perform this function in just a few simple steps. VZS automatically corrects safety performance for RTM using the EB method for the before period and compares it with safety performance in the after period in the SPF framework. **Figure 30A** shows VZS generated SPF graph showing before and after safety performance following construction of improvements at an urban signalized intersection.

Before and after analysis capability has been recently added to the program and it will **NOT require any additional compensation**.

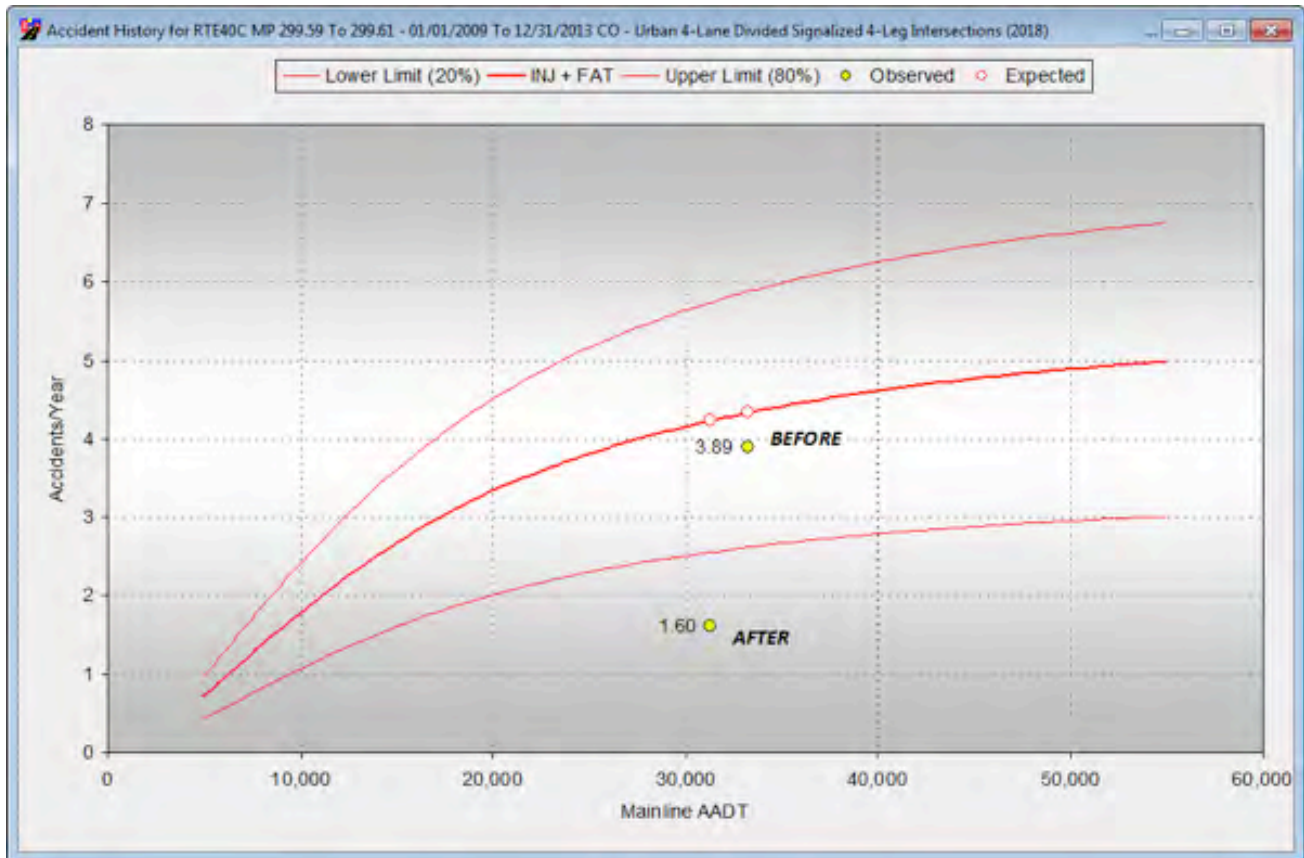


Figure 30A VZS Generated Before After Analysis Graph

5.4 | Software Capabilities

f. Maintenance and Support:

Maintenance & Support must begin first business day following software deployment on County-owned computers.

Provide training for up to twenty (20) County and other public personnel including representatives from Traffic Safety, law enforcement and public health.

Support to be via email and telephone support Monday through Friday 8:00-5:00 PM with response time of one (1) hour or less

Maintenance and Support: DiExSys is committed and has requisite manpower to commence maintenance and support beginning first business day following deployment.

Training: DiExSys staff is highly experienced in providing VZS training for engineers, planners, law enforcement and public health professionals.

Initially DiExSys will prepare training materials and deliver a 2-day VZS Training class for up to 20 Clackamas County employees, including representatives from traffic safety, law enforcement and public health. This training class will offer a methodological foundation and analytical framework for the explicit consideration of safety in highway design, traffic operations, transportation planning, and law enforcement using VZS software. It will provide a practical approach to solving a complex problem of road safety by integrating elements of geometric design, traffic operations, statistics and risk analysis. Clackamas County engineers, planners and law enforcement staff taking the course will gain a comprehensive understanding of the relationships between geometric design and road safety, safety performance of various roads, principles of diagnostics and pattern recognition, benefit cost analysis and optimization strategies. Throughout the course, real life case histories that include roads in Clackamas County will be used to illustrate the application of the introduced concepts. Day 1 will be used to learn modern safety analysis methodology and Day 2 to learn how to use VZS software. Training will include the following:

- Philosophy of explicit consideration of safety in highway design, traffic operations and transportation planning.
- Review of selected design standards from the safety perspective
- Problems with using crash rates
- How to measure safety
- Oregon Safety Performance Functions and Level of Service of Safety
- Relationship between safety and congestion and safety to the number of lanes
- Regression to the Mean (RTM) bias and its correction using Empirical Bayes method
- Diagnostic analysis using statistical pattern recognition with Oregon-specific Diagnostic Tables
- Overview of DiExSys Vision Zero Suite
- Safety assessment analysis and report preparation
- Review and analysis of case histories in Clackamas County using Oregon predictive and diagnostic tools
- Network screening

It is anticipated that additional 2 (two) separate **1-day** Refresher Training sessions will be required over the contract term.

5.4 | Software Capabilities

Support and Response Time: DiExSys is committed and has requisite manpower to provide support to Clackamas County users via email or telephone Monday through Friday 8:00-5:00 PM with response time of one (1) hour or less. Historically DiExSys response time has been within 30 minutes timeframe.

g. Documentation needed to be provided under the proposed contract:

- Full PDF Software manual with license to distribute copies to all County Users

The VZS Software Manual in PDF format is included with each download of VZS software and will be made available to all Clackamas County users. It is accessed by clicking a link in the upper right-hand corner of the main user interface (**Figure 28**) and then opened by clicking Help Manual for VZS-Crash Summary Program (**Figure 29**).

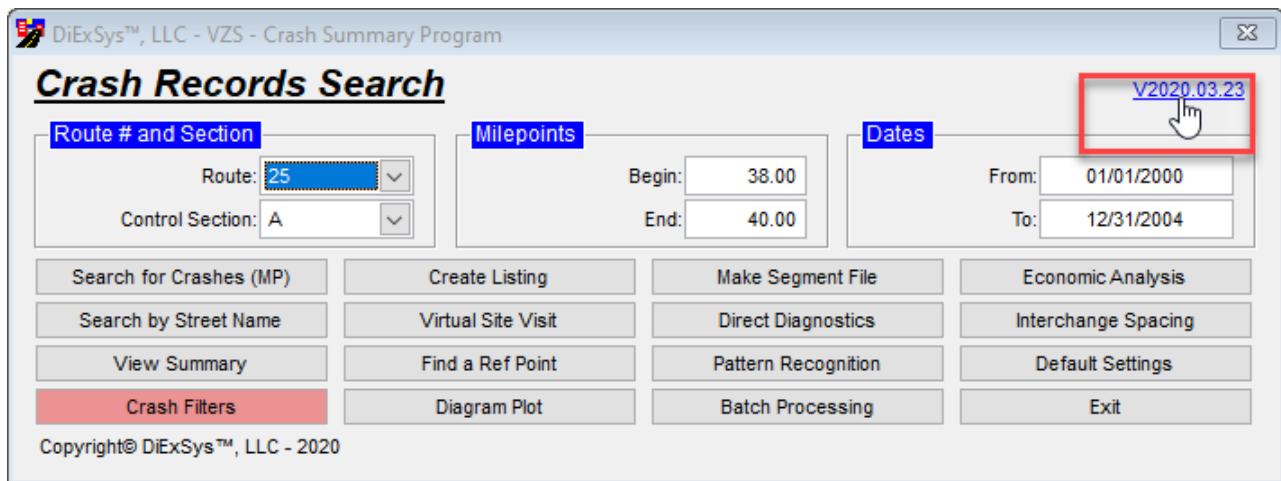


Figure 28 Access to Manual

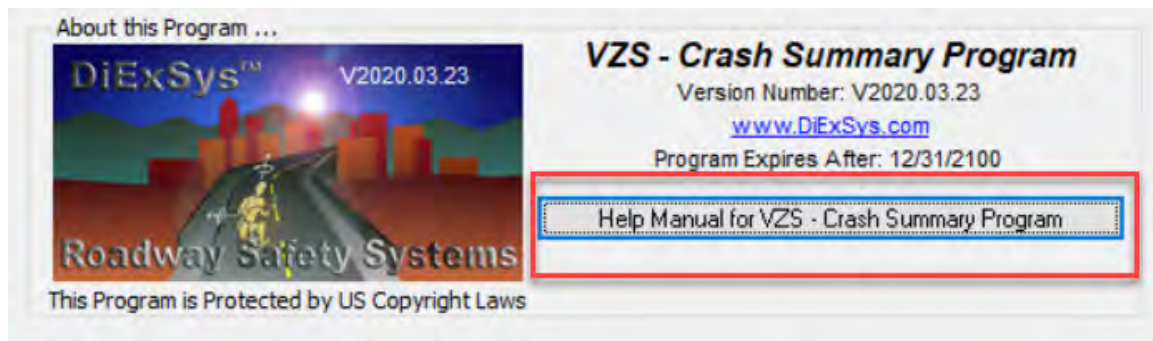


Figure 29 Opening VZS Manual

5.4 | Software Capabilities

h. Data to be migrated and or added into the system shall be included but not limited to:

- **Oregon DOT crash data for all of the County – last 10 years and will be continually uploaded annually throughout the life of the contract.**
- **Annual average daily traffic within the County**
- **Road functional classifications within the County**
- **Road widths, bike lane widths, shoulder widths, and clear zone widths for all public roads within the County**
- **Number of lanes for all public roads within the County**
- **Divided/undivided for all public roads within the County**
- **Signalized/not signalized intersections within the County**
- **Curb/no curb on all public roads**
- **Stripe/no stripe on all public roads**
- **Edge line/no edge line on all public roads**

VZS is designed to easily migrate all of the Oregon and Clackamas County data elements described in Item h of Section 3.3.1 of the Scope.

i. Expandability - Must Accommodate annual updates of roadway data, traffic count data and crash data from both Clackamas County and the Oregon DOT.

VZS is designed to be expandable and will seamlessly and easily update Clackamas and the Oregon DOT roadway, traffic count and crash data annually.

j. Software Licensing:

- **Enterprise level license and support for five (5) years, with the option for additional renewals thereafter. License covers unlimited software installation on County-owned computers and all maintenance and support needed to keep software running throughout the life of the contract.**

DiExSys will provide an enterprise level VZS license and support for 5 years, with the option for additional renewals thereafter. Paying the annual license fee allows Clackamas County and its employees to network the software or otherwise use it or make it available for use on more than one computer at the same time. Its use, however, is restricted to the County employees only (this includes all departments) using the County's computers and working on County projects or programs. A detailed Software License Agreement is provided in our response to Section 5.5 Software Service Level Agreement.

5.5 | Software Service Level Agreement

- **Provide detail of how software is maintained and updated based on new research and development of new SPF's.**

DiExSys will provide secure on-line downloads with updates to Clackamas County IT group or to all users directly depending on the preference of Clackamas County IT professionals.

If new Oregon-specific SPFs are developed by others during the Contract term DiExSys will encode them into VZS and update all users at no charge. If new Crash Reduction Factors relevant to Clackamas County with star rating 4 or greater from the FHWA CMF Warehouse are developed by others during the Contract term DiExSys will encode them into VZS at no charge.

If Clackamas County's data sample size is found to be sufficiently large, DiExSys will develop new SPF models for selected segments and intersections and encode them into VZS as part of this project prior to deployment.

- **Provide detail of annual software update method and timeframe.**

DiExSys will provide secure on-line downloads with updates to Clackamas County IT group or to all users directly depending on the preference of Clackamas County IT professionals. We expect to complete this work within 4 weeks from receiving data from Clackamas County, under the assumption that database structures and crash coding schemes are unchanged.

- **Provide your Service Legal Agreement that provides details of the technical support plan offered within the proposal to include, issue response and resolution times.**

DiExSys Software License and maintenance Agreement is as Follows:

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement (hereinafter referred to as "Agreement") is entered into by and between DiExSys LLC (hereinafter referred to as "Contractor"), with offices at 8608 W. Mountain View Lane, Littleton, CO 80120 and Clackamas County, Oregon.

TERM

DiExSys will provide enterprise level VZS license and support for 5 years, with option for additional renewals thereafter. The license covers unlimited software installation on County-owned computers. The license covers all maintenance and support needed to keep software running throughout the life of the contract.

APPLICABLE LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the STATE of Oregon.

GRANT OF LICENSE

Contractor hereby grants to the Clackamas County a non-transferable non-exclusive license to use Vision Zero Suite software for its own internal purposes for a period of 5 years.

OWNERSHIP

Vision Zero Suite Software is owned by the Contractor and is protected by United States copyright laws and International treaty provisions. Paying the license fee allows the Clackamas County and its employees to network the Software or otherwise use it or make it available for use on more than one computer at the same time. Its use, however, is restricted to the County employees only, using the County's computers and working on the County projects. All users of this software may not rent, lease or give the Software, nor may modify, adapt, translate, reverse engineer, decompile, or disassemble the Software. If any user of this software violates any part of this agreement, the user's right to use this Software terminates automatically and user must then destroy all copies of the Software in user's possession.

COPIES

Other than copies for internal use only, Licensee shall not distribute copies of the product or documentation, or any part thereof, without the express written consent of the Contractor. Documentation shall be defined as any information about the Product distributed with the product.

5.5 | Software Service Level Agreement

MAINTENANCE AND SUPPORT

License fee includes 5 years of maintenance. Maintenance shall include technical support consisting of following: e-mail as well as telephone-based support to users, providing a number to call. The support service will include technical consultation, Monday through Friday 9:00 a.m. to 6:00p.m. MST, with 1 hr. or less response time. Maintenance will begin on the first business day following the deployment of the software on the County computers.

ISSUES RESPONSE AND RESOLUTION TIME

Contractor expects to resolve most technical issues during technical consultations with Clackamas County VZS users, however some issues may require programming changes. Contractor will make all commercially reasonable efforts to resolve these issues within 72 hours.

WARRANTIES

Contractor warrants that all services shall be performed in a workmanlike manner, and according to its current description contained in this Agreement. Contractor warrants that Contractor will make all commercially reasonable efforts not to include any Unauthorized Code in any software provided hereunder. "Unauthorized Code" means any virus, Trojan horse, worm or other software routine or component designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions.

TRAINING

Initially DiExSys will prepare training materials and deliver a 2-day VZS Training class for up to 20 Clackamas County employees, including representatives of traffic safety, law enforcement and public health This training class will offer a methodological foundation and analytical framework for the explicit consideration of safety in highway design, traffic operations, transportation planning, and law enforcement using VZS software. Day 1 will be used to learn modern safety analysis methodology and Day 2 to learn how to use VZS software.

It is anticipated that additional 2 (two) separate *1-day Refresher Training Sessions* may be required over the 5-year contract term.

5.6 | Fees

Provide a detailed fee schedule of all features/options listed in the proposal. Said fee schedule must list a total not to exceed price for the base period and break out clear set pricing for the optional renewal. This total price must reflect all fees associated with every feature/function/option that is listed within the proposal. Additionally the fee for the software must be structured as enterprise licensing pricing vs. per license/user. Fees should be sufficiently descriptive to facilitate acceptance of a Proposal. Additionally the fee schedule must include the following information and clearly identify the costs associated with each of these items: Subscription/Licensing Annual Cost, All Implementation Fees, Renewal Fee Maximum Escalation (Percentage or fixed amount after the initial term). Any other fees not contemplated above.

FEES - COST SUMMARY TABLE

VZS License Enterprise wide for Clackamas County	5 Years at \$25,000 Annually (0% Escalation)	\$125,000
Annual Data Upload	Obtain and upload Clackamas County crash data annually	No Charge
Maintenance/Support and Updates	5 Years of Technical Support via Phone and E-mail	No Charge
System Integration, Encoding of Oregon Safety Knowledge Base, New SPFs and Diagnostic Norms	Data Migration, Conversion, Data Uploading, Quality Control, Encoding Oregon DOT SPFs. Estimation of Model Parameters for New SPFs and Development of Diagnostic Norms	\$50,000
Initial 2-day Training	Initial Training (2 days), Class Materials, Travel Expenses and Per-diem, 2 Instructors per Class	\$10,000
2 Follow up 1-day Refresher Classes	2 Follow up 1-day Refresher Classes at \$5,000 each, 2 Instructors per Class. Includes Class Materials, Travel Expenses and Per-Diem	\$10,000
TOTAL	Not to Exceed Amount for Base Period of 5 years	\$195,000

After Expiration of the Base Period County will have an option to renew VZS Enterprise wide license at \$25,000 Annually.

Note in Reference to Section 2.29 Intergovernmental Cooperative Statement: DiExSys accepts in principle the provisions of section 2.29 Intergovernmental Cooperative Statement. We anticipate being able to provide goods and services awarded under this contract to most public agencies in Oregon at the same prices and terms as those extended to Clackamas County. From time to time, however, at larger agencies the number of VZS software users, the amount of work required to complete data migration and to develop new SPF models and diagnostic norms may significantly exceed the work effort estimated in Clackamas County. Under these rare circumstances DiExSys reserves the right to make adjustment in fee to reflect this difference.

5.7 | References

Provide at least three (3) references from clients your firm has served similar to the County in the past three (5) years, for similar services, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references. Please note the required three references may not be from County staff, but additional references may be supplied. Points awarded for this criteria are based on both the providing of references as well as information gleaned from the provided contacts. Evaluation Committee members may contact references at their sole discretion.

1 *5 Years Reference*

Karl Packer, PE

Traffic Operations Manager, Arapahoe County, Colorado
KPacker@arapahoegov.com, 303 204-4414

2 *36 Months Reference*

Sean Yeates, PE

County Traffic Engineer, Mesa County, Colorado
sean.yeates@mesacounty.us, 970-462-1076, 970-254-4151

3 *Long-term Client*

David Swenka, PE

State Safety Engineer, Colorado DOT, Colorado
david.swenka@state.co.us, 720 227-1523

Additional References

4 **Yelena Ohnen**

Traffic Section Supervisor, Jefferson County, Colorado
yonnen@co.jefferson.co.us, 303 271-8497

5 **Dan Magri**

Under Secretary for Planning, LADOTD (Louisiana)
Dan.Magri@LA.GOV), 225-907-5248

PROPOSAL CERTIFICATION
RFP # 2020-58 Traffic Safety Software

Submitted by: DiEx Sys LLC, Colorado
(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 Colorado
Oregon Business Registry Number 165600694

Contractor's Authorized Representative:

Signature:  Date: 9-8-2020
Name: Konomov, Jake Title: Principal
Firm: DiEx Sys, LLC
Address: 8608 W. Mountain View Lane
City/State/Zip: Littleton, CO 80125 Phone: (303) 910-1401
e-mail: jake.konomov@diexsys.com Fax: _____

Contract Manager:

Name Konomov, Jake Title: Principal
Phone number: 303-910-1401
Email Address: jake.konomov@diexsys.com



November 25, 2020

Board of County Commissioner
 Clackamas County

Members of the Board:

A Board Order Approving Property Disposition Procedures Amendment and Property Control Transfer of Korner Park Property from Business and Community Services (BCS) to Clackamas County Department of Transportation and Development (DTD)

Purpose/Outcome	Government transfer of property for a public purpose and amended operating procedures.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Management and disbursement of tax foreclosed and surplus properties are ongoing.
Previous Board Action/Review	A Study Session with the Board of County Commissioners was held on June 9, 2020 to discuss these parcels as well as the amendment of the current procedures. The Board approved these parcel transfers to DTD for a public benefit and the amendment of operating procedures.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Transferring control of property to DTD supports the Board of County Commissioners' goal of Building a Strong Infrastructure by providing property to support a masterplan project that will enhance road safety in the County. 2. Updating Property Disposition Procedures and making a property control transfer to DTD contributes to assets managed by BCS being repurposed for public benefit or returned to the tax rolls. The public will benefit by Department procedures being current and efficient; they will also benefit from the property control transfer as it supports a DTD masterplan project that will enhance the safety of county roads.
Counsel Review	<p>The staff report and Board Order has been reviewed and approved:</p> <ol style="list-style-type: none"> 1. Date of Counsel review: 10/28/20 2. Initials of County Counsel performing review. KR
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? No 2. If no, provide brief explanation: Neither item has a monetary value.
Contact Person	Lindsey Wilde, Property Agent Specialist, Property Disposition 503-742-4384
Contract No.	N/A

BACKGROUND: Clackamas County's Department of Assessment and Taxation annually forecloses on tax-delinquent properties. Following the recording of the deed in the County's name, the management and disposition is then transferred to the Property Disposition Division of the Department of Business and Community Services. Property Disposition Division is tasked with managing, administering and dispersing tax foreclosed real property assets in a cost effective manner that will provide a County public benefit. No General Fund resources are allocated to this program.

RECOMMENDATION: Staff recommends the Board of County Commissioners approve the property control transfer of 32E23C 00700 and 32E23C 00800 and the amendment of Property Disposition Procedures.

ATTACHMENTS:

1. Board Order
2. Policy Session Materials from June 9, 2020

Respectfully Submitted,

Laura Zentner

Laura Zentner, Director
Business & Community Services

In the Matter of Approving the Property Disposition Procedures Amendment and Property Control Transfer of Korner Park from Business and Community Services (BCS) to Clackamas County Department of Transportation and Development (DTD)

ORDER NO.
Page 1 of 1

This matter coming before the Board of County Commissioners at this time, and it appearing to the Board that the real property parcels listed below, having been acquired by Clackamas County by tax deed, are going to remain in use for County purposes; and

IT FURTHER APPEARING that amended procedures for the Property Disposition Division within Business and Community Services are needed.

IT FURTHER APPEARING to the Board that the following parcels will be have property control transferred for a public benefit applicable of those portions of ORS Chapter 271.330;

NOW, THEREFORE, the Board finds that the real property parcels listed below will have control transferred, the procedures will be amended, and both are in the best interest of the citizens of Clackamas County.

IT IS HEREBY ORDERED that the following properties will have control transferred in compliance with the applicable portions of ORS Chapter 271.300 and the amended procedures are accepted.

Description
32E23C 00700 <ul style="list-style-type: none">• Approximately .39 acres• Zoning- Rural Commercial• Foreclosure date: 10/12/2004
32E23C 00800 <ul style="list-style-type: none">• Approximately .50 acres• Zoning- Rural Commercial• Foreclosure date: 10/12/2004

IT IS FURTHER ORDERED that the Director or Deputy Director of Business and Community Services, is hereby authorized to act as representative of the Board of County Commissioners in the acceptance and execution of all documents necessary for the sales and transfers of tax foreclosed property.

DATED this 25th day of November, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

LEGAL/POLICY REQUIREMENTS:

Oregon Revised Statute prescribes the process of transferring or selling tax foreclosed properties. County policies and procedures provide the necessary means for the Director/Deputy Director of BCS to ensure the operational requirements of the property tax foreclosure program are consistent with all applicable Oregon laws.

PUBLIC/GOVERNMENTAL PARTICIPATION:

BCS staff has met on a number of occasions with staff from Public and Government Affairs (PGA), DTD, and County Administration, as well as members of the Beavercreek Hamlet to consider the current and long term uses/needs for this tax foreclosed property.

OPTIONS:

BCS requests that the BCC consider the recommended revisions to Property Disposition Procedures as well as consider the request for transfer of control to the Clackamas County DTD.

Options include:

1. Approve the revisions of the BCS Property Disposition Procedures as presented.
2. Approve the transfer of control of the Korner Park property to DTD.
3. Modify the BCS Property Disposition Procedures revisions.
4. Decline the Korner Park property transfer to DTD.

RECOMMENDATIONS:

Staff respectfully recommends the BCC accept Options 1 and 2. Approving these options will allow BCS staff to move forward with the amendment to Property Disposition Procedures and the transfer of control of the subject tax foreclosed Korner Park property to DTD.

ATTACHMENTS:

Attachment A – Amended Property Disposition Procedures

Attachment B - Transfer of control of property to Clackamas County Department of Transportation and Development

SUBMITTED BY:

Division Director/Head Approval _____
 Department Director/Head Approval Laura Zentner
 County Administrator Approval _____

For information on this issue or copies of attachments, please contact Rick Gruen, Manager, BCS Property Disposition, @ x4345



Business & Community Services Department

TITLE: PROPERTY DISPOSITION PROCEDURES

PURPOSE:

Establish procedures for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property consistent with adopted Policy.

The Director of Business and Community Services has directed the Property Disposition Division to manage tax foreclosed properties to secure the Highest Permanent Value benefitting the citizens of Clackamas County. Highest Permanent Value is defined as managing, administering and dispersing of tax foreclosed and surplus real property assets in a timely and cost effective manner that can provide a full range of social, economic and environmental benefits for the citizens of Clackamas County.

PROCEDURES:

A. General

1. Property Disposition Division shall annually:
 - a. Review its real property inventory of assets and identify tax foreclosed properties to consider for sale or transfer.
 - b. Review its budget and reserve requirements to determine available net real property revenue for distribution to the taxing districts within Clackamas County.
2. The sale or transfer of tax foreclosed properties shall be made by the Property Resources Division in accordance with ORS 275.000 to ORS 275.340 and ORS 271.300 to 271.360 and the following Highest Permanent Value criteria:
 - a. Transfer of property to taxing districts and other eligible entities – to meet local resource and public benefit needs (i.e. parks, open space, Brownfield sites)
 - b. Return property to tax rolls
 - c. Board of County Commissioners, or those with delegated authority, shall have final approval of those properties considered for transfer or sale.
 - d. At the discretion of the County, and with extenuating circumstances, the record owner or contract purchaser may be given the opportunity to repurchase the property pursuant to ORS 275.180. Said repurchase shall be in the amount of the total back taxes, interest, penalties and County administrative fee. Such repurchase or agreement to repurchase must occur within six (6) months following the expiration of the statutory redemption period commencing with the filing of the foreclosure deed.

B. Transfer Objective

Property Disposition Management Team will consider the tax foreclosed property assets to be declared as surplus and develop a list of available properties which will be distributed to County Departments, local Municipalities, County agencies and Special Districts.

1. Should any of the eligible entities above request a transfer of a property, transfers will be based on the following conditions:
 - a. Subject to final approval of the Board of County Commissioners.
 - b. Property will be used for a ~~(perpetual)~~ public use benefit (i.e. park, open space, greenway, trail, easement, Brownfield sites, etc.) consistent with an adopted strategic plan, master plan or other long term management plan of the requesting entity.
 - c. Property ~~(shall)~~ may be conveyed for the Transfer Value as calculated on the back taxes, interest, penalties owed, plus associated costs (title report, deed recording, etc.) and Property Disposition administrative fee ^{3 of 6} as determined

under Section E. In certain cases, the set value of the property will be based on an appraised value (i.e. public benefit value) in consideration of its limited use under ORS 271.310 to 271.330.

- d. Brownfield sites transferred to Land Bank Authority subject to ORS 271.310 and 271.335 and:
 - i. Transfer Value is paid in the amount of back taxes, penalties, interest, and administration fee in compliance with ORS 275.275 and as determined in Section E below.

2. Properties in excess of \$15,000 (Assessor's Estimate of Real Market Value – ARMV) are assigned to public auction; properties with an ARMV of less than \$15,000 will be considered for private marketing or assigned to public auction under ORS 275.225 (a)

C. Tax Roll Objective

Board of County Commissioners will declare tax foreclosed property assets as surplus and the Property Disposition Management Team will put them up for public auction. Public Oral Auction considerations include:

1. Value will be based on the Assessor's estimate of Real Market Value (ARMV) and/or Independent Appraised Value (IAV) at the discretion of Property Resources Division.
2. Minimum bid amounts will generally be set, but not limited to, the following criteria:
 - a. 25% of ARMV:
 - i. Property is not buildable
 - ii. Property is constrained by one or more of the following:
 - Identified wetlands or riparian overlays
 - Identified septic limitations
 - iii. Review of adjacent parcels show no existing improvements
 - iv. No public access or deeded easement for access
 - b. 50% of ARMV:
 - i. Property may be buildable
 - ii. Property is constrained by one or more of the following:
 - Identified wetlands or riparian overlays
 - Identified septic limitations
 - iii. Review of adjacent parcels show no, or minimal existing improvements
 - iv. Limited public access or deeded easement.
 - c. 75% of ARMV:
 - i. Property is buildable or has existing improvements
 - ii. Review of adjacent parcels show existing improvements
 - iii. Public access or deeded easements are identified
 - d. 100% of Appraised Value
 - i. Property is of high value and has considerable interest
 - ii. Independent Third Party Verification will be obtained. The Property Resources Manager will obtain an Opinion of Value/Salability or Appraisal from qualified professionals on high value or significant parcels, in order to validate setting minimum bid price.
 - iii. Third party verification may be considered for all properties at the Property Resources Manager's discretion.

D. Properties not selling at the Oral Public Auction

The Property Disposition Management Team will review and consider the tax foreclosed property assets and consider the following options:

1. Property may be placed with a private real estate broker (market value)
2. Property may be considered for transfer to a qualifying special district or non-profit organization per ORS 271.330
 - a. Properties being transferred will be conveyed for a minimum of back taxes, interest, penalties owed, plus associated costs (title report, deed recording) and a Property Disposition administrative fee as set by Property Resources Manager.
 - b. A property list may be made available and distributed to qualifying nonprofit organizations.
3. Property may be removed from the current surplus inventory list at any time by the Property Disposition Management Team and/or Board of County Commissioners.

E. Property Disposition Division - Cost Recovery and Administrative Fee Schedule

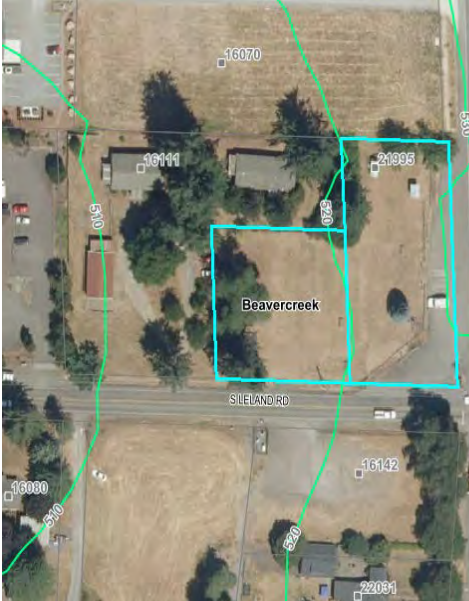
Oregon Revised Statutes (ORS275.275) provides for Property Disposition Division to recover annual operational expenses. As Property Disposition Division is not general fund supported, Property Disposition Division ~~(may be)~~ is entitled

to recover the direct and indirect costs associated with managing, selling, and transferring tax foreclosed and surplus real properties in accordance with applicable Oregon Revised Statutes

1. Properties available for a government transfer and/or non-profit donation may be limited or not available due to inventory constraints.
2. Direct costs include such services related to property inspections, title and property history searches, document and legal review, document preparation, accounting, sale/transfer preparation, deed recording, property liability mitigation, and other property management services as needed. The property account (~~will~~) may be charged for the direct costs for title reports, property appraisals, deed recording and for those direct property management services performed at the established billable rates set by the Business and Community Services Department.
3. Indirect costs will be assessed to the sale or transfer of properties for administration of Property Disposition allocated cost services (reporting, accounting, legal, liability, etc.) using the following fee schedule (based on property sale or transfer value):
 - a. \$1 to \$15,000 – 15% (minimum \$150.00)
 - b. \$15,001 to \$50,000 – 12%
 - c. \$50,001 to \$100,000 – 10%
 - d. \$100,001 to \$500,000 – 8%
 - e. \$500,001 to \$1,000,000 – 5%
 - f. > \$1,000,001 – 3%
4. Former Record Owner or Contract Purchaser Repurchase fee – no less than 2% of property assessed value plus back taxes, interest, and penalties.

RELATED RULE:

The Board of County Commissioners further delegates under Board Order 2015-27 its authority to authorize final sales to the Director or Deputy Director of the Business and Community Services Department and Clackamas County Administration.

Item	Aerial View	Description	Assessed Real Market Value	Transfer Value
1		<p>32E23C 00700 and 32E23C 00800</p> <ul style="list-style-type: none"> • Approximately 1.02 Acres • Zoning RC- Rural Commercial 	\$318,744	\$0.00



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement with
Cascade Utilities Inc for a connection to Government Camp

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with the Cascade Utilities Inc for a connection to Government Camp.
Dollar Amount and Fiscal Impact	Cascade Utilities Inc will pay an annual fee of \$9,048.00 for the use of the connection to Government Camp.
Funding Source	The fiber currently exist for this connection.
Duration	Effective upon signature by the board the SLA is effective for one (1) years and then renewing for an additional year not to exceed ten (10) years.
Previous Board Action	Board has previously approved a similar SLA with Cascade Access LLC.
Strategic Plan Alignment	1. Build a strong infrastructure. 2. Build public trust through good government.
Counsel Review	Andrew Naylor, November 4, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is requesting a new SLA with Cascade Utilities Inc for a lease agreement that provides connectivity to Government Camp on the CBX network. Cascade Utilities Inc requested a link to provide redundancy to their operation center in Estacada Oregon.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new agreement with the Cascade Utilities Inc. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Cascade Utilities, Inc. d/b/a Reliance Connects
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Cascade Utilities, Inc. d/b/a Reliance Connects (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

3. Service Description

The service provided to Customer by County is the physical connectivity of Fiber between sites specifically identified in Appendix A for the use of the Customer's communication needs.

4. Construction and Installation Requirements

- a. County, when installing the Fiber on the property of Customer, shall do so in a neat and professional manner.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber

in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.

- d. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- e. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated as herein provided, this Agreement shall continue for a period of one (1) year following the Service Start Date and shall automatically renew for successive one-year renewal terms, at the County's then-current rate schedule, unless either party terminates the Agreement pursuant to the terms herein. Provided, however, that the total Agreement term length, including any renewal, shall not exceed ten (10) years.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Semi - Annual Payments

County shall provide an invoice for six months of service (July 1 through December 31 and January 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications

outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein, include the following: (a) labor costs, including wages, salaries, and benefits together with overhead

allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

- 1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
- 2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

23. No recourse Against the County

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband eXchange
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

Cascade Utilities, Inc. d/b/a Reliance Connects
PO Box 189
Estacada, OR 97023
503-630-8934

Either Party, by similar written notice, may change the address to which notices shall be sent.

25. Debt Limitations

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

26. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

27. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, and 28, and all other rights and obligations which by their context are intended to survive.

29. Severability

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

30. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION

BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name (print): _____

Title: _____

Date: _____

Customer

Cascade Utilities, Inc. d/b/a Reliance Connects
(Customer Name)

By (signature): Brenda Crosby

Name (print): Brenda Crosby

Title: President

Date: 11/9/20

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Semi-Annual Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	Aerial splice Case located at intersection of Government Camp Loop Rd & Highway 26 Government Camp, OR 97028	Aerial splice case located at intersection of SE Judd Rd & Clackamas Highway 211 in Eagle Creek, OR 97022	One Pair (two) dark fibers	\$754.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Aerial splice Case located at intersection of Government Camp Loop Rd & Highway 26 Government Camp, OR 97028	Aerial splice case located at intersection of SE Judd Rd & Clackamas Highway 211 in Eagle Creek, OR 97022	Construction	\$0.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, or the highest rate allowable in accordance with applicable law, whichever is less, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain telephone number (503) 742-4219 to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within four (4) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer twenty one (21) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental or safety hazards which would restrict or jeopardize any maintenance work.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within four (4) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that four (4) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance rates and charges for any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement with
OHSU for a dark fiber connection

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with the Oregon Health & Science University (OHSU) for a dark fiber connection to their Sunnyside Clinic.
Dollar Amount and Fiscal Impact	OHSU will pay a nonrecurring fee of \$18,765.00 for the extension of the CBX network and an annual fee of \$3,060.00 for the use of the dark fiber connection.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by OHSU.
Duration	Effective upon signature by the board, the SLA is effective for five (5) years.
Previous Board Action	Board has previously approved a similar SLA with Christ the king school.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Counsel Review	Andrew Naylor, August 6, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is requesting a new SLA with Oregon Health & Science University to provide connectivity to a clinic on Sunnyside Rd. OHSU requested a link to provide essential services to their new clinic that will service the greater Clackamas area.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new agreement with the Oregon Health & Science University. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Oregon Health & Science University

(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Oregon Health & Science University (Customer) the services set forth in this Agreement (the “Services”), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber (“Fiber”), between sites specifically identified in Appendix A for the exclusive use of the Customer’s internal communication needs. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

4. Construction and Installation Requirements

- a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not contain hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. Test results for physical connection will be made available to Customer upon request.

5. Term of Agreement

Upon completion of installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated as herein provided, this Agreement shall continue for a period of one (1) year following the Service Start Date and shall automatically renew for successive one-year renewal terms, at the County's then-current rate schedule, unless either party terminates the Agreement pursuant to the terms herein. Provided, however, that the total Agreement term length, including any renewal, shall not exceed five (5) years.

6. Rates

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services described in

Appendix A, as amended from time to time.

7. Payment

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party.

Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligent acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.
- b. Pursuant to Section 20 of this Agreement, either party may terminate this Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall be deemed to have waived any breach of this

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

- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

23. No recourse Against the County

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by electronic mail as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
ddexter@clackamas.us
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
cbxinfo@co.clackamas.or.us
Fax Number: (503) 655-8255

Notice to the Customer

Andy Payne
paynea@ohsu.edu
System Analyst Engineer/Network
Oregon Health & Science University
Desk: 503-494-2087
Mobile: 503-901-1310

Either Party, by similar written notice, may change the address to which notices shall be sent.

25. Debt Limitations

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

26. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

27. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought

and conducted solely and exclusively within the United States District Court for the District of Oregon.

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, and 28, and all other rights and obligations which by their context are intended to survive.

29. Severability

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

30. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

Customer

Oregon Health & Science University
(Customer Name)

By (signature):  _____

Name (print): Cindy Nguyen _____

Title: Senior Contracts Specialist

Date: 11/13/2020

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 10151 SE Sunnyside Rd, Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 10151 SE Sunnyside Rd, Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$18,765.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain telephone number (503) 742-4219 to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within four (4) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer twenty one (21) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental or safety hazards which would restrict or jeopardize any maintenance work.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within four (4) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that four (4) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance rates and charges for any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.



CHRISTINA L. McMAHAN
DIRECTOR

JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

November 25, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Amendment #9 Intergovernmental Agreement with Multnomah County
Assessment and Evaluation for Assessment and Evaluation Beds for Youth**

Purpose/Outcomes	Amend the Intergovernmental Agreement to increase encumbrance for Fiscal Year 20-21, and continue the purchase of assessment and evaluation beds to June 30, 2021
Dollar Amount and Fiscal Impact	\$126,449 for Fiscal Year 20-21
Funding Source	These beds are funded with General Fund
Duration	Terminates on June 30, 2021
Previous Board Action	Amendment #8 approved April 23, 2020 Agenda D.1
Strategic Plan Alignment	1. Provide interventions, compliance monitoring, and restorative services to youth so they can be accountable to victims and the community to repair the harm they have caused. 2. Ensure safe, healthy and secure communities.
Counsel Review	November 5, 2020
Contact Person	Ed Jones, Juvenile Dept. Administrative Services Manager – 503-650-3169
Contract No.	2015001 Amendment 9

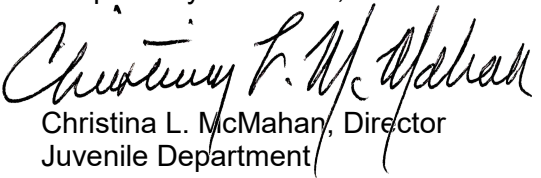
BACKGROUND:

Attached is an amendment to increase compensation for Fiscal Year 20-21 by \$126,449 and to change the rates to meet the updated Behavioral Rehabilitative Services rate schedule effective on July 1, 2020. This IGA was originally approved in September 2014, increased in 2015, renewed in 2016 renewed and increased in 2017, renewed and increased in 2018 and renewed and increased in 2019.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Amendment No. 9 Intergovernmental Agreement

Respectfully submitted,



Christina L. McMahan, Director
Juvenile Department

MULTNOMAH COUNTY
INTERGOVERNMENTAL AGREEMENT AMENDMENT No. 9
(Amendment to change Contract provisions during contract term.)

Contract Number 2015001 Amendment 9

This is an amendment to Multnomah County's Contract referenced above effective September 15, 2014, between Multnomah County, Oregon, hereinafter referred to as MULTNOMAH, and Clackamas County, Oregon, hereinafter referred to as County.

The parties agree:

- I. The following changes are made to Contract No. 2015001, effective July 1, 2020:

(Note: Wording with strikethrough is being deleted; wording in ***bold italics*** is being added.)

C. Article III – CONSIDERATION

COUNTY agrees to pay MULTNOMAH for services performed under this Agreement in the fixed amount of ~~\$180.28~~ ***\$205.86*** per bed day through ~~June 30, 2019~~ ***October 31, 2020***. ***Because of a higher level of service hours, and QRTP certification, the amount will increase effective November 1, 2020 to a fixed amount of \$254.84 per bed per day through June 30, 2021.*** Starting ~~July 1, 2019~~ ***July 1, 2021***, the COUNTY agrees to pay MULTNOMAH for services performed under this Agreement the fixed amount of ~~\$197.65~~ ***\$205.86 per bed day (July 2020-October 2020), and \$254.84 (November 2020 – June 2021) per bed per day*** up to a maximum of ~~\$632,865~~ ***\$759,314***. COUNTY certifies that sufficient funds are available and authorized to finance the costs of this Agreement.

The maximum amount of ~~\$632,865~~ ***\$759,314*** shall be divided as follows:

September 15, 2014 – June 30, 2015 Amount to be paid: \$43,785
July 1, 2015 – June 30, 2016 Amount to be paid: \$87,570
July 1, 2016 – June 30, 2017 Amount to be paid: \$87,570
July 1, 2017 – June 30, 2018 Amount to be paid: \$117,756
July 1, 2018 – June 30, 2019 Amount to be paid: \$142,756
July 1, 2019 – June 30, 2020 Amount to be paid: \$153,428
July 1, 2020 – June 30 2021 Amount to be paid: \$126,449.

MULTNOMAH shall be paid the current BRS rate. If the BRS rate changes during the term of the Contract, County shall be notified of the rate change via letter. The contents of the letter(s) shall become a part of this Contract as if fully set forth herein.

- II. All other terms and conditions of the contract shall remain the same.

MULTNOMAH COUNTY, OREGON

CONTRACTOR:

MULTNOMAH COUNTY, OREGON:

CONTRACTOR:

County Chair or Designee: n/a Signature: _____

Date: _____ Print Name: _____

Dept Director or Designee: Jane Jans for ERICA PAVITT Title: _____

Date: 11/4/20 Date: _____

REVIEWED:

JENNY M. MADKOUR
COUNTY ATTORNEY FOR MULTNOMAH COUNTY

By Assistant County Attorney David Blankfeld Approved as to form by Jeff Munns
Date: October 28, 2020 Date: November 5, 2020



Board of County Commissioners
 Clackamas County

Members of the Board:

**Approval of a Contract with Hawkins Delafield & Wood, LLP
 to serve as a P3 Legal Advisor**

Purpose/Outcome	Contract will provide P3 Legal advisory services as part of a sub-team within the Technical Advisory Team (“TAT”) implementing the county strategic goal of building a new Clackamas County courthouse.
Dollar Amount and Fiscal Impact	Contract total \$500,000 which is in the 2020/2021 FY adopted budget.
Funding Source	County General Fund for 50% of the contract amount with 50% match from the State General Fund through the Oregon Judicial Department
Duration	June 30, 2021
Previous Board Action/Review	July 7, 2020 Board Policy Session where Board directed staff to proceed with the P3 Procurement Preparation effort
Strategic Plan Alignment	The building of a new county courthouse is one of 12 Strategic Priorities of the county and is listed under the category Build Public Trust through Good Government. The project will take advantage of the State Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) legislation and ensure that essential court services are safe and accessible to all residents.
Counsel Review	3. 11/19/20 4. Counsel Initials: AN
Procurement Review	Was the item processed through Procurement? Yes
Contact Person	Gary Barth, Project Manager, 503-754-2050
Contract No.	3378

Background:

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

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

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

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

The Legal Advisor will work with County Counsel to assemble, lead, manage, and coordinate a sub-team within the TAT focused on the development of the Request for Qualifications, the Request for Proposals and the draft Project Agreement required in procuring a private-sector developer for the P3 Courthouse Project. The P3 Legal Advisor will advise the County on all legal issues associated with the successful preparation, procurement and closing of the P3 for the Clackamas County Courthouse.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on August 17, 2020. Proposals were opened on September 15, 2020. The County received three (3) Proposals: Ball Janik and Ashurst, LLP; Hawkins Delafield & Wood, LLP; and NOSSAMAN, LLP. An evaluation committee comprised of three County personnel scored Hawkins Delafield & Wood, LLP. the highest.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with Hawkins Delafield & Wood, LLP for the P3 Legal Advisor contract.

Sincerely,

Gary Barth
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services

**Clackamas County
Agreement for Legal Services
Contract #3524**

This Agreement for Legal Services (“Agreement”) is entered into between Clackamas County, a political subdivision of the State of Oregon (“County”) and **Hawkins Delafield & Wood, LLP.** (“Firm”) in consideration of the mutual covenants and conditions stated below.

1.0 Purpose, Scope, Duration

1.1 County hires Firm to act as an attorney for County for the provision of non-litigation legal services related to the County’s anticipated utilization of a public-private partnership (“P3”) to fund, design, construct, and ultimately deliver a new County courthouse (the “Project”), as further described in the County’s Request for Proposals (“RFP”), attached hereto and incorporated by this reference as Exhibit A. Firm will provide legal services described in Exhibit B, and Firm’s Response to the RFP, attached hereto and incorporated by this reference herein as Exhibit C, together with any additional legal reasonably related to the same. County expressly engages Firm on a “time-and-charges” basis, not on a retainer basis.

1.2 Firm shall not begin to perform legal services with respect to any matter without consultation with and authorization from County.

1.3 This Agreement shall be effective upon the date of last signature, and continue until terminated.

1.4 It is understood that County, and not Firm, shall handle all communications with the public or media on County matters.

1.5 The County Representative for this Agreement is: **Nate Boderman.**

2.0 Relationship between Firm and County

2.1 The relationship of Firm to County arising out of this Agreement shall be that of attorney and client. Firm shall assist the County in the provision of legal services, including consultation with the officers of County as necessary.

2.2 County staff shall assist Firm in locating, developing and providing any documentation necessary to support the legal services provided by Firm.

3.0 Personnel and Staffing

3.1 Firm agrees that **Eric S. Petersen**, a partner of Firm, shall have primary supervisory responsibility for the legal services performed hereunder, shall have discretion to use additional professionals of Firm to provide needed support, shall be available and designated as the contact person with County or designee during the term of this Agreement, and shall arrange for work to be handled efficiently and productively considering cost and expertise.

3.2 Where additional staff is needed to substitute or fill in due to Firm’s staffing problems, County will not be billed for the start-up cost of educating them in the case. Firm will minimize costs by relying on junior attorneys or legal assistants for less demanding tasks, and upon partners where their skill and experience will result in more effective, economical efforts.

3.3 Where staff from outside the Firm is needed in the best judgment of the supervisory partner, prior approval of County or designee must be obtained before such additional staff is retained. County will not be responsible for the fees and costs of such additional staff if prior approval has not been given.

4.0 Billing and Compensation

4.1 Firm shall submit for County's approval bills for legal services rendered and expenses incurred. Such bills shall contain a daily log with the name of each partner, associate, or legal assistant who worked on the matter, the hourly rate of each, the number of hours worked by each, a reference to the matter worked on, a brief description of the work done, and any expenses, all in sufficient detail to provide meaningful explanation. In addition, such bills shall be clearly marked "attorney-client communication, privileged and confidential," and shall include a summary cover sheet listing only the monthly amount to be paid for legal services rendered.

Bills shall be submitted to the County by mail or email to: nboderman@clackamas.us or US Mail to: Clackamas County Counsel, 2051 Kaen Road, Oregon City, 97045.

4.2 Subject to audits, County shall pay Firm as compensation for the legal services described above, fees and disbursements for out-of-pocket expenses as described in this Agreement. This amount shall be paid at the hourly billing rates set forth in Attachment A, which is incorporated into this Agreement. The hourly rates listed in Attachment A will remain in effect until at least June 30, 2022. Subject to the not to exceed amount set forth in section 4.5 below, the rates set forth above shall be increased every January 1, regardless of the date of execution of this agreement, by 3% to account for general inflation. Out-of-pocket disbursements are additional.

4.3 Firm shall be reimbursed for all out-of-pocket expenses reasonably incurred while rendering the legal services described in this Agreement, including long distance telephone, delivery, photocopying, filing fees, and charges for transcripts. Charges for transportation, meals, and lodging are expected to be reasonable and may not exceed the County Contractor Travel Reimbursement Policy. Firm shall not incur travel expenses without first obtaining the approval of the County Representative or designee. No overtime or special staff or clerical services costs shall be billed to County unless it is otherwise agreed prior to the rendering of those services.

4.4 Unless approved by County Representative or designee in advance, time spent by more than one Firm attorney to attend meetings, witness interviews, depositions, hearings, etc. will not be paid by County. County specifically requests Firm to minimize occasions where more than one attorney is involved in a telephone conference.

4.5 The Project is anticipated to progress in phases (Phases 1 – 3), as described in Exhibit A. The amount payable by County to Firm under this Agreement for Phase 1, shall not exceed five hundred thousand dollars (\$500,000.00). Firm shall not submit bills for, and County will not pay, any amount in excess of the maximum compensation amount set forth above, regardless of whether the legal services have already been performed. Firm may only perform legal services for Phases 2 and 3 upon execution of a written amendment to this Contract on terms and conditions acceptable to both parties.

5.0 Termination

This Agreement may be terminated for the following reasons: 1) This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days' written notice to the Firm; 2) County may terminate this Agreement effective upon delivery of notice to Firm, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Agreement is prohibited or County is prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Firm to provide the services required by this Agreement is for any reason denied, revoked, or not renewed; 3) This Agreement may also be immediately terminated by County for default (including breach of contract) if (i) Firm fails to provide services or materials called for by this Agreement within the time specified herein or any extension thereof; or (ii) Firm fails to perform any of the other provisions of this Agreement or so fails to

pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of notice from County, fails to correct such failure within ten (10) business days; 4) If sufficient funds are not provided in future approved budgets of County (or from applicable federal, state, or other sources) to permit County in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, County may terminate this Agreement without further liability by giving Firm not less than thirty (30) days' notice.

6.0 Attorney-Client Privilege

The parties will use their best efforts to protect the attorney-client privilege, the attorney work product privilege and any other privileges available to the full extent allowed by law.

7.0 Governing Law and Venue

This Agreement shall be governed by and construed under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and the Firm 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. 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. FIRM, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

8.0 Non Waiver

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

9.0 Entire Agreement; Modification

This Agreement and its attachments constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto. Any amendment hereof must be in a writing signed by both parties.

10.0 Assignment

This Agreement may not be assigned by either party.

11.0 Notice

Any notice to either party hereunder must be in writing signed by the party giving it and delivered postage prepaid by U.S. Postal Service or Canada Post first class, certified, or express mail, or other overnight delivery service, or hand delivered, as follows:

To County: Clackamas County Counsel
 2051 Kaen Road
 Oregon City, OR 97045

To Firm: Delafield Hawkins & Wood, LLP
 200 SW Market Street
 Portland, Oregon 97201

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

12.0 Indemnity and Responsibility for Damages

Firm shall be responsible for all damage to property, injury to persons, loss, and expense which may be caused by, or result from any negligent or willful act or omission of Firm, its subcontractors or employees acting under this Contract, except to the extent caused by the negligence or willful act or omission of any other person. Firm shall save, defend, indemnify, and hold harmless the County and its elected officials, directors, employees, and agents from all liability, loss, expense, claims, suits and actions of any nature resulting from or arising out of any negligent or willful act or omission of Firm, its subcontractors, officers, agents, or employees acting under this Contract, except to the extent caused by the negligence or willful act or omission of any other person.

The foregoing obligations of Firm are conditioned upon and limited to the extent that the County provides Firm with prompt written notice of any such claim, suit, action or proceeding and reasonable assistance, at Firm's expense, in the defense thereof. Firm shall have control of the defense and settlement thereof, but neither Firm nor any attorney engaged by Firm shall defend the claim in the name of the County, without the prior written consent of the County Counsel. The County may, at its election and expense, assume its own defense and settlement in the event that the County determines that Firm is prohibited from defending County, is not adequately defending its interests, or that an important governmental principle is at issue and County desires to assume its own defense.

13.0 Insurance

Firm shall provide insurance as indicated on Exhibit D, attached and hereby incorporated by reference. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a duration of 24 months.

14.0 Tax Compliance

Firm must, throughout the duration of this Agreement 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 Agreement. Further, any violation of Firm's warranty in this Agreement that Firm 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 Agreement. Any violation shall entitle County to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to: (A) Termination of this Agreement, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Firm, 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 Firm's breach of this Agreement, 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 Firm represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, 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 Firm, to Firm's property, operations, receipts, or income, or to Firm's performance of or compensation for any work performed by Firm; (C) Any tax provisions imposed by a political subdivision of this state that applied to Firm, or to goods, services, or property, whether tangible or intangible, provided by Firm; and (D) Any rules, regulations, charter provisions, or

ordinances that implemented or enforced any of the foregoing tax laws or provisions.

15.0 Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16.0 Counterparts/Facsimile Signatures

This Agreement may be executed in counterparts and each counterpart shall be deemed an original, together constituting one agreement.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement by and through their duly authorized representatives as set forth below.

Hawkins Delafield & Wood, LLP
200 SW Market Street, Suite 350
Portland, Oregon 97201

Clackamas County

Authorized Signature

Chair Date

Date

Recording Secretary

81766-99/ FLLP/ New York

Oregon Business Registry #

Approved as to Form

County Counsel

EXHIBIT A
RFP #2020-78 P3 LEGAL ADVISOR
Published September 17, 2020

EXHIBIT B

SCOPE OF WORK

Firm will provide legal services for all Phases of the Project, as described in Exhibit A of the Contract, and generally described in the categories described below and in Exhibit C of the Contract. Such legal services may include the following: attendance at meetings; participation in telephone and conference calls with multiple working group members; legal research; drafting of memoranda, reports and analyses; contract and document drafting; internal meetings and discussions; preparation for calls, conferences and meetings; reviewing and commenting on drafts, reports and documents prepared by the owner and other consultants and professionals; attendance at discussion and negotiating sessions; review of the results of meetings, calls and conferences; review of correspondence; and transaction administration.

I. PLANNING PHASE SERVICES

Legal Review and Analysis

- > Reviewing current law governing applicable procurement and contracting powers and procedures
- > Reviewing potential tax-exempt financing options
- > Assistance in legal reviews conducted by other counsel as to real estate, permitting, environmental, labor and related legal matters
- > Preparation of memoranda of law on procurement and contracting issues
- > Drafting and review of legislation required for project implementation

Project Planning and Delivery Method Selection

- > Advising regarding project definition, planning, goals, objectives and outcomes
- > Assistance in the overall conceptualization and organization of the procurement for the project
- > Assistance in structuring the environmental, commercial, contract and financing elements of the project
- > Developing strategies for reasonably maximizing competition among proposers
- > Assistance in conducting industry outreach
- > Assistance in assuring compliance with required procurement procedures
- > Assistance in the review of alternative project delivery methods
- > Advising concerning project risk retention and transfer
- > Participation in preparing the business case, multiple criteria analysis and value-for-money analysis and report
- > Legal review of potential financing plans and transaction structures
- > Coordinating with stakeholders in project planning and delivery method selection
- > Assistance with any market sounding survey and request for expressions of interest, and the review of any responsive submittals

II. TRANSACTION PHASE SERVICES

RFQ Preparation, Issuance and Evaluation

- > Reviewing and commenting on the draft RFQ
- > Advising regarding commercial and other issues that should be considered prior to RFQ issuance to ensure the RFQ includes all required information for participants to consider at this stage
- > Advising regarding relationship and intergovernmental matters
- > Advising regarding evaluation issues

- > Assisting in preparation of correspondence with respondents, including correspondence advising of the results of the RFQ evaluation

Preparation and Issuance of RFP and Draft Project Agreement

- > Preparing the draft project agreement, all appendices and related agreements for release with the RFP, including:
 - Initial review of each element of the project agreement
 - Receiving, discussing and incorporating comments from the project team
 - Identifying areas where further consideration and input is necessary
 - Coordinating input from the various content providers and specialists, including other consultants and advisors
 - Incorporating the preferred risk and responsibility allocation
 - Assuring consistent drafting and minimizing redundancy
- > Reviewing and revising the RFP and proposal forms, including proposal requirements
- > Advising regarding commercial issues that have arisen in other similar alternative delivery and public private partnership projects
- > Legal review of issues, and advice related to project insurance
- > Participating in discussions and decisions regarding interface issues between the project and other components of the infrastructure system and reflecting those decisions in the RFP and draft project agreement
- > Legal review of issues, and advice related to labor, employment and DBE programs.

Proposal Development and Submittal

- > Reviewing and advising on proposer inquiries
- > Reviewing and advising on proposer comments on draft project agreement
- > Attending collaborative meetings at which commercial and technical matters relating to the project agreement are discussed
- > Preparing revised drafts of the project agreement, including a final draft for issuance one month before submission deadline

Proposal Evaluation

- > Advising regarding evaluation process and issues, and selection criteria
- > Review legal confidentiality requirements and proposer responsiveness
- > Assistance in conducting pre-selection proposal clarifications and negotiations
- > Reviewing and commenting on the proposal review and evaluation report
- > Assisting in preparation of correspondence with proposers, including correspondence advising of the results of the proposal evaluation

Contract Negotiations

- > Assistance in developing the negotiating strategy and negotiating the final project agreement, appendices and related agreements
- > Coordinating with the project team regarding ongoing developments and strategies
- > Legal review of the financing documents
- > Incorporating the technical and financial proposals in the project agreement and appendices
- > Legal review of the project agreement, appendices and other agreements
- > Participating in presentations concerning the procurement process and the resulting project agreement

Closing

- > Identifying tasks required to close, including final amendments to the project agreement
- > Working with preferred proposer's legal counsel to confirm closing requirements, closing agenda and closing process

- > Working with the owner’s financial and technical advisors to finalize financial close arrangements
- > Conducting a due diligence review of, and commenting on as appropriate, the project company’s subcontract and financing documents
- > Preparing closing documents
- > Attending to closing
- > Preparing closing report, including digital document book

Post-Contract Execution

- > Addressing issues of contract application, implementation, and administration that arise following commercial and financial close
- > Drafting contract administration memoranda and amendments to the project agreement, as necessary.

III. RATE SCHEDULE

The hourly rates for the remainder of 2020 and all of 2021 for the lawyers assigned to the Project are set out below:

TITLE	HOURLY RATE
Partner/Counsel	\$600
Senior Associate (5 to 7 years experience)	\$550
Mid-level Associate (3 to 4 years experience)	\$500
Junior Associate (Less than 3 years experience)	\$425
Law Clerk (An associate not yet admitted to a bar)	\$325
Legal Assistant/Paralegal	\$200

Travel and other expenses

Travel expenses are reimbursable in accordance with the County Contractor Travel Reimbursement Policy, hereby incorporated by reference. Travel and expense reimbursement is not in addition to the not to exceed amount.

EXHIBIT C
VENDOR'S PROPOSAL

EXHIBIT D INSURANCE

During the term of this Agreement, Firm shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Firms with one or more workers, as defined by ORS 656.027.

Firm, its subcontractors, if any, and all employers providing work, labor, or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by County Not required by County.

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. Required by County Not required by County.

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement.

4. Required by County Not required by County.

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$500,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. Certificates of Insurance. As evidence of the General Liability and Automobile Liability insurance coverage required by this Agreement, the Firm shall furnish an endorsement from the insurance company naming the County and its elected officials, directors, employees and agents as additional insureds with respect to the work of this Agreement. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Firm shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Firm or its insurer(s) to County at the following address: Procurement Division, 2051 Kaen Road, Oregon City, OR 97045.



November 25, 2020

Board of County Commissioners
 Clackamas County
 Board of North Clackamas Parks and Recreation District

Members of the Board:

**Approval of an Intergovernmental Agreement Between
 City of Milwaukie and North Clackamas Parks and Recreation
 District for Funding Construction of Phase III of Milwaukie Bay Park**

Purpose/Outcome	Approval by the Board of County Commissioners acting as the Board of Directors of the North Clackamas Parks and Recreation District of an Intergovernmental Agreement (IGA) Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park.
Dollar Amount and Fiscal Impact	Agreement allows NCPRD to accept transfer of up to \$1,000,000 from City of Milwaukie for construction. The total project cost is estimated at \$9,600,000.
Funding Source	The City of Milwaukie will transfer City funds of \$250,000 initially and then reimburse NCPRD from the City's local share of Metro's 2019 Bond Measure funds up to a combined maximum of \$1,000,000. The City funds transferred will only be utilized once the project is fully funded. Other project funds will include NCPRD System Development Charges, grants, and private donations.
Duration	If the IGA is approved, funds will be transferred to NCPRD and used for construction of the park in 2022. The Project is expected to be complete by the end of 2023.
Previous Board Action/Review	<ul style="list-style-type: none"> • May 21, 2020 Business Meeting: Resolution 2020-36 for exemption and authorization to use the Request for Proposals Method to Obtain a Construction Manager/General Contractor • March 19, 2020 Business Meeting: Board Orders approving submission of grant applications (Order 2020-18, Order 2020-19) • February 18, 2020 Policy Session: Milwaukie Bay Park Final Design Project Update
Strategic Plan Alignment	<ul style="list-style-type: none"> • Provide economic development, public spaces, and community enrichment services to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities. • Promote a <i>Healthy and Active Lifestyle</i> by providing a park with recreational pathways, equipment and spaces • Designed with a lens of <i>Equity, Diversity and Inclusion</i>, engaging diverse audiences and maximizing park connections

	<ul style="list-style-type: none"> Promote <i>Carbon Neutrality</i> by providing higher quality natural areas and access by alternative modes of transportation
Counsel Review	Counsel review: October, 20, 2020 (JM)
Procurement Review	No. Item is an IGA.
Contact Person	Heather Koch, NCPRD Project Manager 503-742-4354
Contract No.	N/A

BACKGROUND:

The North Clackamas Parks and Recreation District (“NCRPD”) is requesting approval of an Intergovernmental Agreement between the City of Milwaukie (“City”) and NCPRD for transferring City funds to NCPRD for the construction of Phase III of Milwaukie Bay Park. This IGA is specifically to provide for transfer of funds that NCPRD, as project leader, will accept and utilize for Milwaukie Bay Park. It includes: (1) transfer of \$250,000 allocated by the City in their 2020-2022 biennium budget; and (2) future reimbursement of \$750,000 from the City Local Share funding (Metro Parks and Nature bond) to NCPRD for project construction costs.

NCPRD partnered with the City of Milwaukie ("City") in 2018-19 to develop a final design to complete three acres of undeveloped waterfront land at Milwaukie Bay Park. The design includes an amphitheater, nature play area, interactive water feature, plaza with picnic terrace, a permanent alignment for the trolley trail, pathways, natural areas, public art and restrooms. NCPRD has also engaged a broad and diverse range of over 1,300 community members throughout the District, advanced a funding strategy to leverage local, regional, state and other funds, and developed a process to build a preconstruction and construction services team in FY20-21. Construction is planned to begin in 2022.

The park is identified as a high priority need in the 2004 NCPRD Master Plan and 2007 NCPRD Parks and Recreation System Development Charges (SDC) Update Methodology Report and Capital Improvements Plan. NCPRD is partnering with the City to complete design and construction documents and construct the park. The City owns the park and NCPRD plans for, develops and manages the City's parks under an Intergovernmental Agreement. The District-City IGA was created as part of the formation of the District in 1990, and last amended in 2008. The District-City IGA will be revised in light of this new joint investment.

The total project cost is estimated at approximately \$9,600,000. This includes construction costs as well as preconstruction costs such as design, engineering, permitting and the CM/GC preconstruction services. The funding planned is a mix of NCPRD SDC funds, City funds, Metro Local Share funds, grants, and private donations, as detailed in the following table. The funds from the City addressed in this IGA are a critical piece of the overall funding package, and are the continuation of a long-standing financial investment that the City has made in acquisition, site preparation, planning and development of this site for recreational use over the last twenty years.

Funding Source	Amount	Approval Documents*	Estimated date
City of Milwaukie	250,000	20-22 Biennium Budget & IGA	November 2020
Metro City Local Share	750,000	City-Metro IGA	January 2021
Metro NCPRD Local Share	3,000,000	NCPRD-Metro IGA	March 2021
State grant (LWCF)	1,046,125	Grant Agreement	April 2021
NCPRD SDC Zone 1	2,600,000	21/22 and 22/23 NCPPD Budget	June 2021
State grant (LGGP)	750,000	Grant Agreement	TBD Summer 2021
Metro CIP Grant	750,000	Grant Agreement	TBD Fall 2021
ODOT Grant	405,000	Grant Agreement	TBD Fall 2021
Milwaukie Parks Foundation	50,000	Letter	TBD Fall 2021
TOTAL	\$9,601,125	<i>*This IGA for City funds transfer is the first approval document, with the rest pending execution of IGAs and grant agreements</i>	

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners, acting as the governing body of the North Clackamas Parks and Recreation District, proceed with the approval of the Intergovernmental Agreement between the City and NCPRD for transferring City funds to NCPRD for the construction of Phase III of Milwaukie Bay Park.

ATTACHMENTS:

Intergovernmental Agreement for Milwaukie Bay Park funds transfer.

Respectfully submitted,



Laura Zentner, Director
Business and Community Services

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CITY OF MILWAUKIE AND NORTH CLACKAMAS PARKS AND RECREATION
DISTRICT FOR FUNDING CONSTRUCTION OF PHASE III OF MILWAUKIE BAY PARK**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the City of Milwaukie (“City”), a municipal corporation, and the North Clackamas Parks and Recreation District (“District”), a county service district formed under ORS Chapter 451, effective as of the last date of signature indicated below (“Effective Date”).

RECITALS

- A. Milwaukie Bay Park (“Park”) is a city park in downtown Milwaukie owned by the City and operated and maintained by the District; and
- B. City and District are in the process of finalizing the design of major improvements to the Park to be constructed as Phase III; and
- C. The District Board has approved (May 2020) solicitation of a Construction Manager/General Contractor (“CMGC”) for preconstruction and construction of Phase III; and
- D. Construction of Phase III in accordance with the final design is a substantial endeavor and when completed, will transform the Park into a regional asset; and
- E. In order to facilitate such an endeavor, funds from several sources are required. If any portion of the funding is not received, Phase III of the Park will not be completed as currently envisioned.

NOW THEREFORE, it is agreed by and between City and District as follows:

TERMS OF AGREEMENT

- 1. Description of Agreement for transfer of existing City funds.** Upon the execution of a CMGC contract, the City shall transfer within 30 days \$250,000 approved by City Council for the Park to the District for its use in constructing Phase III of the Park. Upon the City’s execution of an intergovernmental agreement with Metro for City Local Share (funding from Metro 2019 bond measure), the City shall reimburse NCPRD within 60 days of each NCPRD reimbursement request for expenses incurred in the construction of Phase III of the Park, up to the total amount designated for the Park in the City’s Local Share IGA. The funds shall only be used as a portion of the funding to construct Phase III of the Milwaukie Bay Park. Should the additional funding described below not be received by the District in the amounts necessary to construct the full plan by December 31, 2023, the funds shall be returned to the City and construction of Phase III of Milwaukie Bay Park will not begin.
- 2. The City and District agree funding for construction of Phase III of Milwaukie Bay Park shall consist of the following:**

Milwaukie Bay Park IGA for transfer of funds

- a. City funds of \$250,000 as described above;
 - b. \$750,000 of the City's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
 - c. the District's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
 - d. System Development Charges from the District; and,
 - e. Grants and other sources to reach full project funding based on the estimated project cost refined during design development. The estimated total project cost is \$9.6 million; this will be updated as the design is refined and funding agreements are executed, with a Guaranteed Maximum Price (GMP) to be set before the final set of Construction Documents is approved.
- 3. Effective Date, Duration, and Termination.** This Agreement shall become effective on the date all required signatures are obtained ("Effective Date") and shall continue until all funding is secured and the District is able to begin the Construction of Phase III of Milwaukie Bay Park or this Agreement is terminated. This Agreement may be terminated prior to the construction of the Park by written notice provided, with or without cause, by either party no less than 90 days prior to the date of termination. This Agreement can also be terminated by mutual written agreement by the City and District. The indemnity obligations set forth in Paragraph 7 shall survive termination.
- 4. Amendment Provisions.** The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties.
- 5. Compliance with Applicable Law.** City and District will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services provided under this Agreement. Without limiting the generality of the foregoing, City and District expressly agree to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V or the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) the Fair Labor Standards Act; (v) the Occupational Safety and Health Act of 1970; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 6. Indemnification.** Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each party agrees to indemnify, defend and hold harmless the other party and its officers, agents, employees and elected officials from any and all liability, loss, and cost, except for attorney's fees as described in paragraph 8 below, arising out of or resulting from the acts of their officers, agents, employees, and elected officials, including intentional or willful misconduct, in the performance of this Agreement.

7. **Notice.** Any notice required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by email, hand delivery, or by mail delivery addressed to the parties as follows:

Milwaukie:

City Liaison

Kelly Brooks

10722 SE Main Street

Milwaukie, Oregon 97222

Email: brooksk@milwaukieoregon.gov

District:

District Liaison

Heather Koch

150 Beaver Creek Road

Oregon City, OR 97045

Email: HKoch@ncprd.com

These addresses may be changed by written notice to the other parties.

8. **Attorney Fees.** In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
9. **No Waiver.** The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
10. **Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.
11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
12. **Merger.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

