



AGENDA * Revised

Added G.1, Updated I.2, A.3, Removed item B.2

Revision 2
Added Attachment for Agenda
item IV.

Thursday, August 12, 2021 - 6:00 PM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2021-65

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PUBLIC HEARING *(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. Approval of a Board Order Accepting a Request to Transfer Jurisdiction from Clackamas County to the City of Canby for a Portion of N. Locust Street (County Road 1782), N. Maple Street (County Road #2579) and S. Redwood Street (County Road #0277)
2. *Second Reading of an Ordinance Amending Chapter 8.03 of the Clackamas County Code – Secondhand Dealers (Scott Ciecko, County Counsel)

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

A. Health, Housing & Human Services

1. Approval of Amendment #01 to a Subrecipient Agreement with ColumbiaCare Services, Inc. for Residential Treatment Services. Maximum valued of \$1,508,000 through the State of Oregon, Community Mental Health Program. No County General Funds are involved. – *Behavioral Health*
2. Approval of Amendment #21 to the Intergovernmental Agreement with the State of Oregon acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County. Amendment increases amount by \$169,959 through the State of Oregon. No County General Funds are involved. – *Public Health*
3. *Approval of the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority (OHA) for Public Health Medicaid Administrative Claiming (PH MAC). Maximum contract is \$1,900,000 and is a reimbursement mechanism through the state to cover time spent by Public Health staff on administrative activities not otherwise covered by Medicaid. No general funds are involved. – *Public Health*
4. Approval of Amendment #1 to an Intergovernmental Agreement with the State of Oregon, Housing and Community Services Department to change wording regarding the disclaimer of warranties with no other changes to the agreement dates or dollars allocated to the Oregon Emergency

Rental Assistance Program. Not to exceed amount of \$10,192,438 through the US Treasury Consolidated Appropriations Act Federal Rental Assistance pass-through funding from the State of Oregon. No County General Funds are involved. – *Social Services*

5. Approval of an Intergovernmental Agreement with Tri-County Metropolitan District of Oregon for Special Transportation Formula Funds for Mt Hood Express Bus Service, Dedicated Dialysis Rides Program and match funding for Title 19 (Medicaid) non-medical Waivered Transportation. Maximum agreement is \$89,558. There is no financial impact to the County. – *Social Services*
6. Approval to renew an Intergovernmental Agreement with City of Sandy, Oregon, for Support for the Mt Hood Express Bus Service. Total agreement value is \$81,450, through Statewide Transportation Funds. No County General Funds are involved. – *Social Services*
7. Approval to Apply to Funding Opportunity HRSA-21-114 with Health Resources and Services Administration (HRSA) for American Rescue Plan (APR) – Health Center Construction and Capital Investment. Maximum agreement value is \$700,134 through Health Resources and Services Administration. No County General Funds are involved. – *Health Centers*
8. Approval to Apply to the 2021-2023 OSBHA ACTION grant with Oregon School-Based Health Alliance for School Based Health Center programs. Maximum agreement value is \$22,000 through Oregon School-Based Health Alliance. No County General Funds are involved. – *Health Centers*
9. Approval of a Local Subrecipient Grant Amendment #4 with Northwest Family Services for Student Resource Coordination. This amendment adds \$60,000 for a revised maximum of \$330,950, funded through Clackamas County Behavioral Health and Marijuana Tax Funds. No County General Funds are involved. – *CFCC*
10. Approval of Intergovernmental Agreement with Oregon Department of Transportation Rail and Public Transit Division for HB2017 State Transportation Improvement Fund Discretionary Program Funds for an Integrated Website for all Clackamas County Transit Providers. Maximum grant award is \$145,000, funded through the Oregon Department of Transportation. No County General Funds are involved. – *Social Services*

B. Transportation and Development

1. Approval of an Intergovernmental Agreement with the City of Molalla to affirm maintenance responsibility of improvements as required by the Oregon Department of Transportation. No fiscal impact, the county is currently obligated to maintain these improvements regardless of the agreement using Road Fund funding.
- ~~2. A Board Order Setting a Hearing Date for the Withdrawal of Status of McIntyre Rd. There is no fiscal impact.~~
3. A Board Order Vacating a Portion of Dusty Lane, Public Road No. 5032. There is no fiscal impact.

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of ORMAP (the Oregon Map) Intergovernmental Agreement Contract # DOR-318-21 between the Clackamas County Assessor's Office and the Oregon Department of Revenue for the Administration of the Ad Valorem Property Tax System. The semi-annual contract is valued at \$35,000 for this funding period. Assessment and Taxation dedicates an additional \$10,000 annually for the conversion of maps. Funded through the State of Oregon, Department of Revenue. No County General Funds are involved.

D. Business and Community Services

1. Approval of Modification No. 8 to Stewardship Agreement 13-SA-11060600-013 between Clackamas County and USDA, Forest Service Mt. Hood National Forest. Total funds are \$38,738.08, through USDA Forest Service, and Dump Stoppers program. No County General Funds are involved.

E. Disaster Management

1. Approval of Amendment #1 to FY19 Urban Area Security Initiative (UASI) Grant Agreement between the City of Portland and Clackamas County. Total increase of \$50,000 for a total of \$387,000, funded through the United States Department of Homeland Security. No County General Funds are involved.
2. Approval of Amendment #2 to FY19 Urban Area Security Initiative (UASI) Grant Agreement between the City of Portland and Clackamas County. There is no financial impact.
3. Approval of FY20 Urban Security Initiative (UASI) Grant Agreement between the City of Portland and Clackamas County. Total grant is \$375,833, funded through the United States Department of Homeland Security. No County General Funds are involved.

F. Public and Government Affairs

1. A Board Order Approving the Renewal of the Cable Television Franchise Agreement for the Use of the County's Rights-of-Way by Comcast of Tualatin Valley, Inc.; Comcast of Illinois/Ohio/Oregon, LLC; and Comcast of Oregon II, Inc. This agreement will bring 5% in Franchise Fees to the Public and Government Affairs Revenue Account. No County General Funds are involved.

G. Clackamas Water Environment Services

1. *Approval of a Purchase and Sale Agreement between Clackamas Water Environment Services (WES) and Certain Individuals pertaining to the purchase of a vacant parcel for Hoodland Sandy Lane Pump Station Relocation Project. The cost is \$95,000 plus a share of closing costs, funded through WES Wastewater Capital Fund. No County General Funds are involved.

III. 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.)*

IV. COUNTY ADMINISTRATOR UPDATE

V. 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>



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 12, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Board Order Accepting a Request to Transfer Jurisdiction from Clackamas County to the City of Canby of a Portion of N. Locust Street (County Road 1782), N. Maple Street (County Road #2579) and S. Redwood Street (County Road #0277)

Purpose/Outcomes	Jurisdictional transfer of a portion of N. Locust Street, N. Maple Street and S. Redwood Street to the City of Canby.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and Maintenance monies used on County maintained portions of roads located entirely within the City of Canby. Initial cost of transfer is \$348,532, which represents the cost of a 2" asphalt overlay and ADA ramp improvements on portions of the roads being transferred.
Funding Source	Community Road Fund
Duration	Upon execution; permanent
Previous Board Action	-Discussion item at issues on 4/13/21 -Approval of an IGA with the city of Canby pursuant to this transfer approved on 4/22/2021
Strategic Plan Alignment	1. This transfer will directly align with our departments Business Plan goal of completing jurisdictional transfer of roads to cities. 2. The cost savings realized by this transfer will allow transparency for the budget.
Counsel Review	Review and approved by county counsel on 6/2/21- NB
Procurement Review	Was this item processed through Procurement? No This item is a transfer of Jurisdiction
Contact Person	Michael Bays, Survey/CADD Supervisor; 503-742-4667

There are certain County roads, such as N. Locust Street, N. Maple Street and S. Redwood Street in Canby, that are wholly, mostly, or partially within various cities throughout Clackamas County. Fragmented jurisdiction over these roads often results in differing road maintenance activities and confusion by the public as to which agency is responsible for the operation and maintenance of the roads.

Clackamas County and the City of Canby have agreed to the transfer of portions of N. Locust Street, N. Maple Street and S. Redwood Street to the City with the intent of streamlining planned roadway improvements, eliminating confusion to the public and to improve the efficiencies of maintenance and public service. The portions of N. Locust Street, N. Maple Street and S. Redwood Street to be transferred are located entirely within Canby city limits.

The County and the City of Canby have an agreement to provide funds to the City of Canby in the amount of \$348,532, which is equal to the cost of a 2" asphalt overlay, in exchange for the City assuming exclusive jurisdiction over the portion of N. Locust Street, N. Maple Street and S. Redwood Street containing approximately 85,569, 52,988 and 87,938 square feet of Right-of-Way respectively. By accepting jurisdiction over portions of N. Locust Street, N. Maple Street and S. Redwood Street, the City becomes the "Road Authority" responsible for all maintenance, improvement, permitting, and road standard activities.

The City has formally requested that the County fully transfer jurisdiction over portions of N. Locust Street, N. Maple Street and S. Redwood Street over to the City pursuant to ORS 373.270(6), (see attached Resolution 1349). Pursuant to ORS 373.270(7), the County may finalize the transfer by adopting the proposed order which is attached to this report.

RECOMMENDATION:

Staff respectfully requests that the Board approve this Board Order related to the transfer of jurisdiction over portions of N. Locust Street, N. Maple Street and S. Redwood Street and the payment to the City in an amount equivalent to a 2" asphalt overlay and ADA ramp improvements on that portion of roads being transferred.

Respectfully submitted,

Michael Bays

Michael Bays -Survey/CADD Supervisor

Attachments:

Board Order

Exhibits

City of Canby Resolution

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

In the matter of transferring to the City of Canby, jurisdiction over N. Locust Street County Road No. 1782, DTD Nos. 31077, N. Maple Street County Road No. 25879, DTD Nos. 31029, and S. Redwood Street, County Road No. 0277, DTD No. 41023



Board Order No. _____
Page 1 of 2

This matter coming before the Board of County Commissioners as a result of a request from the City of Canby, by Resolution Number 1349, dated June 2, 2021 and the preceding negotiation between the City of Canby and Clackamas County Department of Transportation and Development to transfer portions of the following road, more particularly depicted in Exhibits "A-1", "A-2", and "A-3", and more particularly described in Exhibits "B-1", "B-2", and "B-3" all of which are attached to this Order.

<u>Road Name</u>	<u>Cnty #</u>	<u>DTD #</u>	<u>From</u>	<u>To</u>	<u>Square Feet</u>
N. Locust Street	1782	31077	MP 0.09	MP 0.85	85,569;
N. Maple Street	2579	31029	MP 0.48	MP 0.68	52,988;
S. Redwood Street	0277	41023	MP 0.00	MP 0.26	87,938; and,

It further appearing to the Board that said transfer of jurisdiction has been recommended by Dan Johnson, Director of the Department of Transportation and Development; and,

It further appearing to the Board that pursuant to ORS 373.270, notice of the hearing on this matter was provided by publication in the Canby Herald on 7/14, 7/21, 7/28, and 8/04; now therefore,

IT IS HEREBY ORDERED that jurisdiction of a portion of N. Locust Street, N. Maple Street and S. Redwood Street shall be transferred, Clackamas County jurisdiction shall cease, and full and absolute jurisdiction of said portions of roadway is transferred to the City of Canby as of the date of this Order; and,

IT IS FURTHER ORDERED that 226,495 square feet, more or less, be removed from the County's Road Inventory; and,

IT IS FURTHER ORDERED that copies of this Order be submitted to the Clackamas County Clerk's office for recording and that copies be subsequently sent without charge to the Clackamas County Surveyor, Tax Assessor, Finance/Fixed Asset Offices, and DTD Engineering.

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

In the matter of transferring to the
City of Canby, jurisdiction over
N. Locust Street County Road No. 1782,
DTD Nos. 31077, N. Maple Street
County Road No. 25879, DTD
Nos. 31029, and S. Redwood Street,
County Road No. 0277, DTD No. 41023



Board Order No. _____

Page 2 of 2

ADOPTED this _____ day of _____, 2021.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Exhibit "A-1"

N. Locust Street Transfer of Jurisdiction (North of NE Territorial Rd.)

Clackamas County to City of Canby

Description

All that portion of N. Locust Street, County Road No. 1782, Department of Transportation and Development maintenance No. 31077; Situated in the SW 1/4 and the SE 1/4 of Section 28, T. 3 S., R. 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of the Northerly Lot Line of Lot 1 of "Locust Corner" subdivision, as recorded in Clackamas County records, also being south of the Southerly Right-of-Way of NE Territorial Road (mile point 0.09) and lying North of the Southerly boundary line of Tax Lot 31E28C 00401, as described in Document No. 2015-032967, Clackamas County deed records (mile point 0.85), also being north of the Northerly Right-of-Way of NE Territorial Road, being approximately 1,823 feet long.

Contain 85,569 square feet, more or less.

Exhibit "A-2"

N. Maple Street Transfer of Jurisdiction (South of NE Territorial Rd.)

Clackamas County to City of Canby

Description

All that portion of N. Maple Street, County Road No. 2579, Department of Transportation and Development maintenance No. 31029; Situated in the SE 1/4 of Section 28 and the NE 1/4 of Section 33, T. 3 S., R 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of and between, Mile Point 0.48 being the north lot line of Lot 3, "Brooks Addition" Plat No. 2224 Clackamas County Plat Records and Mile Point 0.68 being the Southerly boundary line of Tax Lot 31E33AB 00201, as described in Document No. 2008-044423, Clackamas County deed records (ending mile point 0.68), being approximately 1,132 feet long, more or less.

Containing 52,988 square feet, more or less.

Exhibit "A-3"

S. Redwood Street Transfer of Jurisdiction (South of SE Township Rd.)

Clackamas County to City of Canby

Description

All that portion of S. Redwood Street, County Road No. 277, Department of Transportation and Development maintenance No. 41023; Situated in the NW 1/4 of Section 3, T. 4 S., R 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of and between, Mile Point 0.00 being the north boundary line of Parcel 2 of Partition Plat 1993-055 Clackamas County Plat Records and Mile Point 0.26 being the north Lot Line of Lot 128 of "Faist Addition No. 5" Plat No. 3735 Clackamas County Plat Records, being 1,354 feet long more or less.

Containing 87,938 square feet, more or less.

EXHIBIT "B-1"



1"=300'



TRANSFERED ROAD

LOCATED IN THE SW 1/4 AND SE 1/4 OF SECTION 28, T. 3 S., R. 1 E., W.M. CLACKAMAS COUNTY, OREGON

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



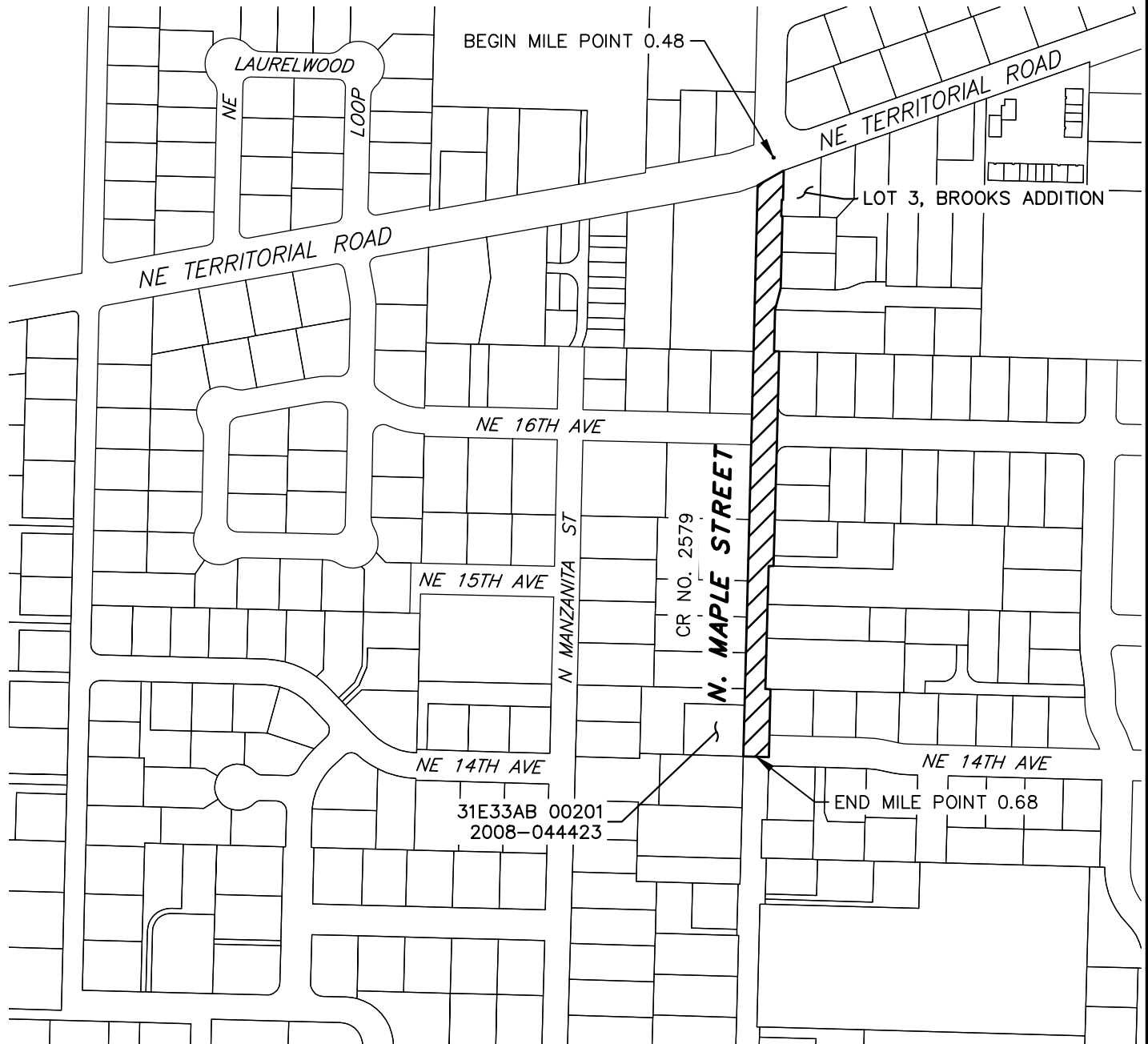
02/24/2021 A. REITER
JURISDICTIONAL TRANSFER
N. LOCUST STREET
COUNTY ROAD NO. 1782

SHEET
1 OF 1

EXHIBIT "B-2"



1"=300'



LOCATED IN THE SE 1/4 OF SECTION 28
 AND THE NE 1/4 OF SECTION 33,
 T. 3 S., R. 1 E., W.M.
 CLACKAMAS COUNTY, OREGON



TRANSFERED ROAD

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



02/24/2021

A. REITER

JURISDICTIONAL TRANSFER
 N. LOCUST STREET
 COUNTY ROAD NO. 2579

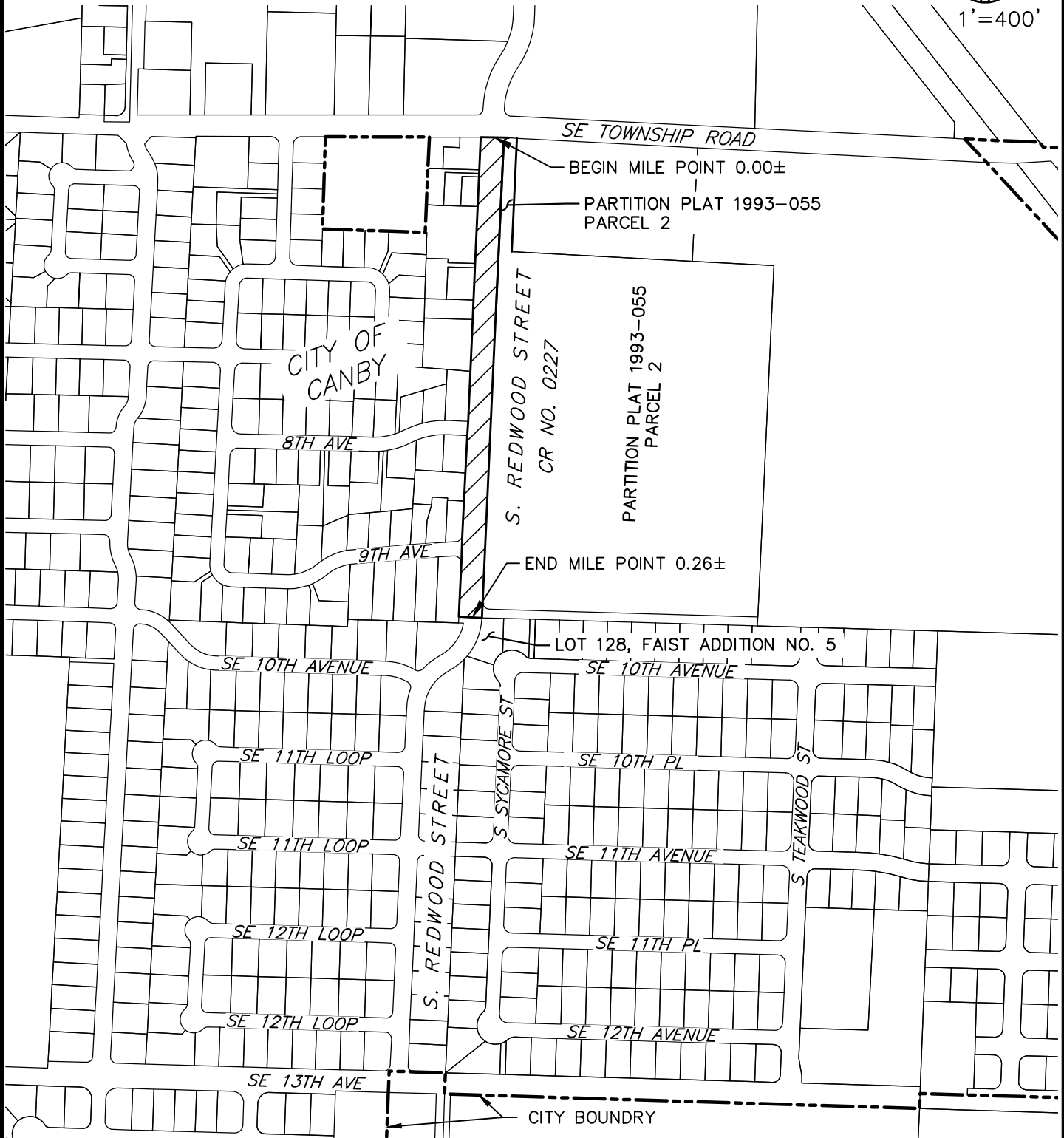
SHEET

1 OF 1

EXHIBIT "B-3"



1' = 400'



TRANSFERED ROAD

LOCATED IN THE NW 1/4 OF SECTION 3,
T. 4 S., R. 1 E., W.M.
CLACKAMAS COUNTY, OREGON

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



02/24/2021

A. REITER

JURISDICTIONAL TRANSFER
S. REDWOOD STREET
COUNTY ROAD NO. 0227

SHEET

1 OF 1

RESOLUTION NO. 1349

A RESOLUTION REQUESTING CLACKAMAS COUNTY TO SURRENDER JURISDICTION OF N LOCUST STREET, N MAPLE STREET AND S REDWOOD IN THE CANBY CITY LIMITS

WHEREAS, ORS 373.270 authorizes the transfer of jurisdiction over a county road within a city; and

WHEREAS, the portions of N. Locust Street, N. Maple Street and S. Redwood Street subject to this resolution are located entirely within the boundaries of the City and are County Roads, as defined in ORS 368.001 (“N. Locust Street, N. Maple Street and S. Redwood Street”); and

WHEREAS, N. Locust Street, N. Maple Street and S. Redwood Street are depicted in Exhibits “B-1, B-2 and B-3”, and more particularly described in Exhibits “A-1, A-2 and A-3”, all of which are attached hereto and incorporated herein; and

WHEREAS, the City is best suited to assume primary responsibility for maintenance and permitting of N. Locust Street, N. Maple Street and S. Redwood Street; and

WHEREAS, Clackamas County shall provide to the City the sum of \$348,523, which is equivalent to the cost of a 2-inch asphalt overlay on the portions of N. Locust Street, N. Maple Street and S. Redwood Street; and


WHEREAS, pursuant to ORS 373.270, the City Council is requesting a jurisdictional transfer of N. Locust Street, N. Maple Street and S. Redwood Street from Clackamas County to the City to better manage and control road improvements, and to direct maintenance activities.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:

1. The City is formally requesting the full and absolute transfer of jurisdiction over N. Locust Street, N. Maple Street and S. Redwood Street pursuant to ORS 373.270 and the approved Intergovernmental agreement between the City of Canby and Clackamas county related to the transfer of a portion of N. Locust Street, N. Maple Street and S. Redwood Street.

This resolution will take effect on June 2, 2021.

ADOPTED this day of June 2nd by the Canby City Council.



Brian Hodson
Mayor

ATTEST:



Melissa Bisset, CMC
City Recorder

Exhibit "A-1"

N. Locust Street Transfer of Jurisdiction (North of NE Territorial Rd.)

Clackamas County to City of Canby

Description

All that portion of N. Locust Street, County Road No. 1782, Department of Transportation and Development maintenance No. 31077; Situated in the SW 1/4 and the SE 1/4 of Section 28, T. 3 S., R. 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of the Northerly Lot Line of Lot 1 of "Locust Corner" subdivision, as recorded in Clackamas County records, also being south of the Southerly Right-of-Way of NE Territorial Road (mile point 0.09) and lying North of the Southerly boundary line of Tax Lot 31E28C 00401, as described in Document No. 2015-032967, Clackamas County deed records (mile point 0.85), also being north of the Northerly Right-of-Way of NE Territorial Road, being approximately 1,823 feet long.

Contain 85,569 square feet, more or less.

Exhibit "A-2"

N. Maple Street Transfer of Jurisdiction (South of NE Territorial Rd.)

Clackamas County to City of Canby

Description

All that portion of N. Maple Street, County Road No. 2579, Department of Transportation and Development maintenance No. 31029; Situated in the SE 1/4 of Section 28 and the NE 1/4 of Section 33, T. 3 S., R 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of and between, Mile Point 0.48 being the north lot line of Lot 3, "Brooks Addition" Plat No. 2224 Clackamas County Plat Records and Mile Point 0.68 being the Southerly boundary line of Tax Lot 31E33AB 00201, as described in Document No. 2008-044423, Clackamas County deed records (ending mile point 0.68), being approximately 1,132 feet long, more or less.

Containing 52,988 square feet, more or less.

Exhibit "A-3"

S. Redwood Street Transfer of Jurisdiction (South of SE Township Rd.)

Clackamas County to City of Canby

Description

All that portion of S. Redwood Street, County Road No. 277, Department of Transportation and Development maintenance No. 41023; Situated in the NW 1/4 of Section 3, T. 4 S., R 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of and between, Mile Point 0.00 being the north boundary line of Parcel 2 of Partition Plat 1993-055 Clackamas County Plat Records and Mile Point 0.26 being the north Lot Line of Lot 128 of "Faist Addition No. 5" Plat No. 3735 Clackamas County Plat Records, being 1,354 feet long more or less.

Containing 87,938 square feet, more or less.

EXHIBIT "B-1"



1"=300'

CLACKAMAS COUNTY

START MILE POINT 0.49

NE 22ND AVENUE

CITY LIMITS

LOT 1, "LOCUST CORNER"

CITY LIMITS

CITY OF CANBY

NE 21TH PL

NE 21TH AVE

CITY OF CANBY

NE 20TH AVE

NE 20TH AVE

CITY LIMITS

CR NO. 1782

N. LOCUST STREET

NE 19TH AVE

CLACKAMAS COUNTY

31E28C 00401
DOC. NO. 2015-032967

LAURELWOOD

NE

LOOP

NE TERRITORIAL ROAD

END MILE POINT 0.85

NE 16TH AVE



TRANSFERED ROAD

LOCATED IN THE SW 1/4 AND SE 1/4 OF SECTION 28, T. 3 S., R. 1 E., W.M. CLACKAMAS COUNTY, OREGON

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



02/24/2021

A. REITER

JURISDICTIONAL TRANSFER
N. LOCUST STREET
COUNTY ROAD NO. 1782

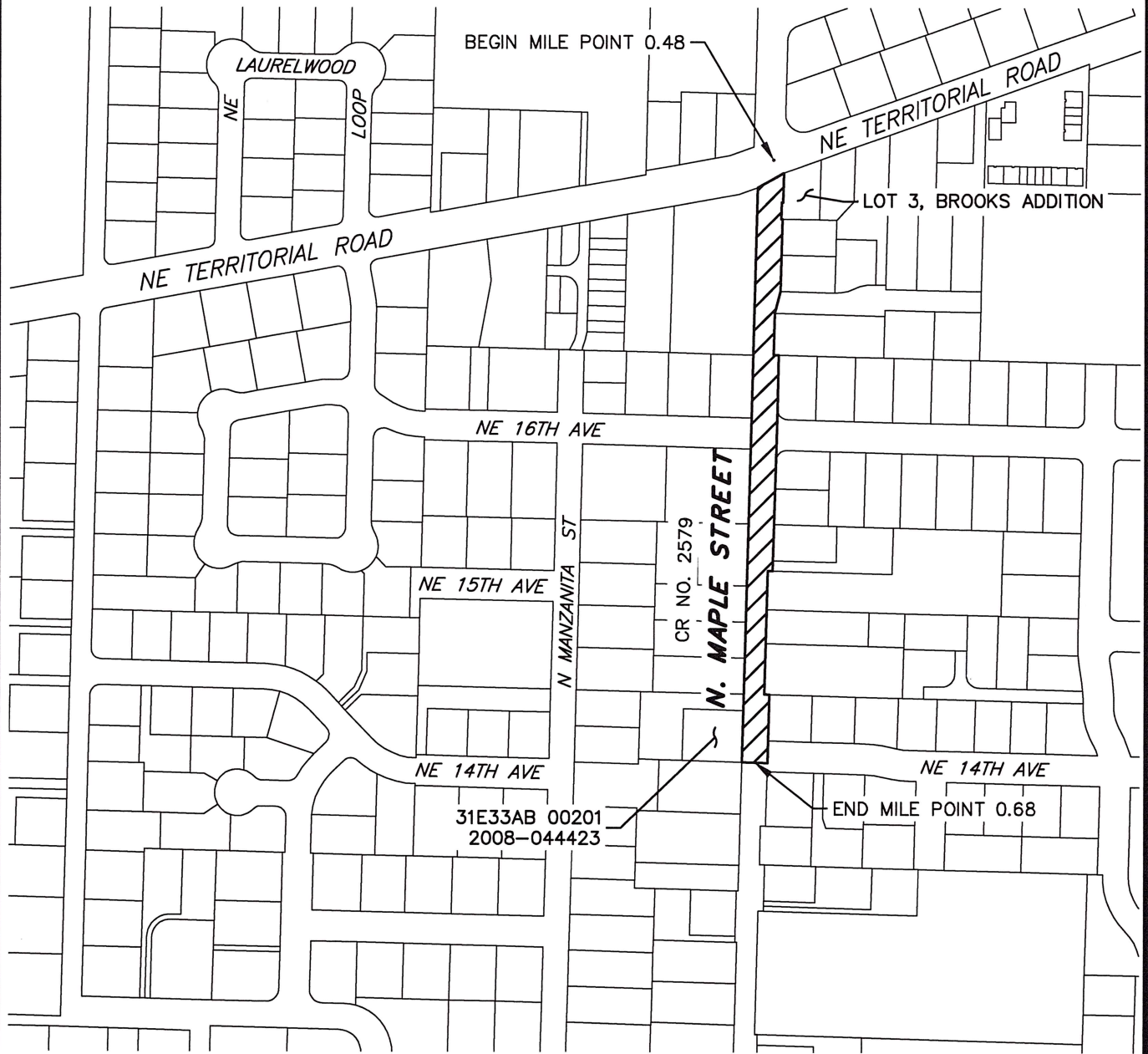
SHEET

1 OF 1

EXHIBIT "B-2"



1"=300'



LOCATED IN THE SE 1/4 OF SECTION 28
 AND THE NE 1/4 OF SECTION 33,
 T. 3 S., R. 1 E., W.M.
 CLACKAMAS COUNTY, OREGON

 TRANSFERED ROAD

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



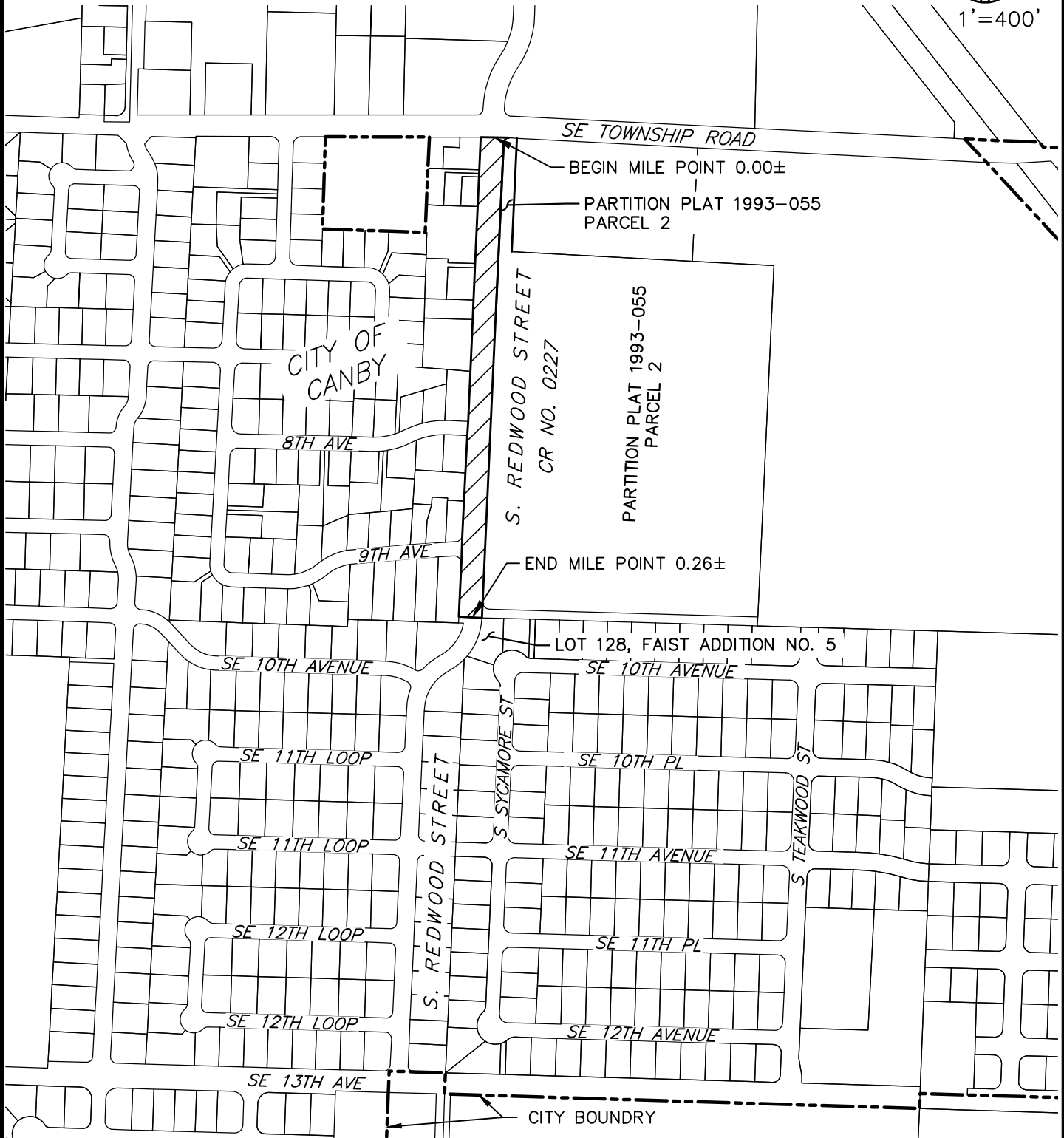
02/24/2021 A. REITER
 JURISDICTIONAL TRANSFER
 N. LOCUST STREET
 COUNTY ROAD NO. 2579

SHEET
 1 OF 1

EXHIBIT "B-3"



1' = 400'



TRANSFERED ROAD

LOCATED IN THE NW 1/4 OF SECTION 3,
T. 4 S., R. 1 E., W.M.
CLACKAMAS COUNTY, OREGON

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



02/24/2021

A. REITER

JURISDICTIONAL TRANSFER
S. REDWOOD STREET
COUNTY ROAD NO. 0227

SHEET

1 OF 1



Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

STAFF REPORTS

August 12, 2021

To the Clackamas County Board of County Commissioners:

In the Matter of a Second Reading of Ordinance No. 04-2021 Amending Chapter 8.03 of the Clackamas County Code--Secondhand Dealers

Purpose/Outcome	Adoption of this ordinance is intended to ensure consistency with State law, to assist deputies in tracking stolen property, and to ensure amounts owed to the County by secondhand dealers are paid.
Dollar Amount and Fiscal Impact	Adoption of this ordinance is not expected to have a significant financial impact.
Funding Source	Adoption of this ordinance will not result in the expenditure of County funds.
Duration	If the Secondhand Dealer code is amended, that amendment will continue in effect until further amendment.
Previous Board Action/Review	This matter was presented to the Board by staff at a policy session (Administrator issues) on June 8, 2021, and again at a policy session on August 3, 2021. This matter was before the Board for a public hearing and first reading on July 1, 2021, and for additional public hearings on July 15 and July 29, 2021. Based on those prior meetings changes to the ordinance described below have been made.
Strategic Plan Alignment	1. This matter is consistent with the Clackamas County Sheriff's Office's strategic goal of providing public safety to those who live, work and, recreate in Clackamas County so they can enjoy safe, livable communities. 2. This matter is consistent with the County's Performance Clackamas goal of ensuring safe, healthy, and secure communities.
Counsel Review	This matter is being presented in party by legal counsel and has been reviewed thereby.
Contact Person	Scott Ciecko, Assistant County Counsel Lt. Chris Cate, Clackamas County Sheriff's Office

BACKGROUND: Chapter 8.03 of the County Code regulates secondhand dealers – businesses that acquire and resell secondhand personal property – within unincorporated Clackamas County. Following a prior policy session and two public hearings, and in response to feedback from the Board and secondhand dealers, the Sheriff’s Office is requesting the Board to make the following changes:

1. Clarifying that the ordinance does not regulate the purchase and/or sale of firearms. This change is necessary so that the code is consistent with State law, which provides that counties cannot regulate transactions of firearms. See ORS 166.170;
2. Removing from the ordinance regulation of certain outdated entertainment media such as blue ray discs, dvd players, and video game cartridges, and instead regulating transactions involving “video game consoles,” as these are more likely to be the target of a theft.
3. Clarifying that when dealers fail to pay any fines or fees that are assessed against them the County may use debt collections agencies in an effort to recover amount owing.
4. Adding a requirement that dealers take and submit to the CCSO photographs of all jewelry, watches, silver items (cutlery), and precious gems and metals that are involved in new transactions.

These changes remain relatively minor and are not expected to have financial or other substantive impacts on the County or secondhand dealers, but will make the chapter consistent with State law and assist the Sheriff’s Office in tracking stolen property. The fourth change comes after consultation with the Board at the July 15, 2021 business meeting and the August 3, 2021 policy session.

The Board previously was briefed about these proposed changes at a policy session under Administrator Issues, on June 8, 2021, as well as a policy session on August 3, 2021, and at the July 1, July 15, and July 29, 20221 business meetings.

RECOMMENDATION: Staff recommends that the Board adopt the proposed ordinance amending Chapter 8.03 of the Clackamas County Code as shown in Ordinance No. 04-2021.

Respectfully submitted by:

s/ Scott Ciecko
Scott Ciecko, Assistant County Counsel

ORDINANCE NO. 04-2021

**An Ordinance Amending
Clackamas County Code Chapter 8.03, Secondhand Dealers**

WHEREAS, ORS 166.170 prohibits the County from regulating the purchase and/or sale of firearms;

WHEREAS, the County should use debt collection agencies in an effort to recover fees and fines owed to it by secondhand dealers; and

WHEREAS, the County should require secondhand dealers to photograph valuable but difficult to identify items including jewelry, watches, precious metals, etc.;

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

Section 1: Chapter 8.03, Secondhand Dealers, of the Clackamas County Code is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

ADOPTED this 12th day of August, 2021.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Chapter 8.03

8.03 SECONDHAND DEALERS

[Chapter 8.03, Secondhand Dealers, codified by Ord. 05-2000, Amended by Ord. 05-2003, 3/13/03 is hereby repealed and replaced by Chapter 8.03 Secondhand Dealers, adopted by Ord. 02-2011, 9/15/11]

8.03.010 Purpose

The purpose of this chapter is to strictly regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. This risk is present despite the best effort of legitimate Secondhand Dealer and Pawnbroker businesses, because these businesses process large volumes of goods and materials that are frequently the object of theft. This chapter is intended to reduce this type of criminal activity by facilitating timely police notification of such property transactions, and by regulating the conduct of persons engaged in this business activity. The need for these regulations outweighs any anti-competitive effect that may result from their adoption.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.020 Definitions

As used in this chapter, unless the context requires otherwise:

- A. ACCEPTABLE IDENTIFICATION means either a current driver license, a State of Oregon Identification Card issued by the Department of Motor Vehicles, or one current United States federal, state or local government-issued identification card which has a photograph of the seller.
- B. ACQUIRE means to take or transfer any interest in personal property in a voluntary transaction, including but not limited to: sales, consignments, memoranda between a Dealer and a private party seller, leases, trade-ins, loans, and abandonments. Any acquisitions of regulated property by a Dealer will be presumed to be an acquisition on behalf of the Secondhand Dealer business. Notwithstanding the foregoing, “acquire” does not include:
 - 1. Any loans made in compliance with state laws by persons licensed as Pawnbrokers by the State of Oregon for the purposes of making a pawn loan; or
 - 2. Memoranda between a Dealer and a person engaged in the business of selling regulated property.
- C. BOARD means the Clackamas County Board of County Commissioners or its designee;
- D. CRIMINAL CONVICTIONS RELATED TO FRAUD, DECEPTION, DISHONESTY, OR THEFT means any conviction for a criminal violation of ORS 162.015 to 162.121; 162.265 to 162.385; 164.005 to 164.235; 164.377; 164.395 to 164.415; Chapter 165, or any similar provision of previous or later Oregon statutes, or statutes of another state, or of the United States;

- E. DEALER or SECONDHAND DEALER
1. Means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business and that either:
 - a. Acquires regulated property on behalf of a business, regardless of where the acquisition occurs, for the purpose of reselling the property; or
 - b. Offers for sale regulated property in Clackamas County.
 2. Notwithstanding Subsection 1 above, DEALER or SECONDHAND DEALER does not include any of the following:
 - a. A business whose acquisitions of regulated property consist exclusively of donated items and/or purchases from 501(c)(3) organizations; or
 - b. An individual or business whose only transactions involving regulated property in Clackamas County consist of the acquisition of regulated property for personal use, or the sale of regulated property that was originally acquired by the seller for personal use; or
 - c. A person whose only business transactions with regulated property in Clackamas County consist of a display space, booth, or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any calendar year.
- F. HELD PROPERTY means any regulated property that cannot be sold, dismantled, altered, or otherwise disposed of for a proscribed period of time as more specifically described in Section 8.03.090.
- G. INVESTMENT PURPOSES means the purchase of personal property by businesses and the retention of that property, in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.
- H. MEDICATION means any substances or preparation, prescription or over-the-counter, used in treating or caring for ailments and/or conditions in humans or animals.
- I. NEW means anything conspicuously not used.
- J. PAWNBROKER has the meaning set forth in ORS 726.010 (2) and includes any business required by ORS 726.040 to hold an Oregon Pawnbroker's license.
- K. PERSON means any natural person, or any partnership, association, company, organization or corporation.
- L. PRINCIPAL means any person who will be directly engaged or employed in the management or operation of the Secondhand Dealer business, including any owners and any shareholders with a 5% or greater interest in the company.
- M. REGULATED PROPERTY means any property of a type that has been determined by the Sheriff's Office to be property that is frequently the subject of theft, including but not limited to the following property, unless excluded by subsection 3 below, and may be revised as necessary by the Sheriff's Office after giving appropriate advance notification.
1. Used Items:
 - a. Precious metals;
 - b. Precious gems;
 - c. Watches of any type and jewelry containing precious metals or precious gems;

- d. Sterling silver including, but not limited to, flatware, candleholders, salt and pepper shakers, coffee and tea sets or ornamental objects;
 - e. Audio equipment;
 - f. Video equipment;
 - g. Other electronic equipment including, but not limited to: global positioning systems (GPS), electronic navigation devices or radar detectors;
 - h. Photographic and optical equipment;
 - i. Electrical office equipment;
 - j. Power equipment and tools;
 - k. Automotive and hand tools;
 - l. Telephones or telephone equipment;
 - m. Power yard and garden tools;
 - n. Musical instrument and related equipment;
 - ~~o. Firearms including, but not limited to, rifles, handguns, shotguns, pellet guns or BB guns;~~
 - ~~po. Sporting equipment;~~
 - ~~qp. Outboard motors, and boating accessories;~~
 - ~~rq. Household appliances;~~
 - ~~sr. Entertainment media such as Blu-ray discs, DVD's, DVD boxed sets, Video Game Cartridges, etc.; Video game consoles;~~
 - ~~ts. Property that is not purchased by a bona fide business for investment purposes, limited to:

 - i. Gold bullion bars (0.995 or better);
 - ii. Silver bullion bars (0.995 or better);
 - iii. All tokens, coins, or money, whether commemorative or an actual medium of exchange adopted by a domestic or foreign government as part of its currency whose intrinsic, market or collector value is greater than the apparent legal or face value; or
 - iv. Postage stamps, stamp collections and philatelic items whose intrinsic market or collector value is greater than the apparent legal or face value.~~
 - ~~ut. Computers and computer related software and equipment;~~
2. New items.
- a. New items purchased from a licensed business shall be exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent for the new items that specifies the seller's business name, physical and mailing address, date of transaction and description of the purchased items. The bill of lading shall be held by the Dealer for one (1) year, or as long as the property is in the Dealer's possession, whichever is longer. Upon reasonable belief that a specific licensed business is dealing in stolen property, the Sheriff may deem that new items purchased from that specific licensed business are regulated property.
 - b. Items acquired from a manufacturer, manufacturer's representative or distributor that are discontinued or have been used for display or

demonstration but not previously sold are new and exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent that includes the information specified in subsection (2)(a) of this section. The Dealer must hold the bill of lading, receipt, and invoice or equivalent for one (1) year or as long as the property is in the Dealer's possession.

3. Regulated property does not include any of the following property:
 - a. Books and comic books;
 - b. Sports cards and sports memorabilia;
 - c. Glassware and objets d'art including, but not limited to, paintings, prints, sculptures, ceramics, and porcelains;
 - d. Vehicles required to be registered with the Oregon Motor Vehicles Division;
 - e. Boats required to be certified by the Oregon Marine Board;
 - f. Furniture;
 - g. Refrigerators, freezers, stoves, ovens, dishwashers, washers and dryers;
 - h. Pursuant to ORS 166.170, firearms and components thereof, including but not limited to rifles, handguns, shotguns, pellet guns, BB guns, and ammunition.

- N. REMANUFACTURED means that an item has been altered to the degree that that the main components are no longer identifiable as the original item.
- O. SHERIFF or SHERIFF'S OFFICE means the Sheriff of Clackamas County, or their designee;
- P. SELLER means any person who:
 1. Offers items of regulated property in exchange for money or other property; or as collateral for a loan; or
 2. Donates or abandons items of regulated property.
- Q. TRANSACTION REPORT means the record of the information required by Section 8.03.080, transmitted to the Sheriff's Office by means required in Section 8.03.090.
- R. TRADE SHOW means an event open to the public, held in a venue other than a Dealer's business location, at which vendors of a specific type of merchandise may exhibit, buy, sell or trade items that may include regulated property.
- S. USED means anything that has been put into action or service.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.030 Permit Required

- A. No person shall act as a Secondhand Dealer in Clackamas County without a valid Secondhand Dealer's Permit issued by the Sheriff's Office.
- B. Any person or business that advertises or otherwise holds themselves out to be acquiring or offering for sale regulated property within Clackamas County will be presumed to be operating as a Secondhand Dealer subject to the terms of this chapter.
- C. Any Pawnbroker operating within Clackamas County shall be required to maintain a valid license pursuant to the Oregon Revised Statutes Chapter 726. If any Pawnbroker also acts as a Secondhand Dealer, that Pawnbroker shall be required to obtain a Secondhand Dealer permit and meet all requirements of this chapter. Any Pawnbroker

that is not a Secondhand Dealer shall nonetheless be subject to the following sections of this chapter:

1. 8.03.080 Reporting requirements (this section shall be used by Pawnbrokers in order to meet the requirements of ORS 726.280 – 726.285).
 2. 8.03.090 Sale Limitations
 3. 8.03.095 Exceptions to Sale Limitations
 4. 8.03.100 Tagging and Inspection of Property
 5. 8.03.110 Prohibited Acts
 6. 8.03.120 Citations
 7. 8.03.150 Nuisance
- D. The sale of regulated property at events known as “garage sales,” “yard sales,” “flea markets” or “estate sales,” is exempt from these regulations if all of the following are present:
1. No sale exceeds a period of seventy-two (72) consecutive hours; and
 2. No more than four (4) sales are held in any twelve- (12) month period.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.035 Minimum Standards

- A. No person may operate as a Secondhand Dealer within Clackamas County unless the person maintains a fixed physical business location.
- B. Any Secondhand Dealer who holds a valid permit may not change the business name of the premises without notifying the Clackamas County Sheriff’s Office at least 30 days prior to the actual effective date of the name change.
- C. Dealers shall comply with all federal, state and local regulations.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.040 Application for Permit

- A. An application for Secondhand Dealer’s Permit shall set forth the following information:
 1. The name, business and residential address, business and residential telephone number, birth date, driver license information, including state of issue and license number and principal occupation of the applicant and any person who will be directly engaged or employed in the management or operation of the business or the proposed business;
 2. The name, address, telephone number, and electronic mail address of the business or proposed business and a description of the exact nature of the business to be operated;
 3. The web address of any and all web pages used to acquire or offer for sale regulated property on behalf of the Dealer, and any and all internet auction account names used to acquire or offer for sale regulated property on behalf of the Dealer;
 4. Written proof that the applicant and all principals of the business are at least 18 years of age;

5. Each principal's business occupation or employment for the five (5) years immediately preceding the date of application;
 6. The business license and permit history of the applicant in operating a business identical to or similar to those regulated by this chapter.
 7. A brief summary of the applicant's business history in Clackamas County or in any other city, county or state including:
 - a. The business license or permit history of the applicant; and
 - b. Whether the applicant has ever had any such license or permit revoked or suspended, the reasons therefor, and the business activity or occupation of the applicant subsequent to the suspension or revocation;
 8. The form of the business or proposed business, whether a sole proprietorship, partnership or corporation, etc., and
 - a. If a partnership, the names, birth dates, addresses, telephone numbers, principal occupations, along with all other information required of any individual applicant, for each partner, whether general, limited, or silent, and the respective ownership shares owned by each;
 - b. If a corporation, or limited liability company, the name, copies of the articles of incorporation and the corporate bylaws, and the names, addresses, birth dates, telephone numbers, and principal occupations, along with all other information required of any individual applicant, for every officer, director, and every shareholder owning more than five percent of the outstanding shares, and the number of shares held by each.
 9. If the applicant does not own the business premises, a true and complete copy of the executed lease (and the legal description of the premises to be permitted) must be attached to the application;
 10. All arrests and criminal convictions relating to fraud, deception, dishonesty or theft, or citations for violation of Secondhand Dealer ordinance or statutes of any city, county, or state of each principal and all natural persons enumerated in paragraphs 1 through 7 of this section; and
- B. New employees of dealers shall complete and submit the Secondhand Dealer personal history information as required in Section A of this Subsection. Employees may not acquire regulated property until all required information has been reviewed by the Sheriff's Office, unless the Dealer receives permission from the Sheriff's Office while those employees' background checks are being evaluated. The criteria used to review a new employee will be the same as those used in the review of an initial application in Section 8.03.050(B).

[Adopted by Ord. 02-2011, 9/15/11]

8.03.050 Issuance and Renewal of Permit

- A. Applications for Secondhand Dealer's Permit must be notarized, and shall be filed with the Sheriff and shall include payment of the required fee. Individual employee history forms containing the required information of each employee need not be notarized, but must be signed by the specific individual represented on the form.

- B. The Sheriff's Office shall conduct an investigation of the applicant and all principals and employees directly engaged in the management or operation of the business listed according to the requirements in Sections 8.03.040(A) and 8.03.040(B). The Sheriff shall issue such permit if no cause for denial as noted herein exists.
- C. The Sheriff shall deny an application for a Secondhand Dealer's Permit if:
1. The applicant, or any other person who will be directly engaged in the management or operation of the business, or any person who owns a five percent or more interest in the business, has previously owned or operated a business regulated by this chapter or a similar ordinance or law of another city, county or state, and
 - a. the license and permit for the business has been revoked for cause which would be grounds for revocation pursuant to this chapter; or
 - b. The business has been found to constitute a public nuisance and abatement has been ordered; or
 2. Any person involved in the business has been convicted of any criminal offense related to fraud, deception, dishonesty or theft, or convicted of any violation of this chapter or laws of any city, county or state; or
 3. The operation as proposed by the applicant would not comply with all applicable requirements of statutes and local ordinances including, but not limited to: building, health, planning, zoning and fire chapters; or
 4. Any statement in the application is found to be false or any required information is withheld; or
 5. Evidence exists to support a finding that the location of the business for which the application has been filed has a history of violations of the provisions of this chapter; or
 6. The operation does not comply with applicable federal or state licensing requirements.
- D. Notwithstanding Section 8.03.050(B), the Sheriff may grant a permit despite the presence of one or more of the enumerated factors, if the applicant establishes to the Sheriff's satisfaction that:
1. The behavior evidenced by such factor(s) is not likely to recur;
 2. The behavior evidenced by such factor(s) is remote in time; and
 3. The behavior evidenced by such factor(s) occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this chapter.
- E. Secondhand Dealer's Permits shall be for a term of one year and shall expire on the anniversary of their issuance. The permits shall be nontransferable and shall be valid only for a single location. When the business location is to be changed, the permit holder shall provide the address of the new location in writing to the Sheriff for approval or disapproval at least 30 days prior to such change.
- F. All Secondhand Dealer's Permits shall be displayed on the business premises in a manner readily visible to patrons.
- G. The Sheriff's Office will have primary authority concerning the issuance of a permit. If an applicant for permit is denied, denied applicants will make their first appeal to the Clackamas County Hearings Officer. If denial of an application for permit is denied by the Hearings Officer, review shall be by writ of review as provided in ORS 34.010 to 34.100.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.060 Permit Fees

Every person engaged in conducting, carrying on or controlling a Secondhand Dealer's business shall:

- A. File an application as described in Section 8.03.050 and pay a nonrefundable fee as required by the Sheriff.
- B. For renewal of a Secondhand Dealer's Permit, file an application and pay a nonrefundable fee as required by the Sheriff.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.070 Additional Locations

- A. The holder of a valid Secondhand Dealer's Permit shall file with the Sheriff an application for a permit for each additional location, and shall pay a nonrefundable fee as required by the Sheriff.
- B. Permits issued for additional locations shall be subject to all the requirements of this chapter, and the term of any permit issued for an additional location shall expire on the same date as the initial permit.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.080 Reporting of Secondhand Dealer Regulated Property Transactions and Seller Identification

- A. Dealers shall provide to the Sheriff all required information listed for each regulated property transaction (not including sales). The Sheriff may designate the format of transfer of this information and may direct that it be communicated to the Clackamas County Sheriff's Office Pawn Shop Detail by means of mail, the internet or other computer media.
 - 1. In the event the Sheriff directs that the transaction information be transmitted via computer media, the Sheriff may also specify the system that will be utilized in order to ensure conformity among all dealers
 - 2. If, after establishing the format and requirements for the transmission of computerized reports of transactions, the Sheriff alters the required format; Dealers will be given at least sixty (60) days to comply with the new format requirements. If unable to implement the reporting system before the deadline, a Dealer must, prior to the deadline submit a written request to the Sheriff for additional time.
 - 3. Pawnbrokers are required to report only new transactions. Loan renewals and redemptions by the original client do not need to be reported as long as the property involved in the transaction has not left the store for any period of time.
- B. If paper forms are approved for use by the Sheriff's Office, the Sheriff will provide all Dealers with transaction report forms at cost until sixty (60) days after such time that the Sheriff directs a change in the reporting method. The Sheriff may specify the format (size, shape and color) of the transaction report form. The Sheriff may require that the

transaction report form include any information relating to the regulations of this chapter. Dealers may utilize their own forms, in lieu of those supplied by the Sheriff's Office, if the Sheriff has approved such forms. The Declaration of Proof of Ownership is considered to be included in references in this chapter to the transaction reports, as appropriate. Declaration of Proof of Ownership will be retained by the business and made available to law enforcement.

- C. When receiving regulated property, the Dealer must do all of the following except that Pawnbroker loan transactions are temporarily exempt from the requirements regarding copying acceptable identification, obtaining a thumbprint and completion of the Declaration of Proof of ownership until an electronic reporting system is implemented by the Sheriff's Office on October 31, 2011. If unable to comply before the deadline, a Pawnbroker must submit a written request for additional time to the Sheriff before the deadline. The requirements for a Dealer at the time of a transaction when receiving any regulated property are:
1. The Dealer must obtain acceptable photo identification from the seller or pledgor and verify that the photograph is a photograph matches the individual in the transaction.
 2. The Dealer must record the seller's current residential address, telephone number and thumbprint on the transaction report.
 3. The dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. If an item is new, the Dealer must include the word "new" in the property description.
 - a. The Dealer must complete the transaction report in its entirety, and the individual completing the report must initial it.
 - b. Transaction reports must be completed in legible printed English.
 4. The Dealer must require the Seller to legibly complete the Declaration of Proof of Ownership except that no such Declaration of Proof of Ownership is required for pawn loans made in compliance with state law by licensed pawnbrokers.
 - a. In completing the Declaration of Proof of Ownership the Seller must, at the time of the transaction, certify in writing that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased.
 - b. The Dealer or Dealer's employee must place the identifiable print of the seller's right thumb (left if right is unavailable) in the thumbprint box on the Declaration of Proof of Ownership. Thumbprints and the information on the Declaration of Proof of Ownership may be produced using a digital format with prior approval of the process from the Sheriff.
 - c. When no Declaration of Proof of Ownership is required for pawn loan transactions, the Dealer or Dealer's employee shall verbally verify that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased, and enter that information in the transaction report.
 5. A Dealer may provide a description of any motor vehicle (including license number) identified as used in the delivery of regulated property and record the description and license number next to the seller's thumbprint.

6. Transaction reports are designed to assist in the investigation of the theft of property. Therefore, additional reporting for Dealers includes unregulated property that is identifiable with markings indicating apparent ownership.
 7. Dealers must take either a photograph or still video of each person selling or loaning on an item of regulated property or make a copy of the acceptable identification presented by the seller. Dealers must also take either a photograph or a still video of each regulated item listed in 8.03.020(M)(1)(a) through (d) (items including precious metals, gems, watches, jewelry, sterling silver, etc.). These photos are required only for new transactions and do not apply to repeated transactions from the same person of the exact same item. All information on the copy must be legible and may be made by photostatic copying, computerized scanning or any other photographic, electronic, digital or other process that preserves and retains an image ~~of the document~~, and which can be subsequently produced or reproduced for viewing of the image. If a photograph is taken, a print of the photograph must be referenced to the transaction report number. A video photograph (still) must be referenced by time and date and transaction report number to correspond to the regulated property accepted. Copied identification must be kept with the transaction report or shall be referenced to the transaction report number. The photograph or videotape ~~of~~ copied identification and items of jewelry listed in 8.03.020(M)(1)(a) through (d) must be kept by the Dealer for one year and must be provided to the Sheriff's Office upon request.
- D. Dealers must mail or deliver to the Sheriff's Office at the close of each business day the original of all transaction reports describing articles received during that business day.
- E. Dealers must retain at their business location a copy of all completed and voided transaction reports for a period of not less than one year from the date of acquisition. Any unused transaction reports must be available for inspection by the Sheriff's Office.
- [Adopted by Ord. 02-2011, 9/15/11]

8.03.090 Regulated Property Sale Limitations

- A. Regulated property is subject to the following limitations:
1. Holding Period: Regulated property acquired by any Dealer must be held for a period of thirty (30) full days from the date of acquisition. Pawnbroker loan transactions are exempt from the 30-day hold requirements of this section because of the redeemable nature of the loans and the holding requirements of ORS 726. However, if the loan is converted to a buy by the Pawnbroker within 30 days from the date of the pawn transaction, the difference between the original date of the pawn and the buy will count toward the 30-day hold requirement. All other provisions of this section remain in effect.
 2. Requirements of held property: All held property must remain in the same form as when received, must not be sold, dismantled, altered or otherwise disposed of, and must be kept separate and apart from all other property during the holding period to prevent theft or accidental sale, and to allow for identification and examination by the Sheriff's Office. Held property must be kept at the business location during this holding period so that it can be inspected during normal business hours as provided in Section 8.03.100.

3. Held property requirements do not apply if:
 - a. the property is received by a Dealer from another Dealer (regulated by the Sheriff's Office or any other nearby police agency approved by the Sheriff) who has already satisfied the holding requirements of this chapter, and the receiving Dealer records the original transaction report number on the transaction report completed for the new transaction.
 - b. a customer, who originally purchased property from a Dealer, returns it with the original receipt.
- B. Upon reasonable belief that an item of regulated property is the subject of a crime, any peace officer may provide notice to any Dealer that a specifically described item of regulated property must be held in a separate Police Hold area for a period not to exceed thirty (30) days from the date of notification, and is subject to the (30) days upon notice provided to the Dealer that additional time is needed to determine whether a specific item of regulated property is the subject of a crime. The Dealer shall comply with the hold notice and notify the Sheriff's Office Pawn Shop Detail of the hold notice not later than five (5) calendar days from the day the notice was received, either by telephone, fax, email or in person. A Dealer must notify the Pawn Shop Detail of its intent to dispose of any item of regulated property under Police Hold at least ten (10) days prior to doing so. A Police Hold area must meet the following criteria:
 1. Located out of public view and access, and
 2. Marked "Police Hold", and
 3. Contains only items that have been put on Police Hold
- C. Any peace officer or Community Service Officer (unsworn peace officers employed by law enforcement agencies) who places a police hold on any property suspected of being the subject of a crime shall provide the Dealer with a DPSST number and a valid incident number.
- D. Upon probable cause that an item of regulated property is the subject of a crime, the Sheriff may take physical custody of the item or provide written notice to any Dealer to hold such property for a period of time to be determined by the Sheriff, not to exceed the statute of limitations for the crime being investigated. Any property placed on hold pursuant to this subsection is subject to the requirements of subsection (A)(2) above, and will be maintained in the Police Hold area unless seized or released by the Sheriff. Seizure of property will be carried out in accordance with ORS.
- E. If a Dealer acquires regulated property with serial numbers, personalized inscriptions or initials, or other identifying marks which have been destroyed or are illegible due to obvious normal use, the Dealer shall continue to hold the regulated property at the business location for a period of ninety (90) full days after acquisition. The Dealer must notify the Sheriff's Office by writing "90-day hold" next to the item on the transaction report or by an electronic means approved by the Sheriff's Office. The held property must conform to all the requirements of this section.
- F. If a peace officer seizes any property from a Dealer, the Dealer must notify the Sheriff's Office not later than five (5) calendar days from the day the seizure occurs. The Dealer must provide the name of police agency, the incident or case number, the name and DPSST number of the peace officer, the number of the receipt left for the seizure, and the seized property information. Notification to the Sheriff's Office may be given by telephone, fax, email or in person.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.095 Exceptions to Regulated Property Sale Limitations

- A. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, or have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements in Section 8.03.090 and if:
1. The item is acquired through consignment by a Dealer from a person who lives more than 150 miles from Clackamas County and the consigned property is mailed, shipped, or sent by courier to the Dealer.
 2. The item is acquired during a trade show. All items acquired during a trade show by a Dealer must be reported. At the time of the transaction, the Dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. The Dealer must also record the name and date of the event and the address of the venue in the name, date, and address fields of the transaction report form. Items acquired during a trade show may be sold or traded during the trade show without being held. Items still in a Dealer's possession at the end of the show will be subject to the hold period requirement in effect for that Dealer's acquisitions of regulated property.
 3. The item is acquired from a business whose acquisitions of regulated property consists exclusively of donated items and/or purchases from a 501(c)(3) organization. The Dealer must record the name and location address of the business in the name and address fields of the transaction report form and the date of acquisition.
 4. The item is acquired through an internet transaction. The Dealer must record on the transaction report the seller's email address or seller's identification, the name of the internet website that listed the item, and the date of the acquisition.
 5. The item is acquired by the Dealer from a yard sale, garage sale, estate sale or swap meet. The Dealer must record on the transaction report the physical address of the sale location and the date of acquisition.
- Items acquired under subsection (A) must be held in compliance with the hold period requirement in effect for the Dealer's other acquisitions of regulated property.
- B. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, nor have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements in Section 8.03.090 and if the item is used, regulated property acquired from a licensed business. The Dealer must keep a receipt for the item from the licensed business that includes the licensed business' name and a description of the item. The receipt must be retained at the Dealer's business location for one year or until the item is sold, whichever is longer. The Dealer must record on the transaction report the name and location address of the business in the name and address fields of the transaction report form, and the date of the acquisition. The item does not have to be held.
- C. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint if the Dealer complies with the following requirements:

1. Conducts each and every acquisition of regulated property by either:
 - a. Not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer; or
 - b. Offering in-store credit that must be used for merchandise only and not redeemed for cash; and
 2. Holds each and every item of regulated property for a minimum of fifteen (15) days from the date of acquisition; and
 3. Complies with the remaining requirements set forth in the Section 8.03.090; and
 4. Notifies the Sheriff in writing that each and every acquisition of regulated property will be conducted by not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer.
- D. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint when the Dealer acquires an item of regulated property on consignment if the Dealer complies with the following requirements:
1. Does not tender payment to the consignor for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer;
 2. Holds each and every item of consigned regulated property for a minimum of fifteen (15) days;
 3. Complies with the remaining requirements in Section 8.03.090.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.100 Tagging Regulated Property for Identification, Sheriff's Inspection

- A. Secondhand Dealer acquiring any regulated property shall affix to such property a tag upon which shall be written a unique number, in legible characters, which shall correspond to the number on the transaction report forms required by Section 8.03.080. After the holding period has expired, the transaction number must remain identifiable on the property until it is sold.
- B. After the applicable holding period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.
- C. After the applicable holding period has expired, items that are remanufactured need not remain tagged.
- D. Upon presentation of official identification, the Sheriff may seek permission to enter onto the business premises of any person with a Secondhand Dealer's Permit to ensure compliance with the provisions of this chapter. An inspection shall be for the limited purpose of inspecting any regulated property acquired by the dealer, held by the dealer pursuant to Section 8.03.090, or the records incident thereto. Such inspections shall occur only during normal business hours. The failure to grant permission to the Sheriff for inspection could result in a violation of this chapter.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.110 Prohibited Acts

- A. It shall be unlawful for any principal, employee or Dealer regulated by this chapter to:
1. Receive any property from any person known to the principal, employee or Dealer to be prohibited from selling by a court order or is under the age of eighteen (18) years,
 2. Receive property prohibited by this chapter. Items specifically prohibited from being acquired by Secondhand Dealers include:
 - a. Medications;
 - b. Gift cards, in-store credit cards, or activated phone cards;
 - c. Property with serial numbers, personalized inscriptions or initials or other identifying marks which appear to have been intentionally altered, obliterated, removed, or otherwise rendered illegible;
 - d. Any item that cannot be lawfully possessed pursuant to local, state, or federal law.
 3. Act as a Secondhand Dealer within Clackamas County without a valid Secondhand Dealer's Permit issued by the Sheriff.
 4. Fail to obtain acceptable identification from the person selling any regulated property;
 5. Fail to have the person selling any regulated property sign the transaction report form describing the article acquired;
 6. Fail to retain on the business premises a copy of the transaction report form describing the acquired regulated property for a period of one (1) year from the date of acquisition;
 7. Fail to mail or deliver to the Sheriff at the close of each business day the original and second copy of all transaction report forms and required photographs describing regulated property acquired during that business day;
 8. Fail to include on transaction report forms all readily available information required by the form;
 9. Fail to withhold from sale any regulated property for the required holding period after acquisition;
 10. Fail, after acquiring regulated property, to retain the property on the business premises for the required holding period after its acquisition;
 11. Fail to allow inspection by the Sheriff of any regulated property being retained pursuant to this chapter;
 12. Fail to allow inspection by the Sheriff of any records required by this chapter;
 13. Fail to have affixed to any acquired regulated property, during the required holding period, a tag on which is written a number in legible characters which corresponds to the number on the transaction report form required by this chapter;
 14. Continue activities as a Secondhand Dealer after suspension or revocation of a permit.

- B. Any violation of Section 8.03.110(A) is a County Code violation punishable by a fine in an amount set by resolution of the Board of County Commissioners.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.120 Citation

- A. The Sheriff, upon learning of a violation of Section 8.03.110(A) may issue the Secondhand Dealer a citation. Such citation shall be delivered at the address listed on the permit application during regular business hours to a person who appears to be in charge.
- B. The citation shall list the nature of the violation, and the time and date of the citation. The citation shall also indicate the fine assessed for said violation, which is to be paid to the Sheriff, or appealed within ten (10) days from the date of delivery. Appeal may be taken under the Hearing Officer procedure outlined in Section 8.03.140.
- C. Nothing in this section shall affect the ability of the Sheriff to take any and all actions otherwise authorized to abate any violation.

D. In the event that fines and fees assessed are not paid in full per the guidelines set forth in this chapter, the county reserves the right to assign the debt for collection.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.130 Revocation or Suspension of Permit

- A. The Sheriff may revoke or suspend any permit issued pursuant to this chapter:
 - 1. For any cause which would be grounds for denial of a permit; or
 - 2. Upon a finding that any violation of the provisions of this chapter, federal, state or other local law has been committed and the violation is connected with the operation of the permitted business location so that the person in charge of the business location knew, or should reasonably have known, that such violations or offenses were permitted to occur at the location by the Dealer or any principal or employee engaged or employed in the management or operation of the business location; or
 - 3. If lawful inspection has been refused; or
 - 4. If the Secondhand Dealer's activities cause significant litter, noise, vandalism, vehicular or pedestrian traffic congestion or other locational problems in the area around the Dealer's premises; or
 - 5. If a fine assessed under this chapter has not been paid to the Sheriff or appealed under Section 8.03.140 within ten (10) days after the date of delivery of a citation; or
 - 6. If any statement contained in the application for the permit is found to have been false; or
 - 7. If any Secondhand Dealer fails to meet federal or state licensing requirements.
- B. The Sheriff shall give the permittee written notice of proposed revocation or suspension of any permit issued pursuant to this chapter by causing notice to be served upon the permit holder at the address listed on the permit application. Service of the notice shall be accomplished by either mailing the notice by certified mail, return receipt requested, or by service in the same manner as a summons served in an action at law. Refusal of the

service by the person whose permit is revoked or suspended shall be prima facie evidence of receipt of the notice. Service of the notice upon the person in charge of a business, during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business.

- C. Revocation or suspension shall be effective and final ten (10) days after the giving of such notice unless such revocation or suspension is appealed in accordance with Section 8.03.140.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.140 Appeals

- A. Appeals of violations of this chapter will be made to the County Hearings Officer pursuant to Chapter 2.07 of the County Code.
- B. Orders of the Hearings Officer:
 - 1. Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.
 - 2. Findings of fact and conclusions of law shall accompany a final order. The findings of fact shall consist of a concise statement of the underlying facts supporting the Hearings Officer's order.
 - 3. The Hearings Officer shall notify the appellant and respondent of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the appellant and respondent or, if applicable, their attorney of record. The Hearings Officer shall issue a final order within fourteen (14) days from the conclusion of the hearing.
 - 4. The Hearings Officer shall file all final orders with the Clerk of the Board of County Commissioners. A final order shall become effective five (5) days after it is filed unless a party makes objections to the form of the order within five (5) days of filing and the Hearings Officer subsequently amends the final order.
- C. Enforcement of Hearings Officer Order:
 - 1. Fines and costs are payable upon receipt of the final order declaring the fine and costs. Fines and costs under this chapter are a debt owing to the Sheriff's Office and may be collected in the same manner as any other debt allowed by law.
 - 2. The Sheriff may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce any order of the Hearings Officer, including, but not limited to, an action to obtain judgment for any fine or any assessment for costs imposed pursuant to Sections 8.03.110(B) or 8.03.140(G).
- D. Judicial Review of the final order of the Hearings Officer under this chapter shall be by writ of review as provided in ORS 34.010 – 34.100.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.150 Maintenance of Regulated Business Activity in Violation Declared a Nuisance, Abatement

Any business maintained in violation of the provisions of this chapter is hereby declared to be a public nuisance. The Sheriff is authorized to bring any action or suit to seek imposition of fines

for violation of this chapter or to abate such nuisance by seeking injunctive or other appropriate relief to:

- A. Cease all unlawful activities;
- B. Close the unlawful business establishment;
- C. Return property obtained through unlawful activities to the rightful owners; or
- D. Seek such other relief as may be appropriate.

[Adopted by Ord. 02-2011, 9/15/11]

August 5, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #01 to a Subrecipient Agreement with ColumbiaCare Services, Inc.
for Residential Treatment Services

Purpose/Outcomes	To provide residential treatment services to Clackamas County clients.
Dollar Amount and Fiscal Impact	Amendment #01 does not change the value of the Agreement. The agreement maximum value remains \$1,508,000.00.
Funding Source	No County General Funds are involved. State of Oregon, Community Mental Health Program (CMHP) funds are utilized.
Duration	Effective July 1, 2021 and terminates on September 30, 2021.
Previous Board Action	Agreement reviewed and approved December 3, 2020, Agenda Item 120320-A1.
Strategic Plan Alignment	Ensuring safe, healthy and secure communities through the provision of mental health services.
Counsel Review	Reviewed by Counsel July 1, 2021 (AN)
Procurement Review	Was this item reviewed by Procurement? No Not required for subrecipient agreements and amendments.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division – 503-742-5305
Agreement No.	9391 (20-037)

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #01 to a Subrecipient Agreement with ColumbiaCare Services, Inc. for residential treatment services to Clackamas County clients. ColumbiaCare provides these services at seven facilities in Clackamas County, and works collaboratively with the County on treatment planning, admission and discharge authorizations and referrals for clients to specialty behavioral health services.

ColumbiaCare Services, Inc. is a not-for-profit agency that works to promote the whole health and wellness of individuals and communities by developing progressing systems of behavioral health care facilities, housing and service programs in collaboration with providers of social, judicial, health care, and Veterans services.

Amendment #01, effective July 1, 2021 through September 30, 2021, extends the term of the Agreement to ensure no gap in services while a formal procurement process for these services is completed.

RECOMMENDATION:

Staff recommends approval of this Amendment.

Respectfully submitted,

Rodney Cook, Interim Director
Health, Housing and Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9391	Division: BH	<input type="checkbox"/> Subrecipient
Board Order #: N/A (Under \$150,000)	Contact: Russell, Angela	<input type="checkbox"/> Revenue
	Program Contact: Brink, Angela	<input checked="" type="checkbox"/> Amend # 1 \$ \$0.00
		<input checked="" type="checkbox"/> Procurement Verified
		<input checked="" type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda

CONTRACT WITH: ColumbiaCare Services, Inc.

CONTRACT AMOUNT: \$1,508,000.00

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? 7/1/2021 - 9/30/2021 |

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: Naylor, Andrew _____ Date Approved: Thursday, July 1, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

AGREEMENTS/CONTRACTS

N/A (Under \$150,000)

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

ORIGINATING COUNTY

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

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT: ColumbiaCare Services, Inc.

PURPOSE OF

CONTRACT/AGREEMENT: Residential Services for Clackamas County Behavioral Health clients residing at ColumbiaCare facilities.

Amendment #01 extends the term of the Agreement three (3) months through September 30, 2021 to allow for the completion of a formal procurement process.

DATE OF EXECUTION: _____

H3S CONTRACT NUMBER: 9391

Subrecipient Amendment

Subrecipient Agreement Number: 20-037 (BH 9391)

Board Order Number:

Department/Division: H3S/Behavioral Health

Amendment No. 01

Subrecipient: ColumbiaCare Services, Inc.

Amendment Requested By: Mary Rumbaugh

Changes: Scope of Service
 Agreement Time

Agreement Budget
 Other: Updates contacts

Justification for Amendment:

This Subrecipient Agreement provides residential treatment services.

Amendment #01 extends the term of Agreement three (3) months through September 30, 2021, and adds additional funding source information.

This Amendment also updates financial reporting dates, and the County's grant accountant and program manager.

Compensation is unchanged by this Amendment.

Except as amended hereby, all other terms and conditions of the contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference.

ColumbiaCare Services, Inc. #9391 – Residential Treatment Services

Subrecipient Agreement 20-037 – Amendment # 1

Page 2 of 6

AMEND Clackamas County Data, Grant Accountant:

Grant Accountant: Ke`ala Adolpho
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5410 KAdolpho@clackamas.us

TO READ:

Grant Accountant: Nicole Unck
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5430 NUnck@clackamas.us

AMEND Clackamas County Data, Program Manager:

Program Manager: Nancy Benner
Clackamas County Behavioral Health Division 2051 Kaen Road Oregon City, OR 97045 (503) 742-5960 NBenner@clackamas.us

TO READ:

Program Manager: Josh Thomas
Clackamas County Behavioral Health Division 2051 Kaen Road Oregon City, OR 97045 (503) 742-5960 JThomas@clackamas.us

ColumbiaCare Services, Inc. #9391 – Residential Treatment Services

Subrecipient Agreement 20-037 – Amendment # 1

Page 3 of 6

AMEND Recitals #2:

WHEREAS, COUNTY holds an Intergovernmental Agreement (“IGA”) for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) with the State of Oregon acting by and through its Oregon Health Authority (“OHA”) for the biennium term of 2019-2021;

TO READ:

WHEREAS, COUNTY holds ***Intergovernmental Agreements*** (“IGA”) for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159 **and 166036**) with the State of Oregon acting by and through its Oregon Health Authority (“OHA”) for the biennium term of 2019-2021;

AMEND Section 1 of the Agreement:

1. **Term and Effective Date.** Pursuant to the terms of the grant award, the period of performance for this award shall be **July 1, 2019 to June 30, 2021**, unless sooner terminated or extended pursuant to the terms hereof.

TO READ:

1. **Term and Effective Date.** Pursuant to the terms of the grant award, the period of performance for this award shall be **July 1, 2019 to September 30, 2021**, unless sooner terminated or extended pursuant to the terms hereof.

AMEND Section 3 of the 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 Community Mental Health Program (“CMHP”) IGA 159159 awarded on June 26, 2019, which is/are the source of the grant funding, in addition to compliance with requirements of Title 42 of the *Code of Federal Regulations* (“CFR”), Part 6A, Sub-Part II & III. A copy of the relevant sections of that grant award have been provided to SUBRECIPIENT by COUNTY, which are attached to and made a part of this Agreement by reference. SUBRECIPIENT shall further comply with any requirements, 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.

TO READ:

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 Community Mental Health Program (“CMHP”) IGA 159159 awarded on June 26, 2019 and ***IGA 166036 awarded May 25, 2021***, which is/are the source of the grant funding, in addition to compliance with requirements of Title 42 of the *Code of Federal Regulations* (“CFR”), Part 6A, Sub-Part II & III. A copy of the relevant sections of that grant award have been provided to SUBRECIPIENT by COUNTY, which are attached to and made a part of this Agreement by reference. SUBRECIPIENT shall further comply with any requirements, 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.

AMEND Section 4 of the Agreement:

4. **Grant Funds.** COUNTY's funding for this Agreement is the 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159). The maximum, not to exceed, grant amount COUNTY will pay is **\$1,508,000.00**. This is a rate-based agreement and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Performance Measures and Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:

4.1. **Federal Funds: \$108,000.00** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) (**CFDA 93.958**) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Community Mental Health Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.

4.2. **Other Funds: \$1,400,000.00** in State funds are provided for funding of other items in the program budget.

TO READ:

4. **Grant Funds.** COUNTY's funding for this Agreement **are the 2019-2021 Intergovernmental Agreements** for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159 **and 166036**). The maximum, not to exceed, grant amount COUNTY will pay is **\$1,508,000.00**. This is a rate-based agreement and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Performance Measures and Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:

4.1. **Federal Funds: \$108,000.00** in federal funds are provided through the Intergovernmental **Agreements** for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159 **and 166036**) (**CFDA 93.958**) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Community Mental Health Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.

4.2. **Other Funds: \$1,400,000.00** in State funds are provided for funding of other items in the program budget.

AMEND Section 2 of Exhibit D, Required Financial Reporting and Reimbursement Request:

2. Requests for reimbursement shall be submitted by the **10th of the month** for the previous month. The final request for reimbursement shall be submitted by July 10, 2021 for June 30, 2021 expenses.

TO READ:

2. Requests for reimbursement shall be submitted by the **10th of the month** for the previous month. The final request for reimbursement shall be submitted by **October 10, 2021 for September 30, 2021** expenses.

AMEND Section 4 of Exhibit D, Required Financial Reporting and Reimbursement Request:

4. Request for Reimbursement shall be submitted electronically to:

BHAP@clackamas.us, NBenner@clackamas.us, and MWestbrook@clackamas.us

Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

TO READ:

4. Request for Reimbursement shall be submitted electronically to:

BHAP@clackamas.us, JThomas@clackamas.us, and MWestbrook@clackamas.us

Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

AMEND Procedure Section 2 of Exhibit E, Reporting:

- 1) SUBRECIPIENT shall send via secure email a copy of the incident report with twenty-four (24) hours, using the following address:

Secure email: NBenner@clackamas.us

TO READ:

- 1) SUBRECIPIENT shall send via secure email a copy of the incident report with twenty-four (24) hours, using the following address:

Secure email: JThomas@clackamas.us

[Signature page follows]

ColumbiaCare Services, Inc. #9391 – Residential Treatment Services

Subrecipient Agreement 20-037 – Amendment # 1

Page 6 of 6

SIGNATURE PAGE

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

COLUMBIACARE SERVICES, INC.

COUNTY OF CLACKAMAS

 4/30/21
Authorized Signature Date

Tootie Smith, Chair Date
Board of County Commissioners

 _____
Name / Title (Printed)

Approved as to form:

 07/01/2021
County Counsel Date

August 05, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment #21 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County

Purpose/Outcomes	Amendment #21 increases PE01-05 COVID-19 Local Active Monitoring by \$169,959.00.
Dollar Amount and Fiscal Impact	Bringing the contract maximum value to \$19,669,700.00
Funding Source	Funding through the State - No County General Funds are involved.
Duration	Effective May 1, 2021 and terminates on June 30, 2021
Previous Board Action	The Board previously reviewed and approved this agreement on June 20, 2019, Agenda item 062019-A1, September 5, 2019, Agenda item 090519-A1, September 26, 2019, Agenda item 092619-A5, October 24, 2019, Agenda item 102419-A5, October 31, 2019, Agenda item 103119-A3, December 12, 2019, Agenda item 121219-A2, January 8, 2020, Agenda item 010920-A8, March 26, 2020, Agenda Item 032620-A5, April 23, 2020, June 25, 230, Agenda item 062520-A8, October 22, 2020, Agenda item 102220-A1, January 14, 2021, Agenda item 011421-A3, January 28, 2021, Agenda item 012821-A8, February 25, 2021, Agenda item 020521-A6, April 29, 2021, Agenda item 042921-A-4, June 03, 2021, Agenda item - 060321-A11
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 June 30, 2021 KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	9329-21

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #21 increases PE01-05 COVID-19 Local Active Monitoring by \$169,959.00. Bringing the contract maximum value to \$19,669,700.00

This contract is effective May 1, 2021 and continues through June 30, 2021.

Page 2 Staff Report
August 5, 2021
Agreement #9329-21

RECOMMENDATION:

Staff recommends the Board approval of this Amendment.

Respectfully submitted,

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

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9329	Division: PH	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Weber, Jeanne	<input checked="" type="checkbox"/> Revenue
	Program Contact: Swift, Rich	<input checked="" type="checkbox"/> Amend # 21 \$ \$169,959.00
		<input checked="" type="checkbox"/> Procurement Verified
		<input checked="" type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Thursday, August 5, 2021

CONTRACT WITH: OR-Oregon Health Authority

CONTRACT AMOUNT: \$19,669,700.00

TYPE OF CONTRACT

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

DATE RANGE

- | | |
|---------------------------------------------------------|-------------------------------------------------------------------------------|
| <input 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? 5/1/2021 - 6/30/2021 |

INSURANCE What insurance language is required?

Checked Off N/A

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

If no, explain why:

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

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

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

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

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

COUNTY COUNSEL

Yes by: Kathleen Rastetter _____ Date Approved: Wednesday, June 30, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

AGREEMENTS/CONTRACTS

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

ORIGINATING COUNTY

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

PURCHASING FOR: **Contracted Services** _____

OTHER PARTY TO

CONTRACT/AGREEMENT: **OR-Oregon Health Authority** _____

BOARD AGENDA ITEM

NUMBER/DATE: _____ DATE: **8/5/2021** _____

PURPOSE OF

CONTRACT/AGREEMENT: 2019-2021 Local Public Health Authority Agreement
for Public Health Services.

Amendment #21 increases PE01-05 COVID-19 Local Active Monitoring by
\$169,959.00 bringing the contract maximum value to \$19,669,700.00

H3S CONTRACT NUMBER: **9329** _____

Agreement #159803



**TWENTY-FIRST AMENDMENT TO OREGON HEALTH AUTHORITY
2019-2021 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

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

This Twenty-First Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2019, (as amended the "Agreement"), is between the State of Oregon acting by and through its Oregon Health Authority ("OHA") and Clackamas County, ("LPHA"), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Clackamas County.

RECITALS

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2021 (FY21) Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

AGREEMENT

1. This Amendment is effective on the first day of the of the month noted in the Issue Date section of Exhibit C Financial Assistance Award FY21.
2. Section 1 of Exhibit C of the Amended and Restated Agreement, entitled "Financial Assistance Award" for FY21 is hereby superseded and replaced in its entirety by Attachment A, entitled "Financial Assistance Award (FY21)", attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 3 of Exhibit C.
3. Exhibit J of the Amended and Restated Agreement entitled "Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200" is amended to add to the federal award information datasheet as set forth in Attachment B, attached hereto and incorporated herein by this reference.
4. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
5. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
6. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
7. The parties expressly ratify the Agreement as herein amended.

8. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

9. Signatures.

STATE OF OREGON ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY (OHA)

By: _____

Name: /for/ Carole L. Yann

Title: Director of Fiscal and Business Operations

Date: _____

CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY

By: _____

Name: Tootie Smith

Title: Chair, Board of County Commissioners

Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Approved by Wendy Johnson, Senior Assistant Attorney General on July 9, 2020. Copy of emailed approval on file at OHA, OC&P.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

By: _____

Name: Derrick Clark (or designee)

Title: Program Support Manager

Date: _____

**Attachment A
Financial Assistance Award (FY21)**

State of Oregon Oregon Health Authority Public Health Division				
1) Grantee Name: Clackamas County Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip: 97045-4035		2) Issue Date Saturday, May 1, 2021	This Action Amendment	
		3) Award Period From July 1, 2020 through June 30, 2021		
4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE01-01	State Support for Public Health	\$506,554.00	\$0.00	\$506,554.00
PE01-04	COVID19 Response	\$0.00	\$0.00	\$0.00
PE01-05	COVID-19 Local Active Monitoring	\$2,799,435.00	\$169,959.00	\$2,969,394.00
PE01-07	ELC ED Contact Tracing	\$1,655,709.00	\$0.00	\$1,655,709.00
PE01-08	COVID Wrap Direct Client Services	\$20,000.00	\$0.00	\$20,000.00
PE01-09	COVID-19 Active Monitoring - ELC	\$4,757,197.00	\$0.00	\$4,757,197.00
PE01-10	OIP - CARES	\$1,265,402.00	\$0.00	\$1,265,402.00
PE02	Cities Readiness Initiative	\$35,546.00	\$0.00	\$35,546.00
PE07	HIV Prevention Services	\$127,562.00	\$0.00	\$127,562.00
PE12	Public Health Emergency Preparedness and Response (PHEP)	\$177,386.00	\$0.00	\$177,386.00
PE13-01	Tobacco Prevention and Education Program (TPEP)	\$275,286.00	\$0.00	\$275,286.00
PE27-04	PDOP Naloxone Project (SOR)	\$16,248.00	\$0.00	\$16,248.00
PE27-05	PDOP Bridge (PDO/SOR)	\$30,000.00	\$0.00	\$30,000.00
PE40-01	WIC NSA: July - September	\$191,491.00	\$0.00	\$191,491.00

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE40-02	WIC NSA: October - June	\$579,475.00	\$0.00	\$579,475.00
PE40-03	BFPC: July - September	\$18,191.00	\$0.00	\$18,191.00
PE40-04	BFPC: October - June	\$54,574.00	\$0.00	\$54,574.00
PE40-05	Farmer's Market	\$53.00	\$0.00	\$53.00
PE42-03	MCAH Perinatal General Funds & Title XIX	\$11,118.00	\$0.00	\$11,118.00
PE42-04	MCAH Babies First! General Funds	\$35,527.00	\$0.00	\$35,527.00
PE42-06	MCAH General Funds & Title XIX	\$20,860.00	\$0.00	\$20,860.00
PE42-11	MCAH Title V	\$119,462.00	\$0.00	\$119,462.00
PE42-12	MCAH Oregon Mothers Care Title V	\$9,482.00	\$0.00	\$9,482.00
PE43-01	Public Health Practice (PHP) - Immunization Services	\$92,240.00	\$0.00	\$92,240.00
PE43-06	CARES Flu	\$108,767.00	\$0.00	\$108,767.00
PE44-01	SBHC Base	\$371,271.00	\$0.00	\$371,271.00
PE44-02	SBHC - Mental Health Expansion	\$376,500.00	\$0.00	\$376,500.00
PE46-05	RH Community Participation & Assurance of Access	\$43,532.00	\$0.00	\$43,532.00
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$176,970.00	\$0.00	\$176,970.00
PE51-01	LPHA Leadership, Governance and Program Implementation	\$287,331.00	\$0.00	\$287,331.00
PE62	Overdose Prevention-Counties	\$123,545.00	\$0.00	\$123,545.00
		\$14,286,714.00	\$169,959.00	\$14,456,673.00

5) Foot Notes:	
PE01-01	1/1/2021: Please note PE language has been updated effective 12/31/2020.
PE01-04	9/2020: SFY21 Funding for 7/1/2020-12/30/2020 is CARES Act funding. Funds must be spent by 12/30/20. Indirect charges are not permitted.
PE01-04	3/2021: SFY21 Funding for 7/1/2020-6/30/2021 is CARES Act funding. Funds must be spent by 6/30/2021. Indirect charges are not permitted.
PE01-05	9/2020: SFY21 Funds can be spent from 7/1/20-12/30/2020 only. CARES Act funding. Indirect expenses are not allowed.
PE01-05	3/2021: SFY21 Funding for 7/1/2020-6/30/2021 is CARES Act funding. Funds must be spent by 6/30/2021. Indirect charges are not permitted.
PE01-08	Funds are for 1/1/2021-6/30/2021.
PE01-09	Funds are available 01/15/2021 - 06/30/2023
PE01-10	Awarded funds can be spent on allowable costs for the period of 7/1/2020 - 6/30/2024. Any unspent funds as of 6/30/21 will be rolled over into the FY22 award. Please see provided budget guidance for more details on roll over information.
PE12	11/2020: Increase award due to OHA's carryover funds from CDC, funds awarded to SFY21 must be spent by June 30, 2021
PE27-04	Initial SFY21: Indirect Cost Rate for the Federal Award is 10.00%. Recipients of PEs funded by this award shall not use more than 10.00% on indirect costs.
PE27-05	Initial SFY21: Indirect Cost Rate for the Federal Award is 10.00%. Recipients of PEs funded by this award shall not use more than 10.00% on indirect costs.
PE40-01	Initial SFY21: July - September 2020 (PE40-01) award must be spent by 9/30/2020. The expenses for State reimbursement should be put on 1st quarter Revenue and Expense Report. The underspent amount cannot be carried over to October 2020 - June 2021 (PE40-02).
PE40-02	Initial SFY21: Report eligible expenses in Q2, Q3 and Q4 on the Quarterly Revenue and Expenditure Report.
PE40-02	11/2020: Award adjustment for telehealth work, see updated PE40-02 comment for new Nutrition Ed and Breastfeeding Ed amounts
PE40-02	-
PE40-03	Initial SFY21: July - September 2020 (PE40-03) award must be spent by 9/30/2020. The expenses for State reimbursement should be put on 1st quarter Revenue and Expense Report. The underspent amount cannot be carried over to October 2020 - June 2021 (PE40-04)
PE40-03	SFY2021 Q1 reconciliation for underspending
PE40-04	Initial SFY21: Report eligible expenses in Q2, Q3 and Q4 on the Quarterly Revenue and Expenditure Report
PE42-11	Initial SFY21: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.

5) Foot Notes:	
PE42-12	Initial SFY21: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.
PE42-12	Initial SFY21: Due to COVID-19 pandemic, additional one-time funding was allocated to OMC sites in FY21 to support outreach and service provision efforts.
PE43-06	Allowable expenses for FY21 include the period of 6/6/2020 – 6/30/2021. All expenses for the entire period should be reported on the FY21 Revenue and Expenditure reports.
PE62	8/2020: Indirect Cost Rate for the Federal Award is 10.00%. Recipients of PEs funded by this award shall not use more than 10.00% on indirect costs.

6) Comments:	
PE01-01	8/2020: Adding revised PE01 language to all grantees, changes are to align PE language with the current SFY21 template, no changes to award amount. 9/2020: Adding revised PE language clarifying Memorandum of Understanding requirements.
PE01-05	9/2020a: SFY21 Rollover of unspent funds \$565,749.49 from FY20 to FY21. Must be spent by 12/30/20. 9/2020b. Case investigation FFS 3/27-7/31/20 \$1,523,814.88; 10/2020 Rollover add FY20 unspent funds of \$14,116.83 to FY21; Case Investigation FFS through 8/31/20 \$695,753.80; 5/2021 - add'l funds for FFS Case Management
PE01-07	1/2020: ELC Funding is for Dec 31, 2020 through June 30, 2021.
PE01-08	1/2021: add award for wrap client direct services
PE01-09	SFY21: COVID Award
PE07	08/2020: PE language updated to reflect change in systems for data entry associated with HIV testing and to update expired links throughout document. Initial SFY21: \$39,233 FF available for use 07/01/20-12/31/20; \$39,233 FF available for use 01/01/21-06/30/21; \$49,096 GF available for use 07/01/20-06/30/21
PE12	08/2020: Amending to revise PE12 language
PE27-04	Initial SFY21: \$16,248 available 7/1/2020 - 9/29/2020.
PE27-05	Initial SFY21: \$30,000 in FY21 available 7/1/2020 - 9/29/2020.
PE40-01	Initial SFY21: Spend \$38,298 on Nutrition Ed; \$7,605 on BF Promotion
PE40-02	Initial SFY21: Spend \$114,895 on Nutrition Ed; \$22,815 on Breastfeeding Ed 11/2020: Spend \$115,895 on Nutrition Ed; \$22,815 on Breastfeeding Ed; Previous comment void and replaced by this one
PE40-03	Initial SFY21: Award amount to be spent by 9/30/2020
PE40-05	Initial SFY21: 50% to be paid on 7/1/2020; 50% to be paid on 10/1/2020
PE44-01	3/2021: increase award
PE62	8/2020: \$123,545 in FY21 is from OD2A YR 2, Funding Available 10/1/20-6/30/21

7) Capital outlay Requested in this action:				
Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.				
Program	Item Description	Cost	PROG APPROV	

Attachment B
Information required by CFR Subtitle B with guidance at 2 CFR Part 200

PE01-05 COVID-19 Local Active Monitoring

Federal Award Identification Number:	N/A	N/A
Federal Award Date:	3/1/20	3/1/20
Budget Performance Period:	3/27/2020-12/30/2021	3/27/2020-12/30/2021
Awarding Agency:	CARES Act	CARES Act
CDFA Number:	21.019	21.019
CFDFA Name:	CARES Act	CARES Act
Total Federal Award:	94,200,000	94,200,000
Project Description:	CARES Act	CARES Act
Awarding Official:	N/A	N/A
Indirect Cost Rate:	N/A	N/A
Research and Development (T/F):	FALSE	FALSE
PCA:	50248	50251
Index:	50109	50109

Agency	DUNS No.	Amount	Amount	Grand Total:
Clackamas	096992656	\$2,969,394.00	\$0.00	\$2,969,394.00

August 05, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority (OHA) for Public Health Medicaid Administrative Claiming (PH MAC)

Purpose/Outcomes	Public Health Medicaid Administrative Claiming (PH MAC) is a reimbursement mechanism that 22 Oregon county health departments use to pay for the time spent by Public Health staff on administrative activities not otherwise reimbursed by Medicaid.
Dollar Amount and Fiscal Impact	The contract Maximum is \$1,900,000. over a 5 year period
Funding Source	Public Health Nurse Home Visiting Program will pay the matching funds with their fee for service revenue. No additional County General Funds are involved. No re-allocation of Public Health approved County General Funds will be made. Cost recovery payment to Public Health comes through the State
Duration	Effective upon full execution and terminates on June 30, 2026
Previous Board Action	No previous Board actions
Strategic Plan Alignment	1. Efficient and effective services 2. Build a strong infrastructure
Counsel Review	County counsel has reviewed and approved this document on July 06, 2021 AN
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	10166

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of. Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority (OHA) for Medicaid Administrative Claiming (MAC)

Public Health Medicaid Administrative Claiming (PH MAC) is a reimbursement mechanism that 22 Oregon county health departments use to pay for the time spent by Public Health staff on administrative activities not otherwise reimbursed by Medicaid. Examples of these activities include the following: outreach and health education; a range of transportation services for the home visitation staff and for families; interpretation services; contacting pregnant women about

Page 2 Staff Report
August 5, 2021
Agreement #10166

the availability of Medicaid prenatal and well-baby care programs and services; and providing referral assistance to families. PH MAC cannot be used for direct health services that are reimbursed by Medicaid or other federal funding (e.g., WIC, Title V). The nurses, community health workers, interpreters, and administrative staff within the Public Health Nurse Home Visiting Program can all use Public Health MAC.

PH MAC reimbursement requires a 50% match from participating county health departments, participation in a quarterly time verification study, and quarterly claim submissions. The time verification study is conducted by OHA and the Multnomah County Education Service District. There is a small cost that participating county health departments must pay to OHA and the Multnomah County Education Service District to administer the time verification study and manage the resulting data. The cost is nominal. Given these factors, quarterly PH MAC claims vary; however, within the last fiscal year, the average MAC claim (between all 22 participating agencies) was about \$38,500 per quarter.

Bringing the contract maximum value to \$1,900,000.00

This contract is effective upon full execution and continues through June 30, 2026.

RECOMMENDATION:

Staff recommends the Board approval of this Amendment.

Respectfully submitted,

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

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10166

Division: PH
Contact: Weber, Jeanne
Program Contact:
Philip Mason-JOyner

- Subrecipient
- Revenue
- Amend
- Procurement Verified
- Aggregate Total Verified

Board Order #:

Non BCC Item BCC Agenda Date: Thursday, August 5, 2021

CONTRACT WITH: State of Oregon

CONTRACT AMOUNT: \$1,900,000.00

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 checked="" type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off |

DATE RANGE

- | | |
|----------------------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____ |
| <input checked="" type="checkbox"/> Upon Signature _____ - 6/30/2026 | <input type="checkbox"/> Biennium _____ - _____ |
| <input type="checkbox"/> Other _____ - _____ | <input type="checkbox"/> Retroactive Request? _____ |

INSURANCE What insurance language is required?

- Checked Off N/A
- Commercial General Liability:** Yes No, not applicable No, waived
If no, explain why:
- Business Automobile Liability:** Yes No, not applicable No, waived
If no, explain why:
- Professional Liability:** Yes No, not applicable No, waived
If no, explain why:
Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

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

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

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

COUNTY COUNSEL

Yes by: Andrew Naylor Date Approved: Wednesday, June 30, 2021

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
Public Health

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT State of Oregon

BOARD AGENDA ITEM

NUMBER/DATE: _____

DATE: 8/5/2021

PURPOSE OF

CONTRACT/AGREEMENT: 2Public Health Medicaid Administrative Claiming (PH MAC) is a reimbursement mechanism that 22 Oregon county health departments use to pay for the time spent by Public Health staff on administrative activities not otherwise reimbursed by Medicaid.

H3S CONTRACT NUMBER: 10166



Agreement Number 170610

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA,” and

**Clackamas County
2051 Kaen Road, Suite 367
Oregon City, OR 97045
Attention: Philip Mason-Joyner
Telephone: (503) 742-5300
E-mail address: pmason@clackamas.us**

hereinafter referred to as “County.”

Work to be performed under this Agreement relates principally to OHA’s

**OHA – Public Health
Maternal & Child Health, Center for Prevention & Health Promotion
800 NE Oregon Street, Suite 825
Portland, OR 97232
Agreement Administrator: David Anderson or delegate
Telephone: (971) 276-0412
Facsimile: (971) 947-1177
E-mail address: david.v.anderson@dhsaha.state.or.us**

1. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on **July 1, 2021**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2026**. Agreement termination or expiration shall not extinguish or prejudice either party’s right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. Agreement Documents.

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Federal Terms and Conditions

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, B, A, and C.

c. For purposes of this Agreement, “Work” means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

3. Consideration.

a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$1,900,000.00**. OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

b. OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. Contractor or Subrecipient Determination.

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

- County is a subrecipient County is a contractor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.778

5. County Data and Certification.

a. County Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): _____

Street address: _____

City, state, zip code: _____

Email address: _____

Telephone: () _____ Facsimile: () _____

Proof of Insurance: County shall provide the following information upon submission of the signed Agreement, all insurance listed herein and required by Exhibit C, must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: _____

Policy #: _____ Expiration Date: _____

b. Certification. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies under penalty of perjury that:

- (1) The County is in compliance with all insurance requirements of this Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance within 30 days of execution of this Agreement. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
- (2) The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;

- (3) The information shown in this Section 5a. "County Information", is County's true, accurate and correct information;
- (4) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (5) County and County's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (6) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>;
- (7) County is not subject to backup withholding because:
 - (a) County is exempt from backup withholding;
 - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County that County is no longer subject to backup withholding; and
- (8) County Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is required to provide OHA with the new FEIN within 10 days.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures. This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original.

Clackamas County

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon, acting by and through its Oregon Health Authority pursuant to ORS 190

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via E-mail by Jeffrey J. Wahl, Assistant Attorney General
Department of Justice

June 30, 2021
Date

EXHIBIT A

Part 1 Statement of Work

Public Health MAC Time Study Activity Codes

- A1. Outreach and Application Assistance for the Medicaid Program** means interviews, group meetings, phone contacts or home visits that inform Medicaid eligible and potentially Medicaid eligible individuals and their families about the benefits and availability of services provided by the Medicaid program. Additionally informing individuals and their families on how to access, use and maintain participation in all health care resources (i.e. Medicaid, Early Periodic Screening and Diagnostic Testing, etc.), creating and/or disseminating materials to inform children and families about Medicaid and assisting them to make application for Medicaid eligibility (i.e. collecting information for the Medicaid application, helping to complete necessary forms for the Medicaid application, and updating of forms as necessary if a child or family's circumstances change), related staff travel and paperwork.
- A2. Outreach and Application Assistance for Non-Medicaid Programs** means activities that assist the patient/client in gaining access to non-Medicaid services, effectively utilizing social services and community wellness programs. (Included are housing, commodities, food banks, Women's Infant and Children Program ("WIC"), foster care, financial assistance, exercise and weight loss programs, energy assistance, childcare, after school programs, friendly visitor and vocational services). Activities that assist the client in applying for these services, including form preparation, related staff travel and paperwork.
- B1. Referral, Coordination, Monitoring, and Training of Medicaid Services** means making referrals for and coordinating the delivery of diagnostic and preventive service and treatment for health, vision, dental, developmental, mental health, substance abuse and other Medicaid services. Includes staffing to coordinate Medicaid case plan services (participation in multidisciplinary team meetings, conferencing on health, developmental issues, consultations), gathering background information and supportive information, such as medical histories, writing case plans, or summaries and preparing and/or presenting materials for case review, arranging for health services and coordinating services (i.e. psychological counseling, health, substance abuse counseling and consultation, inpatient services), related staff travel and paperwork.
- B2. Referral, Coordination, Monitoring, and Training of Non-Medicaid Services:** means making referrals for and coordinating the delivery of social services and community wellness programs (including housing, commodities, food banks, WIC, foster care, financial assistance, exercise and weight loss programs, energy assistance, child care, after school programs,

friendly visitor and vocational services) arranging transportation for these services and related staff travel and paperwork.

- C1. Medicaid/OHP transportation and translation** means assisting an individual to obtain transportation to services covered by OHP, arranging for or providing translation services to facilitate access to OHP services. Include related paperwork, clerical activities or staff travel required to perform these activities.
- C2. Non-Medicaid/OHP transportation and translation** means assisting an individual to obtain transportation to services not covered by Medicaid/OHP, or arranging for or providing translation services related to social, vocational, or educational programs. Include related paperwork, clerical activities or staff travel time required to perform these activities.
- D1. System Coordination Related to Medicaid Services:** means working internally and with other agencies to improve Medicaid health services, identify gaps in services, expand health and medical services; and improve capacity to engage in medical assistance services and to expand access and linkage to medical and health services and their utilization by medical assistance target populations, gathering information about the target population to improve early identification of health and developmental problems; related staff travel and paperwork.
- D2. System Coordination Related to Non-Medicaid Services:** means working internally and with other agencies to improve social services, identify gaps in services, expand and improve capacity to engage in non-Medicaid activities, expand access and linkage to non-Medicaid services, their utilization by target populations; related staff travel and paperwork.
- E. Direct Health Care Services:** means providing direct health care services to a patient, such as well baby checkups, immunizations, disease management, counseling, and including medical case management or other activities that are an integral part or extension of a patient's visit. Included is all related paperwork, clerical activities, staff time, or travel required performing these services
- F. Other Work Activities:** means all other paid work activities that do not fall under one of the above categories. Time off for vacation, sick leave, family leave, holidays, jury duty, paid lunchtime, comp time, and any other time away from work if the time is paid. Such activities may include payroll, maintaining inventories, developing budgets, general supervision, etc. All related paperwork, clerical activities, or staff travel would also be included.

1. BACKGROUND

Under Title XIX of the Social Security Act (“the Act”), the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation (“FFP”) is the federal government’s share for states’ Medicaid program

expenditures. States may claim FFP for providing administrative activities that are found to be necessary by the Secretary of the U.S. Department of Health and Human Service for proper and efficient administration of the state Medicaid plan. The process applicable to claiming administrative costs is referred to herein as Medicaid Administrative Claiming or MAC.

OHA and County intend to improve health services access and availability for children and families eligible for medical assistance under Medicaid and who reside in the geographic area(s) served by the County. Under the Agreement, County will perform Title XIX administrative activities, and OHA will reimburse County for the cost of performing these administrative activities. County will provide, through its own staff and through subcontracts, outreach, health care coordination, and other medical assistance related administrative activities that support OHA's administration of the Title XIX Medicaid Oregon State Plan (the "State Medicaid Plan.").

2. STATEMENT OF WORK

County shall directly and through subcontracts approved by OHA provide to Medicaid-eligible clients allowable Title XIX administrative activities as follows: (a) Outreach and Application Assistance for the Medicaid Program; (b) Referral, Coordination, Monitoring, and Training of Medicaid Services; (c) Medicaid/Oregon Health Plan ("OHP") transportation and translation; and (d) System Coordination Related to Medicaid Services, (collectively, the "Work"), which are further defined in Exhibit A Part 1, attached and hereby incorporated by reference as part of this Agreement.

a. County Responsibilities. The County shall perform the following:

- (1)** Utilize the specific Time Study Activity Codes as set forth in Exhibit A, Part 1 ("Activity Codes"), approved by OHA and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid ("CMS") to document all time spent on all activities listed in Exhibit A and to claim all costs under this Agreement for allowable Medicaid administrative activities. Specifically, County shall use the Activity Codes to document all time spent on all activities listed in Exhibit A ("Documented Time") throughout four (4) specifically identified days per claiming quarter ("Survey Days"). OHA shall randomly select the Survey Days and notify County in advance of the Survey Days selected.
- (2)** Provide training to its employees and subcontractors on the implementation of the Time Study and Activity Codes to ensure County's employees and subcontractors make claims only for allowable Medicaid administrative activities.
- (3)** Submit all MAC information to the Multnomah Education Service District ("MESD") for MESD's preparation of claiming information documents and subsequent MAC claims to OHA. In accordance with its agreement with OHA, MESD will post on secure Internet site

quarterly claiming information for County's review and approval. Steps in the approval process shall be as follows:

- (a)** Within one week of posting by MESD of a County's claim, OHA shall send an electronic invoice to a designated contact at County. Invoice shall bill County for State match portion of Medicaid funds, more specifically described in Exhibit A, Part 3. County shall have one week from the date it receives the invoice to review and notify the OHA Contract Administrator in writing of its disapproval—if any—of the document. At the time County disapproves a quarterly claiming information document, County must provide corrected information to OHA Contract Administrator. County shall send such notices to OHA Agreement Administrator at the address indicated on the face page of this Agreement.
- (b)** If the County's total Documented Time throughout the Survey Days is equal to or greater than fifty percent (50%) of the total time County spends on all activities throughout the Survey Days, whether Documented Time or otherwise ("Total Time"), County shall provide OHA with an acceptable explanation for the percentage of Documented Time to Total Time.

If the explanation is acceptable to OHA and remains the same over time even through County's total Documented Time throughout the Survey Days continues to be equal to or greater than fifty percent (50%) of the total time County spends on all activities throughout the Survey Days, then upon approval by OHA, County shall maintain supporting documentation and will not be required to provide an explanation to OHA unless circumstances supporting the explanation change significantly. In that case County shall submit acceptable documentation prior to payment. OHA reserves the right to request at any time documentation concerning County's Documented Time and an explanation for that documentation.

Notwithstanding that actual percentage of Documented Time throughout the Survey Days, County shall document and maintain in its records an explanation of Documented Time for any individual that is equal to or exceeds fifty percent (50%) of that individual's Total Time throughout the Survey Days. Such documentation does not have to be provided as part of the quarterly claiming process but must be made available to OHA upon request.

- (c)** County shall signify its approval of the claim by signing and dating the invoice and sending it with enclosed payment of the

50% match (as explained in Subsection a. (12) of this Section) to the address given on the invoice.

- (4)** Be responsible for creating its own claiming information documents in order to document the bases for MAC claims submitted to OHA, in the event that the Agreement between OHA and MESD expires or terminates prior to the expiration or termination of this Agreement.
- (5)** Provide MESD with its actual and current cost pool data, including the total number of staff in the cost pool, and Medicaid eligible percentage for the claimed quarter, within 30 days after the end of each quarterly claiming period. Cost pool data includes: the name, title, job description, salary, and other personnel expenses for each individual employee and subcontractor, including each employee of subcontractor; and the percentage of time each employee and subcontractor, including each employee of subcontractor, spends on the coded activities listed in Exhibit A.
- (6)** Ensure that all MAC claims for the Work are in accordance with requirements applicable to MAC claims in OMB Circular A-87 and the State Medicaid Plan, which are incorporated herein by this reference. The Work for which County claims reimbursement must be directly related to the administration of the State Medicaid Plan for FFP to be available.
- (7)** Obtain OHA's prior written approval of any subcontracts proposed by County for the purpose of carrying out the Work under this Agreement, by:

 - (a)** Providing OHA with a draft copy of each subcontract; and
 - (b)** Upon obtaining OHA verbal approval of each subcontract, submitting to OHA a copy of the signed subcontract.
- (8)** Monitor subcontracts to ensure that the Medicaid administrative activities and costs being tracked and billed to County by subcontractors are allowable and related to the purpose of this Agreement.
- (9)** Monitor compliance with the requirements of this Agreement and maintain all records that support the quarterly claiming information documents and MAC claims for the Work performed, including but not limited to: position details, Time Study results, and salary and benefit information pertaining to relevant cost pool members, to include clear identification of federal portions of salary and benefits and the process by which those federal funds are removed from cost pool information prior to the information's submittal to MESD. As specified by OHA, other information applicable to the Work provided under this Agreement may be required in order for OHA to approve a claim.

- (10) Upon request from OHA, the Oregon Department of Justice, Medicaid Fraud Unit, the Secretary of State's Office, or the federal government, make available all records that support the quarterly MAC claims to OHA for Work performed.
- (11) Assure that Medicaid eligible children and families receiving assistance under this Agreement are free to accept or reject Medicaid services and are free to receive such services from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by OHA.
- (12) Pay OHA for the State match portion of Medicaid funds for MAC claims submitted to OHA, and the OHA intergovernmental charge, as more specifically described in Exhibit A, Part 3.
- (13) Use the OHA-provided Medicaid-eligible percentage for County in its cost calculations unless another statistically based calculation has been approved by OHA.

b. OHA responsibilities. OHA will:

- (1) In accordance with Section 2.a.(3) of this Exhibit, upon receipt of a signed invoice and payment from County of its 50 percent match in accordance with its approval of the claiming information produced by MESD, submit the resulting MAC claim to the federal government for payment.
- (2) Within 30 days of receipt of the County's match, pay the County's claim for the quarter.
- (3) Provide technical assistance and training to County, its employees, all County subcontractors and County subcontractors' employees on the use of MESD's web-based Time Study tool and Activity Codes, and all other processes and claiming information documents necessary for County's MAC claims.
- (4) Assist County in the review of and provide comments on the subcontracts between County and its subcontractors to carry out Work under this Agreement. OHA's review of subcontracts is not made for the purpose of providing legal advice to County. OHA will provide written approval of any subcontracts proposed by the County.
- (5) Provide assistance to County in the identification of Medicaid administrative activities eligible for reimbursement under this Agreement and reimburse County as described in Exhibit A, Part 3.
- (6) Assist County in responding to any federal Medicaid compliance issues.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Summary of Medicaid Payment Methodology

County shall send all invoices to OHA Contract Administrator at the address specified on page 1, or to any other address as OHA may indicate in writing to County. County's claims to OHA for overdue payments on invoices are subject to ORS 293.462.

Under Title XIX of the Act, the federal government and states share the cost of providing allowable Medicaid administrative activities. The State share for Medicaid administrative activities County will provide under this Agreement is 50% (fifty percent) of the total allowable costs attributable to Medicaid administrative activities. County shall, on a quarterly basis, pay to OHA, through an Intergovernmental Transfer (IGT) that is in accordance with Section 1903(w)(7)(G) of the Act, 50% (fifty percent) of the total allowable costs of providing Medicaid administrative activities, which represents the State match portion of the Medicaid expenditures.

The State match funds County transfers to OHA shall be public funds that are not federal funds, or shall be federal funds authorized by federal law to be used to match other federal funds. OHA shall then pay County the total allowable costs of providing Medicaid administrative activities in arrears on a quarterly basis. OHA shall claim the FFP amount from CMS.

Allowable administrative Medicaid costs are separate from any other direct Medicaid or other services that may be provided by County pursuant to separate Medicaid funding agreements or authorizations. Duplicate payments are not allowable when determining administrative costs under Medicaid. Payments for allowable activities must not duplicate payments that have been or should have been included and paid as part of a rate for services, part of a capitation rate, or through some other local, State or federal program. Medicaid administrative costs may not be claimed for activities that are integral parts or extensions of medical services. Furthermore, in no case shall County be reimbursed more than the actual cost of the activities claimed by County under this Agreement.

2. Payment for all Work performed under this Agreement shall be subject to the provisions of ORS 293.462. The maximum, not to exceed amount payable to County for providing Medicaid administrative activities under this Agreement is specified in Section 3 of this Agreement. OHA will only pay for Work performed and documented in accordance with Exhibit A, Part 2, Section 2.a., of this Agreement, and otherwise permitted by Medicaid.
3. County shall reimburse OHA 50% (fifty percent) of the amounts paid to County under this Agreement for the State match portion, as specified in Section 5 below.
4. For purposes of this Agreement, all MAC claims submitted to OHA by MESD are deemed to be submitted by County. County shall submit MAC claims for Medicaid allowable administrative activities only. Medicaid does not pay for administrative expenditures

related to, or in support of, services that are not included in the State Medicaid Plan, the Oregon Health Plan, or services which are not reimbursed under Medicaid. In addition, Medicaid does not pay for health care services that are rendered free of charge to the general population. Thus, any administrative activity which supports the referral to, coordination of, planning of, or screening for services that are provided free to the general population would not be considered as Medicaid administration.

5. County shall submit to MESD quarterly, in arrears, all cost pool data, utilizing the MESD web-based time study tool, for the Medicaid administrative costs claimed under this Agreement. County shall determine the amount of Medicaid administrative costs according to the federal formula, which is found in the Medicaid Administrative Claiming Public Health Manual, Version 2.0, and provided to the County by OHA.
 - a. County shall pay by IGT to OHA quarterly upon invoice from OHA for:
 - (1) The State match portion which is equal to 50% (fifty percent) of the amount claimed by County and accepted by OHA for the total allowable Medicaid administrative costs; and
 - (2) An OHA quarterly intergovernmental charge of \$20.00 per cost pool member.
 - b. OHA will reimburse County in arrears on a quarterly basis for the total allowable costs of providing Medicaid administrative activities.
6. County certifies by its signature to this Agreement that for the purposes of 42 CFR § 433.51, the funds it transfers to OHA pursuant to this Agreement are public funds that are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds. County further certifies by its signature to this Agreement that these funds will not be committed or earmarked for non-Medicaid activities, nor will be contractually obligated for provision of health care services to the indigent or for any other non-Medicaid activity.
7. County shall be financially responsible for the final amount of any claim for services provided under this Agreement that CMS or OHA finds unallowable under the Medicaid program. In the event CMS or OHA finds any costs claimed by County unallowable, OHA shall provide County written notice identifying the amount that must be refunded to CMS or OHA. Within thirty (30) calendar days of OHA's notice, County shall either (1) Make a payment to OHA for the full amount of the unallowable cost identified by OHA in its notice; or (2) Notify OHA in writing that County wishes to repay the unallowable amount from future payments or other means. OHA may then offset the unallowable amount from future payments owed to County under this Agreement, or any payment to County from OHA under any other contract or agreement between County and OHA, present or future. Nothing in this section shall be construed as a waiver by either party of any process or remedy that might otherwise be available. The rights and remedies of OHA set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided to OHA by law or under this Agreement.
8. **Travel and Other Expenses.**

OHA will not reimburse County for any travel or additional expenses under this Agreement.

EXHIBIT A

Part 3 Special Terms and Conditions

1. Confidentiality of Client Information.

- a.** All information as to personal facts and circumstances obtained by the County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b.** The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c.** OHA, County and any subcontractor will share information as necessary to effectively serve OHA clients.

2. Amendments.

- a.** OHA reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA's satisfaction with performance of the work or services provided by the County under this Agreement.
 - (2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b.** OHA further reserves the right to amend the Statement of Work based for the following:
 - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in

combination, govern the provision of services provided under this Agreement.

- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 “Amendments” of this Agreement.

3. County Requirements to Report Abuse of Certain Classes of Persons.

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
 - (1) Children (ORS 419B.005 through 419B.045);
 - (2) Elderly Persons (ORS 124.055 through 124.065);
 - (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
 - (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
- b. County shall make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon’s Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233), as a requirement of this Agreement.
- c. County shall immediately report suspected child abuse, neglect or threat of harm to DHS’ Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the County shall notify the referring DHS caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.
- d. If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for their care;
 - (2) The abused person’s age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

4. **Background Checks. Reserved.**
5. **Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
6. **Media Disclosure.** The County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the OHA office that referred the child or family. The County will make immediate contact with the OHA office when media contact occurs. The OHA office will assist the County with an appropriate follow-up response for the media.
7. **Nondiscrimination.** The County must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
 - a. County represents and warrants as follows:
 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by County of this

Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. OHA represents and warrants as follows:

- (1) Organization and Authority. OHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by OHA of this Agreement (a) have been duly authorized by all necessary action by OHA and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OHA of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered

by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Funds Available and Authorized Clause.

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon OHA receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than OHA. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OHA represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to OHA on a OHA-approved form. OHA is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

- 6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. Reserved.

8. **Ownership of Intellectual Property.**

- a. Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
- c.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. **County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

10. OHA Default. OHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

11. Termination.

- a. **County Termination.** County may terminate this Agreement:
 - (1) For its convenience, upon at least 30 days advance written notice to OHA;
 - (2) Upon 45 days advance written notice to OHA, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
 - (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or

- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. OHA Termination. OHA may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
- (6) Immediately upon written notice to County, if OHA determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
- 12. **Effect of Termination.**
 - a. **Entire Agreement.**
 - (1) Upon termination of this Agreement, OHA shall have no further obligation to pay County under this Agreement.
 - (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
 - b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
- 13. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
- 14. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
- 15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
- 16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For

purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

- 17. Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
- 18. Assignment of Agreement, Successors in Interest.**

 - a.** County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.
 - b.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- 19. Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 20. Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA’s prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. OHA’s consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- 21. No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County’s performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 22. Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

- 23. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 24. Survival.** Sections 1, 4, 5, 6, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
- 25. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

OHA: Office of Contracts & Procurement
635 Capitol Street NE, Suite 350
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

- 26. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
- 27. Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
- 28. Reserved.**
- 29. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with

counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 30. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 31. Stop-Work Order.** OHA may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may

agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

- a.** Cancel or modify the stop work order by a supplementary written notice; or
- b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C
Subcontractor Insurance Requirements

Local Government shall require its first tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Local Government and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Local Government shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Local Government shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Local Government shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts or pursuing legal action to enforce the insurance requirements. In no event shall Local Government permit a contractor to work under a Subcontract when the Local Government is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and Local Government's acceptance of all Services required under this Subcontract, or, (ii) Local Government's or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subcontract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Local Government before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit.

EXHIBIT D

Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

- 4. Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et.seq. (Pub. L. 94-163).
- 5. Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
 - a.** No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c.** The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d.** This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e.** No part of any federal funds paid to County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f.** No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h.** No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a.** County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b.** If County expends \$750,000 or more in federal funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If County expends less than \$750,000 in a federal fiscal year, Recipient is exempt from federal audit requirements for that year. Records must be available as provided in Exhibit B, “Records Maintenance, Access”.
- 8. Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or

Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
 - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County’s understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).
11. **Agency-based Voter Registration.** If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosure.**
 - a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address

(including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b.** 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c.** As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d.** County shall make the disclosures required by this Section 13. to OHA. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

13. Federal Intellectual Property Rights Notice. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:

- a.** The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and

- (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b.** The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c.** The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.
- 14. Federal Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.

August 5, 2021

Board of County Commissioners
Clackamas County

Dear Board of County Commissioners:

Approval of Amendment #1 to an Intergovernmental Agreement with the State of Oregon, Housing and Community Services Department to change wording regarding the disclaimer of warranties with no other changes to the agreement dates or dollars allocated to the Oregon Emergency Rental Assistance Program

Purpose/Outcomes	Approval of Amendment #1 is to change the language in section 9.5 of the original contract to more accurately reflect the disclaimer of warranties and responsibilities of each party. There is no change to the effective dates or the total contract value. These funds provide direct rental assistance to eligible low-income individuals and households impacted by COVID-19.
Dollar Amount and Fiscal Impact	Not to exceed amount of \$10,192,438 of COVID rental assistance funds. \$8,493,698 available
Funding Source	U.S. Treasury Consolidated Appropriations Act Federal pass-through funding from the State of Oregon – Oregon Housing and Community Services Department (OHCS). No County General Funds are involved.
Duration	Grant effective upon signature to Sept 30, 2022 with a specific eligible expenditure period. Original agreement was executed 05/21/21
Previous Board Action	On March 9, 2021, the Board approved the process to distribute \$12,478,950 in federal rent assistance funds directly awarded to the County and \$2,347,249 in state rent assistance funds from OHCS. On May 20, 2021 the additional rental assistance funds were approved and the agreement was signed by the County Administrator.
Counsel Review	The agreement was approved by Counsel on July 13, 2021 AN
Procurement Review	Was the item processed through Procurement? N/A- This is a revenue agreement.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. Ensure safe, healthy and secure communities.

Healthy Families. Strong Communities.

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

www.clackamas.us

Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	State Grant #6183, H3S#10117

BACKGROUND:

Previous Rent Assistance Funding

On March 9, 2021, the Board approved the recommended process to distribute \$14,829,199 in state and federal rent assistance funding. Three agencies, Ant Farm, Clackamas Women’s Services, and NW Family Services, are currently under contract to expend these funds. The Social Services Rent Assistance team will also process these funds.

New Rent Assistance Funding

Because Clackamas County’s population is greater than 200,000, the County received a direct allocation from the Federal Treasury for rent assistance in the amount of \$12,478,950. The State of Oregon also received an allocation from the same Treasury funds and will distribute those dollars via a formula to Community Action Agencies across the state. Clackamas County will receive \$8,493,698 from the state allocation.

The State will require awardees to process rent assistance requests exclusively via the Allita system. Allita is an on-line portal where renters will input personal data and upload various documents, including tax returns. The system will prioritize applications, and then forward them to local agencies. The local agency, Social Services, will be responsible for ensuring that all required information is included, and will then process rent and utility payments for eligible households.

Clackamas County residents will have the option of applying through the Allita system, or through the existing Coordinated Housing Access (CHA) line that is being used to process applications from the direct-from-Treasury allocation. Social Services will work with PGA to inform County residents about the different ways that they can access rent assistance. Communications will also focus on providing information on the anticipated wait time between application, approval, and the receipt of the actual assistance. Social Services expects a tremendous demand for rent assistance. We are in the process of increasing staff capacity, but expect some delays as new staff are hired and trained.

While many County residents will be able to access the Allita portal, we expect that some County residents, especially those without access to computer technology, may struggle to use the system. The CHA access point will be an important option for these households.

Social Services is also in the process of securing agreements with one or more organizations who will assist members of the public on how to use the Allita system. This will provide more access to communities of color, and other groups who experience barriers to accessing rent assistance.

Another round of Federal rent assistance is expected. The American Rescue Plan allocated \$21.6 billion nationwide for rent assistance. Clackamas County expects to receive \$9.9 million

in direct funding from the Treasury, and an additional pass through amount from the state. We will keep the Board updated as we receive more information on the next round of funding.

RECOMMENDATION:

Staff recommends the approval of Amendment #1, and that the H3S Director, or their designee, be authorized to sign all documents on behalf of the Clackamas County Board of Commissioners.

Respectfully submitted,

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

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10117	Division: SS	<input type="checkbox"/> Subrecipient
Board Order #: N/A (Under \$150,000)	Contact: Diridoni, Jessica	<input checked="" type="checkbox"/> Revenue
	Program Contact: Christopherson, Teresa	<input checked="" type="checkbox"/> Amend # 1 \$ \$0.00
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda

CONTRACT WITH: FY 21-22 State of Oregon OHCS IGA #6138

CONTRACT AMOUNT: \$10,192,438.00

TYPE OF CONTRACT

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

DATE RANGE

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

INSURANCE What insurance language is required?

Checked Off N/A

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

If no, explain why:

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

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

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

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

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

COUNTY COUNSEL

Yes by: Andrew Naylor _____ Date Approved: Tuesday, July 13, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin Only	Date Received: _____
	Date Signed: _____
	Date Sent: _____

AGREEMENTS/CONTRACTS

N/A (Under \$150,000)

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

ORIGINATING COUNTY

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

PURCHASING FOR: Contracted Services _____

OTHER PARTY TO

CONTRACT/AGREEMENT: FY 21-22 State of Oregon OHCS IGA #6138 _____

PURPOSE OF

CONTRACT/AGREEMENT:

Changes to the original agreement as it relates to Warrentites and Limitation of Liability.

DATE OF EXECUTION: _____

H3S CONTRACT NUMBER: 10117 _____

**STATE OF OREGON
OREGON HOUSING AND COMMUNITY SERVICES**

GRANT AGREEMENT #6183

Oregon Emergency Rental Assistance Program

This Grant Agreement (this "Agreement") is entered into by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, together with its successors and assigns hereinafter referred to collectively as "OHCS" or "Agency," and **Clackamas County** acting by and through its Health, Housing and Human Services Department, hereinafter referred to as "Subgrantee".

Recitals

- A.** Agency has been granted authority under subsection (a) of Section 501 of Division N, Title V, Subtitle A ("Emergency Rental Assistance" or "ERA") of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020) by the United States' Department of the Treasury ("U.S. Treasury") to make payments to certain recipients to provide emergency rental assistance (the "Program").
- B.** Subgrantee is willing to execute this Agreement obligating itself to comply with the terms and conditions hereof, including but not limited to satisfaction of its obligations arising hereunder in exchange for receipt of the funds described herein.

Agreement

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, it is agreed by and between the parties hereto as follows:

1. Incorporation; Definitions.

- 1.1. Incorporation.** The foregoing Recitals, the Community Plan (as later defined), the Notice or Notices of Allocation (NOAs) (as later defined), and the Exhibits hereto are incorporated into this Agreement by reference, except that the Recitals, the Community Plan, the NOAs, and the Exhibits do not modify this Agreement's express provisions.
- 1.2. Definitions.** The words and phrases used in this Agreement have the meanings given herein or as used in the Program Requirements (as later defined).

2. Authority.

Pursuant to Oregon Revised Statutes (ORS) 456.559(1)(g) and ORS 456.625(17), Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Agreement.

3. Term of Agreement.

When all Parties have executed this Agreement, and all necessary approvals have been obtained (the "Executed Date"), this Agreement is effective and has a funding start date as of March 13, 2020 (the "Effective Date"), and, unless extended or terminated earlier in accordance with its terms, will expire on **September 30, 2022** (the "Termination Date").

4. Grant Managers and Program Coordinators.

- 4.1.** Agency's Grant Manager is:

Laura Lien, Assistant Director of Homeless Services
725 Summer Street NE, Suite B
Salem, OR 97301
(503) 580-9335
Laura.L.Lien@oregon.gov

4.2. Agency's Program Coordinator is:
Samuel Kenney, Homeless Services Program Analyst
725 Summer Street NE, Suite B
Salem, OR 97301
(503) 986-2136
Samuel.Kenney@oregon.gov

4.3. Subgrantee's Grant Manager is:

Teresa Christopherson
2051 Kaen Rd, #135
Oregon City, OR 97045
503-650-5718
teresachr@clackamas.us

4.4. A Party may designate a new Grant Manager by written notice to the other party.

5. Project Activities; Program Requirements.

5.1. Project Activities. Subgrantee must perform the project activities set forth in Exhibit A, Emergency Rental Assistance Program Element (the "Work"), attached hereto and incorporated into this Agreement by this reference, for the period beginning on the Effective Date and ending on the Termination Date (the "Performance Period").

5.2. Program Requirements. Subgrantee agrees to timely satisfy, to the satisfaction of Agency, all requirements of this Agreement, including all applicable Agency administrative rules, all applicable Agency program guidance (including but not limited to handbooks, manuals, and frequently asked questions), all related Agency directives and other orders (including, but not limited to corrective action notices), the Emergency Rental Assistance Program Element attached in Exhibit A hereto, and all other applicable federal, state, and local statutes, rules, regulations, ordinances, and orders (all of the foregoing, as amended from time to time, collectively, the "Program Requirements").

5.3. Updates to Federal Guidance. In the event U.S. Treasury, or other applicable federal agency, issues guidance that conflicts with or changes the terms and conditions of this Agreement or the Program Requirements, Agency shall have a reasonable time to make any adjustments to or otherwise cure any conflicts with this Agreement and the Program Requirements.

6. Grant Funds.

In accordance with the terms and conditions of this Agreement, Agency will provide Subgrantee up to \$10,192,438.00 (the "Grant Funds") for the Work. Agency will pay the Grant Funds from monies allocated from the U.S. Treasury for this Program (the "Funding Source").

7. Disbursement of Grant Funds; Allowable Costs.

7.1. Disbursement.

- 7.1.1. **Funding Availability.** Subject to the availability of sufficient monies in and from the Funding Source based on Agency's reasonable projections of monies accruing to the Funding Source, Agency will disburse Grant Funds to Subgrantee for the Work that is undertaken during the Performance Period.
- 7.1.2. **Community Plan.** Agency's disbursement of Grant Funds to Subgrantee are contingent upon Subgrantee's prior submission to Agency and Agency's review and acceptance of Subgrantee's plan to execute the Work in accordance with the Program Requirements (the "Community Plan").
- 7.1.3. **Notices of Allocation (NOAs).** Upon its acceptance of Subgrantee's Community Plan, Agency will issue by email or mail one or more Notices of Allocation (NOAs) to Subgrantee to indicate approval of the Community Plan. Subgrantee is subject to, and will comply with, all such NOA terms and conditions, including this Agreement and the Program Requirements. Any NOA issued as described herein is immediately effective, is incorporated into and constitutes a part of this Agreement. Subgrantee accepts a NOA, including modifications thereto, upon undertaking performance of the Work funded by a NOA. Agency reserves the right in its sole discretion to modify, correct, adjust, or terminate any NOAs. Agency's modification or termination of a NOA does not terminate Agency's remedies with respect to Subgrantee's performance or non-performance of obligations due under this Agreement.
- 7.1.4. **Federal Funding Terms.** Grant funds are derived from U.S. Treasury and are subject to the terms under which they are received. Subject to the availability of Program funds, Agency having continued funding, appropriation, limitation, allotment, or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement, and conditioned upon the terms and conditions of this Agreement, Agency will make the Grant Funds to Subgrantee up to the maximum principal amount stated above and perform under this Agreement. Agency will provide Grant Funds to Subgrantee only upon approved reimbursement requests for allowable costs incurred or, if allowed by Agency, to be incurred by Subgrantee consistent with the terms and conditions of this Agreement, including the Program Requirements.
- 7.1.5. **Backup Documentation; Substantiation.**
 - 7.1.5.1. Subgrantee must provide to Agency any information or detail regarding the expenditure of Grant Funds required under Exhibit A prior to disbursement or as Agency may request.
 - 7.1.5.2. Subgrantee's requests for Grant Funds must be supported by documentation satisfactory to Agency, including but not limited to: properly executed payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of subrecipients, under their respective contracts with Subgrantee) in accordance with generally accepted accounting principles and applicable state and federal requirements, including as specified herein. Agency may require such other information or clarification as it deems necessary or appropriate.
- 7.1.6. **Approval by Agency.** Agency will only disburse Grant Funds to Subgrantee for activities completed or materials produced, that, if required by Exhibit A, are approved by Agency. If Agency determines any completed Work is not acceptable and any deficiencies are the responsibility of Subgrantee, Agency will prepare a detailed written description of the

deficiencies within fifteen (15) days of receipt of the materials or performance of the activity, and will deliver such notice to Subgrantee. Subgrantee must correct any deficiencies at no additional cost to Agency within fifteen (15) days. Subgrantee may resubmit a request for disbursement that includes evidence satisfactory to Agency demonstrating deficiencies were corrected.

7.2. Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Subgrantee under this Agreement is subject to satisfaction of each of the following conditions precedent:

- 7.2.1. Agency has received sufficient funding, appropriations, expenditure limitation, allotments, or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;
- 7.2.2. No default as described in Section 16 has occurred; and
- 7.2.3. Grantee's representations and warranties set forth in Section 12 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

7.3. Advances and Reimbursement of Grant Funds.

- 7.3.1. **Generally.** Subgrantee must request Grant Funds in such form and manner as is satisfactory to or required by Agency. Further, in accordance with U.S. Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Subgrantee must limit any request for Grant Funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate cash requirements of the Subgrantee in performing the Work. Submission of proper account records showing revenue and expenditures for the reporting period must be submitted as documentation to support the amounts being requested. The foregoing requirements apply to all Grant Funds requested under this Agreement.
- 7.3.2. **Advance of Funds (Projected).** Subgrantee may request and be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to the Subgrantee must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Subgrantee in carrying out the purposes of the grant as described in this Agreement. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Subgrantee for allowable grant direct costs and the proportionate share of any allowable indirect costs. Subgrantee must make timely payment to contractors in accordance with the contract provisions. Advance grant fund payments are at Agency's sole discretion and will be made only as close as is administratively feasible to the actual use by the Subgrantee for applicable direct or indirect Work costs and only up to the proportionate share of such allowable costs as is permitted under the Agreement, including applicable Program Requirements.
- 7.3.3. **Reimbursement of Funds.** When the Subgrantee requests payment by reimbursement, reimbursement is the preferred method when the requirements in Section 7.3.2. above cannot be met. Agency will make payment within thirty (30) calendar days upon receipt of the reimbursement request and all adequate backup documentation (to the Agency's satisfaction, in its discretion), unless Agency reasonably believes the request to be improper.

7.4. Disallowance of Costs.

- 7.4.1. Agency is not responsible nor shall it pay for any costs disallowed either upon a request for funds or as a result of any audit, review, site visit, or other disallowance action by Agency, except for costs incurred by Subgrantee solely due to the willful misconduct or gross negligence of Agency, its employees, officers, or agents. If a cost is disallowed by Agency after reimbursement has occurred, Subgrantee shall repay all disallowed costs to Agency upon written notice within the time frame specified by Agency, which in no event shall exceed thirty (30) days.
- 7.4.2. If Subgrantee is a county, such disallowed costs may be recovered by Agency only through repayment, withholding, or by other means authorized by this Agreement or as allowed at law not inconsistent with the Oregon Constitution, and particularly Article XI, Section 10 and consistent with the Program Requirements and specifically requirements set forth by the federal government.
- 7.4.3. If Subgrantee is other than a county, Agency may recover such disallowed costs through repayment, withholding, offset, or other means permitted under this Agreement, by law or otherwise but consistent with the Program Requirements and specifically requirements set forth by the federal government.
- 7.4.4. Subgrantee will, and will cause its subrecipients to, cooperate with Agency and all appropriate investigative agencies and will assist in recovering invalid payments.
- 7.5. Unallowable Costs and Lobbying Activities.** Subgrantee will review and comply with the Program Requirements and adhere to provisions on allowable costs and expenditures. Subgrantee will, among other obligations, comply with the provisions prohibiting the expenditure of funds for lobbying and related activities, whether in 2 CFR Part 230, 2 CFR Part 225, or otherwise, as such provisions may be modified from time to time. If Subgrantee makes expenditures or incurs costs for purposes or amounts inconsistent with the allowable costs of the Grant Funds as described in Exhibit A or elsewhere in this Agreement, such funds are subject to recapture and Agency may exercise any and all remedies under this Agreement or otherwise available at law.
- 7.6. No Duplicate Payments.** Subgrantee may use other funds in addition to the Grant Funds to complete the Work; provided, however, the Subgrantee may not credit or pay any Grant Funds for Work costs that are paid for with other funds and would result in duplicate funding. Subgrantee is provided thirty (30) days to return the duplicative payments. After thirty (30) days, if a duplicate payment has not been returned or applied to a debt not already covered by Program funding, reimbursement of the duplicate payment must be made to Agency and shall include the entire amount of duplicate payment funds received regardless of Agency reimbursement amounts.
- 7.7. Suspension of Funding and Project.** Agency may by written notice to Subgrantee, temporarily cease funding and require Subgrantee to stop all, or any part, of the Work for a period of up to 180 days after the date of the notice, if Agency has or reasonably projects that it will have insufficient funds from the Funding Source to disburse the full amount of the Grant Funds. Upon receipt of the notice, Subgrantee must immediately cease all Work, or if that is impossible, must take all necessary steps to minimize the Work.

If Agency subsequently projects that it will have sufficient funds, Agency will notify Subgrantee that it may resume activities. If sufficient funds do not become available, Subgrantee and Agency will work together to amend this Agreement and any applicable NOAs to revise the amount of Grant Funds and Work to reflect the available funds. If sufficient funding does not become available or an amendment is not agreed to within a period of 180 days after issuance of the notice, Agency will either (i) cancel or modify its cessation order by a supplemental written

notice, or (ii) terminate this Agreement as permitted by either the termination at Agency's discretion or for cause provisions of this Agreement.

8. Nonexclusive Remedies Related to Funding.

8.1. Spend Down and Reallocation Policy. All Grant Funds, with the exception of administrative allocations, will be spent proportionally to the expenditure period at the rate prescribed below (as tracked through the OPUS "Award Summary" report).

8.1.1. Minimum Spending Target.

Subgrantee has committed to certain spending targets in its time-bound expenditure plan, as approved by and on file with Agency. Notably, and at a minimum, Subgrantee's spending targets are the following:

- By September 30, 2021 (as may be extended pursuant to updates by U.S. Treasury), at least 65% of the funding must be spent.
- By September 30, 2022, all 100% of the funding must be spent.

Subgrantee's spending below the target(s) will be evaluated against the Subgrantee's time-bound expenditure plan (which outlines the Subgrantee's flexible spend rate) as approved by and on file with Agency. Any spending below the stated rate(s) is subject to rescission of Grant Funds. Any amount of funding greater than 10% of a funding sources total allocation or a combined total of \$100,000 that is subject to rescission will trigger Community Action Agency (CAA) Board Notification.

8.2. Agency and Subgrantee Collaboration to Cure. When spending is below the thresholds described above, and prior to funding rescission, Agency and Subgrantee agree to collaborate to find solutions that resolve the issues, provided it is within Agency's control (in its sole discretion) to adjust to meet Subgrantee's needs and does not conflict with federal law. Agency will allow proposals from Subgrantee to cure spending issues and prevent funding rescission. Subgrantee will have ten (10) days to modify its Community Plan and update the flexible spend rate in its time-bound expenditure plans to demonstrate how compliance with spending targets will be achieved. If Subgrantee continues to be unable to meet the spending targets and prior to a rescission of Subgrantee's funding, Agency may take further action, including but not limited to notifying the Subgrantee's executive leadership (e.g., Executive Director) and governing body (e.g., Board Chair) and reporting to the Housing Stability Council.

8.3. Withholding, Retention, and Redistribution of Grant Funds.

8.3.1. Withholding.

Agency may withhold any and all undisbursed Grant Funds from Subgrantee if Agency determines that Subgrantee has failed to timely satisfy any material obligation arising under this Agreement, including but not limited to compliance with the Program Requirements, providing complete, accurate, and timely reports in a form satisfactory to Agency, or if Agency determines that the rate or scale of requests for Grant Funds in any expenditure category materially deviates from an applicable NOA or is unsubstantiated by related documentation.

8.3.2. Redistribution or Retention of Grant Funds.

8.3.2.1. Due to Non-Timely Use. If Agency determines that Grant Funds are not obligated

for reimbursement by Subgrantee in a timely manner Agency may reduce Subgrantee's Grant funding and redistribute Grant Funds to other subgrantees or retain such funds for other Agency use, within applicable state and federal law. Agency may implement adjustments pursuant to this subsection by modifying the applicable NOA(s). This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

8.3.2.2. **Due to Substantial Difference.** If Agency determines the rate of request for any expenditure or cost category is substantially different than in Agency-approved budget submissions, including applicable NOAs, Agency has sole discretion to reduce and redistribute or retain any and all funds otherwise available to Subgrantee under this Agreement. Agency may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to Agency under this Agreement.

8.3.3. **Repayment of Excess Disbursed Funds.**

8.3.3.1. **Due to Modified NOA.** If Grant Funds previously disbursed by Agency to Subgrantee exceed a relevant modified NOA amount and remain unexpended by Subgrantee, Subgrantee shall not expend any such excess Grant Funds. Subgrantee, instead, shall return any remaining unexpended Grant Funds in excess of the modified NOA to Agency within 30 calendar days of the modified NOA unless another use of such funds is authorized in writing by Agency. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

8.3.3.2. **Due to Overpayment.** If Agency makes an overpayment of Grant Funds to Subgrantee in response to one or more funds requests, whether or not the underlying request(s) were inaccurate, Subgrantee shall repay such overpayment within thirty (30) calendar days of its discovery by Subgrantee or upon notice by Agency, unless Agency in writing designates an earlier time for repayment or authorizes another use by Subgrantee of such overpayment. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

8.3.4. **Return of Unexpended Funds.**

Within thirty (30) days following the end of the Performance Period or Termination of this Agreement, Subgrantee must return to Agency all unexpended Grant Funds, unless required earlier by U.S. Treasury guidance or in accordance with the Program Requirements.

9. **Online Systems.**

9.1. Subgrantee and its subrecipients must enter all appropriate and necessary data into OPUS (a web-based application developed by Agency), Allita HSM, or other Agency-approved system (the "Sites") at the time of client intake for this Program. Exceptions are only allowed with prior written approval by Agency.

9.2. **Sites' Terms and Conditions.** As a condition of use of the Sites, Subgrantee and its subrecipients ("User") agrees to all Agency terms and conditions contained in this Agreement, notices on the Sites, or as otherwise directed by Agency. User agrees to not use the Sites for any unlawful purpose. Agency reserves the right, at its discretion, to update or revise the Sites' terms of use. Continued use of the Sites constitutes acceptance of the Sites' terms and conditions.

9.3. **Local Data Collection.** Use of the Sites for additional reported "local" program data is at the entity's own risk. Agency will not modify or otherwise create any screen, report, or tool in the Sites to meet needs related to this local data.

- 9.4. Data Rights.** Subgrantee hereby grants and will require and cause any subrecipient to grant Agency the right to reproduce, use, display, adapt, modify, distribute, and promote the content in any form and disclose, as allowed by law, any or all of the information or data furnished to or received by Agency directly or indirectly resulting for this Agreement. Subgrantee also shall use and shall require and cause its subrecipients to use Client Release forms and Privacy Policy forms (samples provided by Agency) in connection with obtaining and transmitting client data.
- 9.5. Disclaimer of Warranties.** Subgrantee understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products, and services included in or available through the Sites (the “**Content**”) are provided “as is” and “as available” for use. The Content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Agency does not warrant that: (1) the content is accurate, reliable, or correct; (2) the Sites will be available at any particular time or location; (3) any defects or errors will be corrected; or (4) the content is free of viruses or other harmful components. Use of the Sites is solely at the User’s risk. User hereby accepts the risk of its use of the Sites, and of the use of the Sites by its subrecipients, and expressly waives any claims and causes of action against the State and Agency.
- 9.6. Limitation of Liability.** Subgrantee agrees that under no circumstances will Agency be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the Sites. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Agency has been informed of the possibility of such damage.
- 9.7. Indemnification.** Subject to applicable law, Subgrantee agrees, and shall take all reasonable steps to cause its subrecipients and contractor(s) that are not units of local government as defined in ORS 190.003, if any to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorney’s fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts of omissions of Subgrantee’s subrecipients and contractors or any of the officers, agents, employees or subcontractors of the subrecipient or contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the subrecipient or contract from and against any and all Claims.

10. Contribution.

- 10.1.** 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 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. 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 the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution under this Section 10 with respect to Third Party Claim.

10.2. With respect to a Third Party Claim for which Agency is jointly liable with Subgrantee (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 to Subgrantee in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Subgrantee on the other hand in connection with the events that 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 the Subgrantee on the other hand shall be determined by reference to, and 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 if the State had sole liability in the proceeding.

10.3. With respect to a Third Party Claim for which Subgrantee is jointly liable with Agency (or would be if joined in the Third Party Claim), Subgrantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subgrantee 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. Subgrantee's contribution amount in any instance is capped to the same extend it would have been capped under Oregon law if it had sole liability in the proceeding.

11. Fixed Assets. If applicable, Subgrantee shall, and shall cause its subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Code of Federal Regulations, 2 CFR Subtitle B with guidance at 2 CFR Part 200, and specific requirements of the source of funds. These regulations shall apply to all equipment purchased with Agency funding, regardless of source of funds. The following practices are in addition to those otherwise required:

11.1. High Risk Items. Fixed assets with a value greater than \$5,000 will include all computer equipment, electronic equipment, photography equipment, hand tools and other items.

11.2. Equipment. The title to all equipment as defined in 2 CFR Part 200, purchased in whole or in part with funds provided under this Agreement, shall rest with the Subgrantee. Property and equipment purchased with Agency grant funds shall not be used for collateral or to secure financing.

11.3. Insurance. Subgrantee shall, at a minimum, provide the insurance coverage required by Oregon Revised Statute for automobiles and or equipment registration through Oregon Department of Transportation, Department of Motor Vehicles, that has been acquired in whole or in part with funds provided under this Agreement owned by Subgrantee. In its agreements with its subrecipients, Subgrantee shall require and cause its subrecipients to comply with the requirements of this Section, including adding Agency named as an additional insured party in all such motor vehicles and or equipment.

11.4. Loaned Equipment / Property Disposition. All fixed assets owned by Agency and loaned to Subgrantee under a standard agreement will remain the property of Agency, regardless of their value. The disposition of all loaned equipment shall be readily available.

11.5. Disposal Requiring Prior Approval. When Subgrantee, or its subrecipients, wishes to dispose of equipment having an original cost of more than \$5,000, and which has a current per-unit, fair-

market value of more than \$5,000, Subgrantee shall submit a written notification to the appropriate Agency's Program coordinator with a copy to the Agency's Financial Compliance Monitor. If Agency consents, Agency will provide instructions regarding the method of disposition. Agency reserves the right to refuse to consent to such disposal and the right to object to the timing of each disposition. Such disposition, if permitted, shall be done in a manner consistent with the property management standards for equipment of the Agency from which the original funding was received. In the case of mixed funding sources, the most restrictive standards shall apply.

11.5.1. Items of equipment with a current per-unit, fair-market value of \$5,000 or less may be retained, sold, or otherwise disposed of upon written notification to the appropriate Agency's Program coordinator with a copy to Agency's Financial Compliance Monitor with no further obligation. The Agency's Program coordinator shall be notified of all title transfers, sales, and other methods of disposition. Agency may review disposition records upon notification of Subgrantee.

12. Compliance and Monitoring.

12.1. Compliance.

12.1.1. Subgrantee will comply and will require and cause (including by contract) all subrecipients, vendors, contractors, agents, and assigns to comply with this Agreement, including applicable Program Requirements.

12.1.2. Without limiting the generality of the foregoing, Subgrantee will comply and will require and cause its subrecipients, vendors, contractors, agents, and assigns to comply with all federal requirements, including but not limited to the Federal Funding Accounting and Transparency Act (FFATA) of 2006 (P.L. 109-282), provisions of which include, but are not limited to a requirement for Subgrantees to have a Data Universal Numbering system (DUNS) number and to maintain a current registration in the SAMs (System for Awards Management) database.

12.1.3. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with the following laws, regulations and executive orders 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, 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) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Subgrantee shall, to the maximum extent economically feasible in performance of this Agreement, use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(ii)).

12.2. Agency to Monitor Subgrantee.

12.2.1. Agency, including its authorized representatives and authorized third parties, may monitor the activities and records of each Subgrantee and Subgrantee's subrecipients and

vendors as it deems necessary or appropriate for, among other things, to ensure: (1) Subgrantee and its subrecipients comply with the terms of this Agreement, including but not limited to the Program Requirements, and that Grant Funds are used properly for authorized purposes hereunder; and (2) that performance goals are achieved as specified in this Agreement, including without limitation in the Community Plan, NOAs, and the Program Requirements, and that performance is to the satisfaction of Agency.

12.2.2. Agency's monitoring activities may include any action deemed necessary or appropriate by Agency, to the extent permitted by Agency's authority, including, but not limited to the following: (1) the review (including copying) from time to time of any and all Subgrantee, subrecipient, and Vendor files, records, and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Subgrantee fiscal and program reports, and requiring appropriate Request for Funds documentation as well as such other information and clarification as it deems appropriate, prior to providing a Request for Funding approval, whether in whole, in part, or otherwise; and (5) evaluating, training, providing technical assistance and enforcing compliance of Subgrantee, subrecipients, vendors, and their officers, employees, agents, contractors and other staff.

12.2.3. Agency monitoring and enforcement activities may be conducted in-person, by telephone, and by other means deemed appropriate by Agency. Monitoring will be done through contractors, agents, or other authorized representatives.

12.2.4. Agency may, in its sole and absolute discretion, request assistance in monitoring from outside parties, including but not limited to the Oregon Secretary of State, the Oregon Attorney General, the federal government, and law enforcement agencies.

12.2.5. Agency (or the State or its agents) may require Subgrantee to perform some level of random audit of Program applications and Subgrantee will perform to the best of its ability.

12.3. Subgrantee To Fully Cooperate. Subgrantee agrees to fully and timely cooperate with Agency in the performance of any and all monitoring and enforcement activities, including causing its subrecipients, vendors, and contractors to so cooperate by agreement. Failure by Subgrantee or any of its subrecipients or vendors to comply with this requirement is sufficient cause for Agency to require special conditions, take such other action (including the exercise of available remedies) as it deems appropriate, and may be deemed by Agency as a material failure by the Subgrantee to perform its obligations under this Agreement.

12.4. Subgrantee To Monitor Its Subrecipients.

12.4.1. At least once during the term of this Agreement and as otherwise directed by Agency, Subgrantee will monitor the activities and expenditures of its subrecipients as is reasonable to ensure: (1) compliance with this Agreement, including the Program Requirements; and (2) achievement of this Agreement's performance goals, in Agency's sole discretion.

12.4.2. Subgrantee's monitoring of its subrecipients must include: (1) an evaluation of each subrecipient's risk of non-compliance with federal statutes, regulations, and terms and conditions of any applicable subaward for purposes of determining the appropriate level and type of subrecipient monitoring; (2) a review of financial and performance reports; and (3) follow-up on all deficiencies pertaining to any involved federal funding in accordance with 2 CFR 200.331 and other applicable federal regulations, including the U.S. Treasury's Program guidance as updated from time to time.

12.5. Agency Findings and Reports.

- 12.5.1. **Monitoring Visits; Reports.** During the term of this Agreement, Agency may conduct monitoring visits, including review of Subgrantee and subrecipient files, records, and other information related to performance under this Agreement. Agency generally will advise the Subgrantee as to its observations and findings generated by any monitoring visit, usually through an exit interview. Within sixty (60) days after an inspection, Agency will provide Subgrantee with a written report of its findings from the inspection and may proscribe corrective action, which Subgrantee must timely satisfy.
- 12.5.2. **Ongoing Monitoring.** Agency may continue to track and follow-up its monitoring findings and corrective actions with Subgrantee or its subrecipients through a tracking record. The tracking record may include, without limitation: findings, corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution. Subgrantees must resolve findings and other required corrective actions within reasonable timeframes provided by Agency.

13. Representations and Warranties.

13.1. Organization/Authority. Subgrantee represents and warrants to Agency that:

- 13.1.1. Subgrantee is duly organized and validly existing in the State of Oregon;
- 13.1.2. Subgrantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Agreement, (ii) incur and perform its obligations under this Agreement, and (iii) receive financing, including the Grant Funds, for the Work;
- 13.1.3. This Agreement has been duly executed by Subgrantee and when executed by Agency, constitutes a legal, valid, and binding obligation of Subgrantee enforceable in accordance with its terms;
- 13.1.4. If applicable and necessary, the execution and delivery of this Agreement by Subgrantee has been authorized by an ordinance, order, or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and
- 13.1.5. There is no proceeding pending or threatened against Subgrantee before any court or governmental authority that if adversely determined would materially adversely affect the Work or the ability of Subgrantee to carry out the Work.

13.2. False Claims Act. Subgrantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Subgrantee that pertains to this Agreement or to the Work. Subgrantee certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Subgrantee further acknowledges in addition to the remedies available to Agency under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Subgrantee.

13.3. No Limitation. The representations and warranties set forth in this Section 13 are in addition to, and not in lieu of, any other representations or warranties provided by Subgrantee.

14. Confidential Information.

14.1. Confidential Information Definition. Subgrantee acknowledges it and its employees and agents may, in the course of performing its responsibilities, be exposed to or acquire information

that is: (i) confidential to Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal information, as that term is used in ORS 646A.602(12), (b) social security numbers, and (c) information related to domestic violence: (1) as described in Section 501(g)(4)(A)(iii) of the ERA, (2) as described in the Violence Against Women Act, 34 USC Subtitle I, Chapter 121, Subchapter III, Part I “Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Violence and Stalking”, and (3) is afforded state law protection from public disclosure under ORS 192.355(38), (items (i) and (ii) hereof separately and collectively “Confidential Information”).

14.2. Nondisclosure. Subgrantee agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Subgrantee uses in maintaining the confidentiality of its own confidential information. Subgrantee may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Project activities and Subgrantee must advise each of its employees and agents of these restrictions. Subgrantee must assist Agency in identifying and preventing any unauthorized use or disclosure of Confidential Information. Subgrantee must advise Agency immediately if Subgrantee learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. Subgrantee must, at its expense, cooperate with Agency in seeking injunctive or other equitable relief, in the name of Agency or Grantee, to stop or prevent any use or disclosure of Confidential Information. At Agency’s request, Subgrantee must submit, return, or destroy any Confidential Information in the manner requested by Agency, including but not limited to upon satisfaction of the business purposes of such Confidential Information as used in the Allita HSM system. If Agency requests Subgrantee to destroy any Confidential Information, Subgrantee must provide Agency with written assurance indicating how, when and what information was destroyed.

14.3. Identify Protection Law. Subgrantee must have and maintain a formal written information security program that provides safeguards to protect Confidential Information from loss, theft, and disclosure to authorized persons, as required by Oregon Consumer Information Protection Act, ORS 646A.600-628. If Subgrantee or its agents discover or are notified of a potential or actual “Breach of Security”, as defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600-628, (collectively, “Breach”) with respect to Confidential Information, Subgrantee must promptly but in any event within two (2) business days (i) notify the Agency’s Grant Manager of such Breach and (ii) if the applicable Confidential Information was in the possession of Subgrantee or its agents at the time of such Breach, Subgrantee must (a) investigate and remedy, to the extent practicable, the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps Subgrantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, if Agency determines notice is required of any such Breach to any individual(s) or entity(ies), agency will have sole control over the timing, content, and method of such notice, subject to Subgrantee’s obligations under applicable law.

14.4. Subgrants/Contracts. Subgrantee must require any subrecipients, contractors or subcontractors under this Agreement who are exposed to or acquire Confidential Information to treat and maintain such information in the same manner as is required of Subgrantee under subsections 14.1 and 14.2 of this Section.

14.5. Background Check. If requested by Agency and permitted by law, Subgrantee’s employees, agents, contractors, subcontractors, and volunteers that perform Project activities must agree to

submit to a criminal background check prior to performance of any Project activities or receipt of Confidential Information. Background checks will be performed at Subgrantee's expense. Based on the results of the background check, Subgrantee or Agency may refuse or limit (i) the participation of any Subgrantee employee, agent, contractor, subrecipient, or volunteer, in Project activities or (ii) access to Agency Personal Information or Subgrantee premises.

15. Insurance Requirements. Subgrantee shall insure, or self-insure, and be independently responsible for the risk of its own liability for claims within the scope of the Oregon Tort Claims Act (ORS 30.260 through 30.300)..

16. Subgrantee Status and Certifications.

16.1. Subgrantee shall perform all work under this Agreement as an independent contractor. Subgrantee is not an officer, employee or agent of the Agency or State, as those entities are respectively defined in ORS chapter 456 and in ORS 30.265, with respect to work performed under this Agreement.

16.2. Subgrantee agrees that insurance coverage, whether purchased or by self-insurance, for Subgrantee's agents, employees, officers and/or subcontractors is the sole responsibility of Subgrantee.

16.3. Subgrantee certifies that it is not employed by or contracting with the federal government for the Work covered by the Grant Funds under this Agreement.

16.4. Subgrantee certifies that it has established or before starting the Work will establish a formal statement of nondiscrimination in its employment policy and that it enforces such policy.

16.5. Subgrantee certifies to the best of its knowledge and belief that neither the Subgrantee nor any of its principals, officers, directors, or employees:

16.5.1. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or Agency;

16.5.2. Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it 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 related to 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;

16.5.3. Is 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 Subsection 16.5.2. above;

16.5.4. Has within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default; and

16.5.5. Is included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control for the U.S. Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

17. Governing Law; Jurisdiction.

This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and Subgrantee that

arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. SUBGRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

18. Default.

18.1. Subgrantee. Subgrantee will be in default under this Agreement upon the occurrence of any of the following events:

- 18.1.1. Subgrantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- 18.1.2. Subgrantee fails to comply timely with any material obligation under this Agreement, including but not limited to any Agency directive or term of a corrective action plan;
- 18.1.3. Any representation, warranty, or statement made by Subgrantee in this Agreement or in any documents or reports relied upon by Agency to measure the Work, the expenditure of Grant Funds, or the performance by Subgrantee is untrue in any material respect when made;
- 18.1.4. Subgrantee (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator or itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of affecting any of the foregoing; or
- 18.1.5. A proceeding or case is commenced, without the application or consent of Subgrantee in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Subgrantee, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Subgrantee or of all or any substantial part of its assets, or (c) similar relief in respect to Subgrantee under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive dates, or an order for relief against Subgrantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect)..

18.2. Agency. Agency will be in default under this Agreement if, after fifteen (15) days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the funding source.

19. Remedies.

19.1. Agency Remedies.

- 19.1.1. In the event Subgrantee is in default under Section 18.1, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 20.2; (ii) modifying any NOA under this Agreement; (iii) reducing or withholding payment for the Work that is deficient or that Subgrantee has failed to complete by any scheduled deadlines, including disallowing costs; (iv) suspending or recouping payments, or both; (v) requiring Subgrantee to complete, at Subgrantee's expense, corrective action or additional activities necessary to satisfy its obligations or meet performance standards under this Agreement; (vi) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; (vii) exercise of its right of recovery of overpayments under this Agreement; (viii) declaring Subgrantee ineligible for the receipt of future awards from Agency; (ix) criminal action for misstatements or fraud, misfeasance, or other culpable behavior; and (x) investigation, audit, and/or sanction by other governmental bodies.
- 19.1.2. Subgrantee acknowledges and agrees that any such remedies are subject to Article XI, Section 7 of the Oregon Constitution, the Oregon Tort Claims Act, and the terms and conditions of any other applicable provision of this Agreement.
- 19.1.3. **No Waiver.** No failure or delay by Agency to enforce any provision of this Agreement shall constitute a waiver by Agency of that or any other provision, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
- 19.1.4. **Survival.** Remedies provided under this Agreement or otherwise shall survive termination of this Agreement.

19.2. Subgrantee Remedies. In the event Agency is in default under Section 18.2 and whether or not Subgrantee elects to terminate this Agreement, Subgrantee's sole monetary remedy will be, within any limits set forth in this Agreement, reimbursement of Work completed and accepted by Agency and of authorized expenses incurred, based on Subgrantee following the Program Requirements for client eligibility and issuing of benefits, less any claims Agency has against Subgrantee. In no event will Agency be liable to Subgrantee for any expenses related to termination of this Agreement or for anticipated profits.

20. Termination.

20.1. Mutual. This Agreement may be terminated at any time by mutual written consent of the Parties.

20.2. By Agency. Agency may terminate this Agreement as follows:

- 20.2.1. At Agency's discretion, upon thirty (30) days advance written notice to Subgrantee;
- 20.2.2. Immediately upon written notice to Subgrantee, if Agency fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;
- 20.2.3. Immediately upon written notice to Subgrantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from funding the Agreement from the funding source; or
- 20.2.4. Immediately upon written notice to Subgrantee, if Subgrantee is in default under this

Agreement and such default remains uncured fifteen (15) days after written notice thereof to Subgrantee.

20.3. By Subgrantee. Subgrantee may terminate this Agreement as follows:

- 20.3.1. If Subgrantee is a governmental entity, immediately upon written notice to Agency, if Subgrantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Agreement.
- 20.3.2. If Subgrantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Work is prohibited by law or Agreement is prohibited from paying for the Work from the Grant Funds or other planned funding; or
- 20.3.3. Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) days after written notice thereof to Agency.

20.4. Cease Activities. Upon receiving a notice of termination of this Agreement, Subgrantee must immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Subgrantee must deliver to Agency all materials or other property that are or would be required to be provided to Agency under this Agreement or that are needed to complete the Work that would have been performed by Subgrantee.

21. Miscellaneous.

21.1. Conflict of Interest.

- 21.1.1. **Generally.** By signature to this Agreement, Subgrantee declares and certifies the award of this Agreement and the Work, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer, or employee of Subgrantee.
- 21.1.2. **Conflict of Interest Policy and Reporting.** A conflict of interest exists if, among other things, a decision or recommendation could affect the finances of the public official or the finances of a relative. If a conflict of interest exists, the public official must always give notice of the conflict, and in some situations the public official is restricted in their ability to participate in the matter that presents the conflict of interest. Subgrantee will timely report to Agency any perceived or actual conflict of interest. Subgrantee certifies it has established a conflict of interest policy that outlines the process for disclosing in writing any potential conflict of interest and such policy must be provided to Agency upon Agency's request, or as otherwise requested during a Subgrantee audit.

21.2. Nonappropriation. Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

21.3. Amendments.

- 21.3.1. Agency reserves the right to add or amend Community Plans and NOAs. Otherwise, the Parties may not waive, supplement, or amend the terms of the Agreement, in any manner whatsoever, except by written amendment signed by the Parties and for which all necessary Agency approvals have been obtained.
- 21.3.2. Subgrantee's proposed changes to or additions of a Community Plan must be submitted to Agency in writing and require the prior written approval of Agency before Subgrantee may commence a change.

21.3.3. All federal terms and conditions included in this Agreement at time of original Agreement execution may be amended from time to time by the federal grantor or regulator of funds.

- 21.4. Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given under this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 21.5. Required Notifications to Agency.** In addition to the requirements provided elsewhere in this Agreement, Subgrantee shall immediately report changes in Key Personnel including Fiscal, Program, and Executive Level Leadership.
- 21.6. Survival.** All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9.6, 9.7, 17, 19, 21.6, 21.7, and 21.10 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.
- 21.7. Headings.** The headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.
- 21.8. Severability.** The Parties agree 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 21.9. Execution in Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.
- 21.10. Indemnity.** Subject to applicable law, Subgrantee shall take all reasonable steps to cause its subrecipients and contractor(s) that are not units of local government as defined in ORS 190.003, if any to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorney's fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subgrantee's subrecipients and contractors or any of the officers, agents, employees or subcontractors of the subrecipient or contractor ("Claims"). It is specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the subrecipient or contract from and against any and all Claims..
- 21.11. Attorney Fees.** In the event a lawsuit of any kind is instituted on behalf of Agency or the Subgrantee with respect to this Agreement, or any right or claim related thereto, including but not limited to the collection of any payment due under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party is, to the extent permitted by law, entitled to its reasonable attorney fees incurred before and during trial, on appeal, in arbitration, in

bankruptcy, and in such other forum or proceeding appropriate thereto, together with such additional terms as the court or hearing officer may adjudge for reasonable costs and disbursements incurred therein. Reasonable fees shall not exceed the rate charged to Agency by its attorneys.

- 21.12. Compliance with Law.** In connection with their activities under this Agreement, the Parties must comply with all applicable federal, state, and local laws. While the Agency will make reasonable efforts to update its Program guidance and notify the Subgrantee thereof, the Subgrantee is ultimately responsible for maintaining awareness of and compliance with updates to federal law governing the Program.
- 21.13. No Third-Party Beneficiaries.** Agency and Subgrantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
- 21.14. Assignment and Successors.** Subgrantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Subgrantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Subgrantee's assignment or transfer of its interest in this Agreement will not relieve Subgrantee of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 21.15. Contracts and Subgrants.** Subgrantee may not, without Agency's prior written consent, enter into any contracts or subgrants for any of the Work. Agency's consent to any contract or subgrant will not relieve Subgrantee of any of its duties or obligations under this Agreement.
- 21.16. Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 21.17. No Limitations on Actions of Agency in Exercise of Its Governmental Powers.** Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of Agency in the exercise of its governmental powers. It is the express intention of the Parties that Agency shall retain the full right and ability to exercise its governmental powers with respect to the Subgrantee, the Grant Funds, and the transactions contemplated by this Agreement to the same extent as if it were a party to this Agreement, and in no event shall Agency have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.
- 21.18. Records Maintenance and Access.** Subgrantee must, and must require and cause its subrecipients to, maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Subgrantee must, and must require and cause its subrecipients to, maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Subgrantee's and subrecipients' performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records". Subgrantee acknowledges and agrees Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Subgrantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following 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. In its agreements with subrecipients, Subgrantee shall require and cause its subrecipients

to comply with the requirements of this Section and to grant right of access to and ownership by Agency of the subrecipients' books and records related to this Agreement.

21.19. Audits.

21.19.1. **Agency-Required Audits.** As required by Agency, Subgrantee will, and will cause its subrecipients to, submit to Agency financial and compliance audits satisfactory to Agency for such periods and programs covered by this Agreement.

21.19.2. **Federal Audits.** If Subgrantee expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200 and applicable federal regulations.

21.20. Headings. The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

21.21. Agreement Documents. This Agreement consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Agreement less all Exhibits
- Exhibit B (Federal Assurances; Terms & Conditions)
- Exhibit A (Emergency Rental Assistance Program Element)

21.22. Merger. This Agreement, all Exhibits, and all incorporated documents, 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.

21.23. Waiver. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

21.24. Diversity, Equity, and Inclusion. Agency and Subgrantee commit to an intentional, data driven approach to reduce disparities in housing and social service provisions. Agency commits to creating a system to analyze Agency-funded programs and remove identified barriers to accessing opportunities within those programs.

[The rest of this page left intentionally blank]

48. CERTIFICATIONS AND SIGNATURE OF SUBGRANTEE'S AUTHORIZED REPRESENTATIVE

THIS AGREEMENT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SUBGRANTEE.

The undersigned certifies under penalty of perjury both individually and on behalf of Subgrantee that:

A. The undersigned is a duly authorized representative of Subgrantee, has been authorized by Subgrantee to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Subgrantee;

B. By signature on this Agreement for Subgrantee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Subgrantee and that Subgrantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Subgrantee has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Subgrantee and Subrecipients' employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the U.S. Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Subgrantee has sufficient staffing and operation capacity to expend the Grant Funds;

F. Subgrantee acknowledges that Agency reserves the right to reduce Subgrantee funding as it determines to be appropriate (in its sole discretion) and redistribute such funds to other eligible providers with the goal of minimizing service disruption and ensuring funds are utilized;


G. Subgrantee is bound by and will comply, and require its subrecipients to comply, with all federal, state and local laws, regulations, requirements, terms and conditions contained in and as applicable to this Agreement; and

H. Subgrantee further certifies to having a formal statement of nondiscrimination in its employment policy and that it enforces such policy.

[Signature Pages Follow]

SIGNATURE PAGE

SUBGRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT SUBGRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE LEGAL AUTHORITY TO BIND, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Authorized Signature: 
Title: County Administrator
Name (Type or Print): Gary Schmidt
Date: May 20, 2021
Telephone Number: 503-655-8581
Email Address: gschmidt@clackamas.us
Subgrantee Address: 2051 Kaen Rd #135, Oregon City, OR 97045

44. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE

State of Oregon acting by and through its
Housing and Community Services Department
725 Summer Street NE Suite B, Salem, OR 97301

Authorized Signature:  Andrea Bell 5/21/2021
Margaret Solle Salazar, Director or designee Date

Reviewed and Approved: Laura Lien, Assistant Director of Homeless Services May 18, 2021
OHCS Grant Administrator Date

DEPARTMENT OF JUSTICE

Approved for legal sufficiency by: AAG Maria DiMiceli pursuant to OAR 137-045-0015(3) May 18, 2021
Date

EXHIBIT A
Emergency Rental Assistance Program Element

1. Description. The Oregon Emergency Rental Assistance Program is a program designed to assist households that are unable to pay rent and utilities due to the COVID-19 pandemic.

2. Scope of Work.

- A. Subgrantee shall comply and perform, and shall cause and require by contract that its subrecipients comply and perform all Work to the satisfaction of Agency, and in accordance with the terms of this Agreement and the Program Requirements. The remaining provisions of this Section 2 are supplemental to and do not limit the obligations of Subgrantee or its subrecipients arising under this Subsection 2A or otherwise under this Agreement.
- B. Subgrantee shall, and shall cause and require its subrecipients by contract to administer the program in a manner satisfactory to Agency and in compliance with the Program Requirements, including but not limited to the following terms and conditions:
- 1) Develop and implement a comprehensive Emergency Rental Assistance Community Plan to enable a timely and equitable delivery of resources to communities who are most impacted by the COVID-19 pandemic, including, but not limited to communities of color, people with disabilities, and other groups as defined by Agency.
 - 2) Prioritize applications for program services in alignment with U.S. Treasury and Agency requirements. Applications must use the Allita HSM software, provided by the Agency, as the platform for capturing applicant information for processing prioritization.
 - 3) Conduct eligibility assessment for households with the following requirements as well as any other requirements the Agency imposes through Program Guidance:
 - i. One or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 pandemic;
 - ii. One or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and
 - iii. The household has a household income at or below 80% of area median income.
 - 4) Utilization of Grant Funds to address the unique needs of those at risk of homelessness or who have experienced homelessness is allowable per Program Guidance provided by the Agency, as may be amended from time to time.

3. Program Specific Reporting.

Subgrantee shall, and shall cause and require its subrecipients by contract to submit to the satisfaction of Agency reports as required in this Agreement. Such reports may include reports from the Allita HSM software demonstrating timely payments on behalf of households once a completed application is received and approved.

Subgrantee may make request for a reporting deadline extension when necessary by submitting a written request to Agency Program Coordinator. The Agency Program Coordinator will review an extension request and provide a written notification of approval or denial to the Subgrantee.

EXHIBIT B

Federal Assurances; Terms and Conditions

Subgrantee hereby assures, warrants, covenants, and certifies that with respect to any federal funds disbursed to it under this Agreement:

- A. Application, Acceptance and Use of Federal Funds.** Use, Compliance with Federal Law; Subgrantee shall comply with all applicable Federal regulations, policies, guidelines, and requirements, as may be modified from time to time, as they relate to the application, and use of all federal funds under this Agreement which may include, but are not limited to 2 CFR Subtitle B with guidance at 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Super Circular effective December 23, 2014). The U.S. Treasury has supplemented the foregoing at Section 501(a) of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and U.S. Treasury interpretive guidance.
- B. Further Assurances.** As the duly authorized representative of the Subgrantee, I assure, warrant, covenant, and certify that the Subgrantee, in addition to complying with 2 CFR Subtitle B with guidance at 2 CFR, Part 200, 2 CFR Part 300, and Section 501(a) of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and U.S. Treasury interpretive guidance, shall comply and, require all Subrecipients and Vendors, as applicable, to comply with the following federal requirements, as they may be amended from time to time.

GENERAL ASSURANCES

- 1. Miscellaneous Federal Provisions.** Subgrantee shall comply and require all subrecipients to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply and require all subrecipients to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (d) Title IX of the Education Amendment of 1972, (e) the Drug Abuse Office and Treatment Act of 1972, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (g) Section 523 and 527 of the Public Health Service Act of 1912, (h) Title VIII of the Civil Rights act of 1968, (i) the Hatch Act (U.S.C. 1501-1508 ad 7328), (j) Davis-Bacon Act (40 U.S.C. 276a to 276a7), (k) the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), (l) the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), (m) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then Subgrantee shall comply and require all subrecipients to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended.

3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$150,000 then Subgrantee shall comply and require all subrecipients to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Subgrantee shall include and require all subrecipients to include in all Agreements with subrecipients receiving more than \$150,000, language requiring the subrecipient to comply with the federal laws identified in this section.
4. **Other Environmental Standards.** Subgrantee shall comply and require all subrecipients to comply with all applicable environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514; (b) protection of wetlands pursuant to Executive Order 11990; (c) evaluation of flood hazards in flood plains in accordance with Executive Order 11988; (d) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (e) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (f) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
5. **Energy Efficiency.** Subgrantee shall comply and require all subrecipients to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
6. **Truth in Lobbying.** By signing this Agreement, the Subgrantee certifies, to the best of the Subgrantee's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Subgrantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Subgrantee shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- c.** The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d.** This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e.** No part of any federal funds paid to Subgrantee under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- f.** No part of any federal funds paid to Subgrantee under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g.** The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h.** No part of any federal funds paid to Subgrantee under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

7. Audits.

- a.** Subgrantee shall comply, and require any subrecipient to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

- b. If Subgrantee receives federal awards in excess of \$750,000 in a fiscal year, Subgrantee is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.
 - c. Subgrantee shall save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subgrantee acknowledges and agrees that any audit costs incurred by Subgrantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subgrantee and State.
- 8. Debarment and Suspension.** Subgrantee shall not permit any person or entity to be a subrecipient if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subrecipients with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 9. Drug-Free Workplace.** Subgrantee shall comply and cause all subrecipients to comply with the following provisions to maintain a drug-free workplace: (i) Subgrantee certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Subgrantee's workplace or while providing services to Agency clients. Subgrantee's notice shall specify the actions that will be taken by Subgrantee against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Subgrantee's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify Agency within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subrecipient to comply with subparagraphs (i) through (vii) above; (ix) Neither Subgrantee, or any of Subgrantee's employees, officers, agents or subrecipients may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Subgrantee or Subgrantee's employee, officer, agent or subrecipient has used a controlled substance, prescription or non-prescription

medication that impairs the Subgrantee or Subgrantee's employee, officer, agent or subrecipient's performance of essential job function or creates a direct threat to Agency clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Agreement.

- 10. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Subgrantee agrees that it has been provided the following notice:
- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a Subgrantee, subrecipient or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
- 11. Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
 - b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Subgrantee, and Subgrantee shall also include these Agreement provisions in its contracts with non-Federal entities

12. **Federal Whistleblower Protection.** Recipient shall comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information. Therefore, in part, Subgrantee, its subrecipients, and contractors shall, inform its or their employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
13. **System for Award Management (SAM) reporting (41 USC § 2313).** The Subgrantee 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 current information in SAM. The Subgrantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subrecipients"), including restrictions on subawards to entities that do not acquire and provide (to the Subgrantee) the unique entity identifier required for SAM registration.
14. **Requirement to report breach of personally identifiable information (PII) per OMB M-17-12.** The Subgrantee (and any subrecipient at any tier) must have written procedures in place to respond in the event of breach (as defined in 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) (as defined in 2 C.F.R. 200.79) within the scope of a grant-funded program or activity, or 2) uses or operates a Federal information system. The Subgrantee's breach procedures must include a requirement to report actual or imminent breach of PII to Grantor no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

Information required by 2 CFR § 200.331(a)(1)

Federal Award Identification:

- (i) Subgrantee name (which must match registered name in DUNS): Clackamas County
- (ii) Subgrantee's DUNS number: 096992656
- (iii) Federal Award Identification Number (FAIN): _____
- (iv) Federal Award Date: January 12, 2021
- (v) Sub-award Period of Performance Start and End Date: From March 13, 2020 to September 30, 2022
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$ 204,336,635.00
- (vii) Total Amount of Federal Funds Obligated to the Subgrantee by the pass-through entity including this Agreement: \$18,964,989.00
- (viii) Total Amount of Federal Award committed to the Subgrantee by the pass-through entity: \$10,192,438.00
- (ix) Federal award project description: Provide financial assistance and housing stability services to eligible households.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Department of Treasury
 - (b) Name of pass-through entity: Oregon Housing and Community Services
 - (c) Contact information for awarding official of the pass-through entity: Gaby Zhu, Chief Financial Officer
- (xi) Is Award R&D? _NO_

State of Oregon
Oregon Housing and Community Services Department
Oregon Emergency Rental Assistance Program
Grant Agreement #6183
Amendment No. 1

This is Amendment No. 1 (the “Amendment”) to the Grant Agreement No. 6183, dated May 21, 2021 (the “Agreement”) executed by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, (“Agency”), and **Clackamas County, acting by and through its Health, Housing and Human Services Department**, [~~an Oregon Non-Profit Corporation,~~] (“Subgrantee”).

Recitals: It has now been determined by Agency and Subgrantee that the Agreement referenced above shall be amended to clarify the Warranties and Limitation of Liability as listed in Sections 9.5 and 9.6 of the Agreement.

For good and sufficient consideration including the terms and conditions of this Amendment, the parties agree as follows:

1. **Amendment to Agreement.** The Agreement is hereby amended as follows effective upon signature by all parties and approval required by law: New Language is indicated by **bolding** and **underlining** and deleted language is indicated by **bolding** and ~~striking~~ unless a section is replaced in its entirety:

a. Amend Section 9, Subsection 9.5, entitled “Disclaimer of Warranties” as follows:

Subgrantee understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products, and services included in or available through the Sites (the “**Content**”) are provided “as is” and “as available” for use. The Content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Agency does not warrant that: (1) the content is accurate, reliable, or correct; (2) the Sites will be available at any particular time or location; (3) any defects or errors will be corrected; or (4) the content is free of viruses or other harmful components. Use of the Sites is solely at the User’s risk. User hereby accepts the risk of its use of the Sites, and of the use of the Sites by its subrecipients. [~~and expressly waives any claims and causes of action against the State and Agency.~~]

9.5.1 Notwithstanding the foregoing, Agency represents and warrants that the Allita HSM system shall perform in accordance with the Documentation for

such system. Except as provided for in this Section 9.5.1, with respect to the Allita HSM system, all other warranties of kind, either express or implied, including but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement are expressly disclaimed. Moreover, with respect to the Allita HSM system, Agency does not warrant (1) the content is accurate, reliable or correct; (2) the Sites will be available for any particular time or location; (3) any defects or errors will be corrected; or (4) the content is free of viruses or other harmful components. For purposes of this Section 9.5, "Documentation" means any and all documents and intellectual property therein prepared and owned by the vendor providing the Allita HSM system that identifies how the Allita system is intended to operate, including any product or application descriptions, service level agreements, usage guides, policies, and procedures relating to the Allita HSM System.

- b. Amend Section 9, Subsection 9.6, entitled "Limitation of Liability" as follows:

Subgrantee agrees that under no circumstances will Agency be liable for any [~~direct,~~] indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the Sites. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Agency has been informed of the possibility of such damage.

2. Except as expressly amended above, all other terms and conditions of the Agreement, as amended, remain in full force and effect.
3. The parties expressly affirm and ratify the Agreement as herein amended.
4. Subgrantee certifies that the representations, warranties, and certifications contained in the Agreement are true and correct as of the effective date of this Agreement and with the same effect as though made at the same time of this Amendment.
5. This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

Certification: By signature on this Amendment, the undersigned hereby certifies for Subgrantee under penalty of perjury that the undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, and 323 and elderly rental assistance program under ORS 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

SIGNATURE PAGE

SUBGRANTEE:

Clackamas County

Authorized Signature: _____

Date: _____

By (print name): _____

Title: _____

Email: _____

TIN#: _____

AGENCY:

**State of Oregon acting by and through its
Housing and Community Services Department**

Authorized Signature:

Margaret Salazar, Director or designee Date

Reviewed and Approved By: Approved via email June 2, 2021
Laura Lien, Contract Administrator Date

DEPARTMENT OF JUSTICE

Approved as to Legal Sufficiency By: Maria F. Di Miceli per OAR 137-045-0015(3) May 27, 2021
Assistant Attorney General Date

August 12, 2021

Board of County Commissioners
Clackamas County

Board Members

Approval of an Intergovernmental Agreement with Tri-County Metropolitan
District of Oregon for Special Transportation Formula Funds for Mt Hood Express
Bus Service, Dedicated Dialysis Rides Program and match
funding for Title XIX (Medicaid) non-medical Waivered Transportation

Purpose/Outcomes	Agreement with Tri-County Metropolitan Transportation District of Oregon (TriMet) to fund Mt Hood Express fixed route service to the Mt Hood area, rides for dialysis patients living outside the TriMet service district and provide local match dollars for the County's Title XIX (Medicaid) waived non-medical transportation program.
Dollar Amount and Fiscal Impact	The maximum agreement is \$89,558. \$21,500 will be used to fund operations, including fuel, for the Express and Villages Shuttle service of Mt Hood Express. \$32,513 will be used as local match for the Title XIX waived non-medical transportation program. \$35,545 will be used for dedicated dialysis service to riders outside the TriMet service district. No match funds are required and there would be no fiscal impact on the County.
Funding Source	State of Oregon, Public Transit Division, Special Transportation Funds (STF) Formula Base
Duration	July 1, 2021 to June 30, 2023
Previous Board Action	None
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
County Counsel	This is a Grant application. Not subject to County Counsel Review
Procurement Review	<ol style="list-style-type: none"> 1. Was this time processed through Procurement? No 2. In no, provide brief explanation: This is a Grant application. Not subject to Procurement Review.
Contact Person	Brenda Durbin, Director, Social Services Division - 503-655-8641
Contract No.	H3S #10226

Background

The Social Services Division of the Department of Health, Housing and Human Services requests approval of an intergovernmental agreement with TriMet for Special Transportation Formula Funds. This proposal will provide funding for Mt Hood Express operations, the Clackamas Transportation Consortium's Title XIX waived non-medical transportation program and rides to dialysis clients who live outside of the TriMet service district.

Clackamas County Social Services has received Special Transportation Funds (STF) to operate the Mt Hood Express transit for over 10 years and for other transportation programs serving seniors and persons with disabilities for over two decades. ODOT has made STF formula base funds available through TriMet as the STF Agency.

Clackamas County Social Services (CCSS) has operated the Mt Hood Express public bus service since 2007. The Mt. Hood Express (formerly the Mountain Express) provides public transit service from the City of Sandy along the Highway 26 corridor including stops in Welches, Rhododendron, Government Camp and Timberline Lodge. The service connects to Sandy's bus service to provide regional public transit access to employees, local residents and persons who desire to access recreational opportunities year round on Mt. Hood. The Villages Shuttle service provides point-deviated bus service to the Villages at Mt. Hood Communities on weekdays, allowing seniors, persons with disabilities and others who need extra stops and route deviations bus service to access work, medical appointments and other needs. The Mt Hood Express cannot function without safe, reliable vehicles.

For many years Clackamas County Social Services (CCSS) has received funding from TriMet general funds for to provide required match per one-way ride so that Consortium members receive the full \$14.00 per one-way ride for rides provided. This agreement now provides those funds through the State of Oregon Special Transportation Funds process. The Federal match rate is adjusted annually. The current rate is 30.38%. The balance is funded by Title XIX (Medicaid) Waivered Services funds. All rides must first be authorized by the client's APD case manager in order for Consortium members to receive payment for the service. The goal of the Consortium in providing transportation services is to assist older and disabled county residents in meeting their individual needs. These services assist them in living independently in their own homes for as long as possible.

This grant will also fund rides for seniors who need transportation to dialysis and other life sustaining medical treatment who reside outside of the TriMet service district. This service for medically fragile residents is provided through the Transportation Reaching People program and is generally the only transportation option in rural areas. All of the rides originate outside the Clackamas TriMet service district, but have destination anywhere in the Metro Region. Riders received door to door service.

Total amount of the application is \$89,558. No County General Funds are involved.

Recommendation

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

Respectfully submitted

Mary Rumbaugh

Digitally signed by Mary
Rumbaugh
Date: 2021.07.21 07:03:30 -07'00'

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

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10226

Board Order #: N/A (Under \$150,000)

Division: SS
Contact: Babcock, Kristina
Program Contact:
Babcock, Kristina

- Subrecipient
 Revenue
 Amend # \$
 Procurement Verified
 Aggregate Total Verified

Non BCC Item BCC Agenda

CONTRACT WITH: 22-23 TriMet STF

CONTRACT AMOUNT: \$89,558.00

TYPE OF CONTRACT

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

DATE RANGE

- | | |
|---------------------------------------------------------|----------------------------------------------------------------------------------|
| <input 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? 07/01/2021 - 06/30/2023 |

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: Kathleen Rastetter _____ Date Approved: Tuesday, June 29, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

AGREEMENTS/CONTRACTS

N/A (Under \$150,000)

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

ORIGINATING COUNTY

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

PURCHASING FOR: Contracted Services _____

OTHER PARTY TO

CONTRACT/AGREEMENT: 22-23 TriMet STF _____

PURPOSE OF

**CONTRACT/AGREEMENT: TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON
SUBRECIPIENT AGREEMENT GP200839GS
DISBURSEMENT OF STATE OF OREGON, PUBLIC
TRANSIT SECTION
SPECIAL TRANSPORTATION FUNDS
ODOT GRANT AGREEMENT NO. 33503**

Biennial renewal

DATE OF EXECUTION: _____

H3S CONTRACT NUMBER: 10226 _____

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
SUBRECIPIENT AGREEMENT GP200839GS AMENDMENT 1
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION
SPECIAL TRANSPORTATION FUNDS
ODOT GRANT AGREEMENT NO. 33503**

PARTIES:

1. Tri-County Metropolitan Transportation District of Oregon (TriMet)
2. Clackamas County (Subrecipient)

RECITALS:

1. Pursuant to ORS Chapter 391, TriMet is designated to distribute to "providers of transportation," as that term is defined in ORS 391.830(6), State of Oregon Department of Transportation (ODOT), Public Transit Division, Special Transportation Funds (STF) for the purposes set forth at ORS 391.830(4). Subrecipient is a "provider of transportation" in Clackamas County, Oregon. ODOT, through its Public Transit Division, awarded TriMet Fiscal Year 2022-2023 Biennium STF Formula Funds (Funds) under Agreement No. 33503. Funds to Subrecipient has been approved by ODOT Grant Agreement No. 33503. Notwithstanding any term of provision of Grant Agreement No. 33503, the maximum amount of Funds to be disbursed to Subrecipient shall not exceed \$89,558.
2. Pursuant to OAR 732-005-0061, TriMet and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved Funds to Subrecipient for Subrecipient's accomplishment of the Project(s), specified in Exhibit C, attached hereto. **Funds shall be used solely for the Project(s) and shall not be used for any other purpose.**

AGREEMENTS:

1. General

Subrecipient agrees to comply with and use the Funds in accordance with the terms of this Agreement No. GP200839GS, including the attached Exhibit A, B, C, and D (Agreement). Subrecipient further agrees to comply with the terms and conditions of ORS 391.800 through 391.830 and the provisions of Oregon Administrative Rules (OAR) Chapter 732, as may be amended, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in the attached Exhibits A, B, C, and D, which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the Funds, and shall be amended to incorporate those changes, if any.

Subrecipient agrees to comply with all subrecipient monitoring policies, procedures and other

requirements to ensure compliance with applicable federal and State of Oregon statutes and rules, including, but not limited to, ORS 391.800 through 391.830, the provisions of OAR Chapter 732, and Title VI of the Civil Rights Act of 1964.

Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract Subrecipient may execute. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this Agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 4, and 6(B).

2. Audit Requirements/Financial Management Procedures

Funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit A shall apply. TriMet may request additional information including, but not limited to, audits of specific projects or services related to this Agreement or the Project(s). Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 391.800 through 391.830 and OAR Chapter 732 in addition to the requirements set forth in Exhibit A.

Subrecipient shall comply with applicable federal, state and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing and reporting requirements with Funds. **Subrecipient shall document the expense of all Funds disbursed under this Agreement.**

3. Reporting Requirements

In order to be reimbursed, Subrecipient shall submit quarterly progress reports electronically to TriMet's Project Manager, using the report form in Exhibit D, no later than 30 days after the close of each quarterly reporting period. Quarterly progress reports must be remitted via TriMet's established process for posting on its website that meets the requirements of Exhibit A and Exhibit C. Reporting periods follow calendar quarters Q1 (July through September), Q2 (October through December), Q3 (January through March), and Q4 (April through June).

TriMet and ODOT reserve the right to request additional information as may be necessary to comply with state reporting requirements. Copies of the reports shall be sent to TriMet's Project Manager, Justin Trubiani, or his designee.

4. Withholding of Funds

In addition to any other provisions of this Agreement, including but not limited to Exhibits A and C, TriMet may withhold payment of Funds if:

4.1. The Funds are not being used in accordance with ORS 391.800 through 391.830, the relevant OARs or this Agreement;

4.2. All required reports have not been submitted; or

4.3. If there are any unresolved audit findings relating to the STF.

Subrecipient shall assure that Funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Upon breach of conditions that require TriMet to return Funds to ODOT, to the extent allowed by law, Subrecipient shall hold harmless and indemnify TriMet for an amount equal to the Funds required to be repaid, plus any additional costs incurred by TriMet.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives Funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and Federal Transit Administration (FTA) regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Indemnification

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

In addition to any other remedies available to TriMet provided by law or this Agreement, any Subrecipient receiving Funds pursuant to this Agreement shall assume sole liability for that

Subrecipient's breach of the conditions of this Agreement. The provisions set forth in this Section and related provisions in Exhibit A shall survive termination or expiration of this Agreement.

7. Vehicle/ Operator Requirements

Subrecipient shall ensure that all drivers of equipment purchased with Funds have a valid Oregon driver's license and shall have passed a defensive driving course or bus driver's training course. Per ORS 820.200, drivers of public passenger-carrying vehicles must be at least 21 years of age. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall require criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

8. Funding

- A. Upon execution of this Agreement and to the extent TriMet has received funds from ODOT, TriMet shall disburse Funds to Subrecipient as outlined in Exhibits A and C. The total amount disbursed by TriMet under this Agreement shall not exceed the sum of \$89,558.
- B. TriMet will make quarterly installment payments to Subrecipient within 30 days after TriMet has received Funds from ODOT. TriMet shall determine the amount of each quarterly payment based on the amount of Funds stated in Exhibit C divided by the number of calendar quarters for which payments are scheduled to be made, with any adjustments as may be determined by TriMet.
- C. All Funds must be used for expenses incurred no later than June 30, 2023 and not before July 01, 2021.
- D. Subrecipient shall provide documentation (i.e., General Ledger reports) to TriMet's Project Manager (Justin Trubiani at trubianj@trimet.org) within 30 days after the end of each TriMet Fiscal Year that show cumulative total expenses incurred in the biennial period. Such documentation shall show that all Funds paid to Subrecipient were used solely for the Project(s) identified under Exhibit C.

If disbursements exceed actual expenditures as documented above, the amount must be returned to TriMet to be used at TriMet's discretion for projects approved by the Special Transportation Fund Advisory Committee.

- E. Prompt Payment - Subrecipient shall make payment promptly, as due, to all persons supplying to the Subrecipient labor or material for the performance of the work provided for in the contract. At a minimum, Subrecipient shall pay subcontractors no later than thirty (30) days from receipt of payment from TriMet. Subrecipient shall not hold retainage from

subcontractors.

9. Term

This Agreement shall be in effect from July 1, 2021 through June 30, 2023, unless the Agreement is terminated earlier as provided herein.

10. Communications

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

TriMet:

Justin Trubiani
TriMet
1800 SW 1st Ave., Suite 300
Portland, Oregon 97201
(971)223-9049
trubianj@trimet.org

Subrecipient:

Teresa Christopherson
Clackamas County; Social Services Division
2051 Kaen Rd, PO Box 2950
Oregon City, Oregon 97045
(503) 650-5718
teresachr@clackmas.or.us

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

11. Assignment/Subcontracts

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other Party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by TriMet.

12. Mediation

Should any dispute arise between the Parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any Party commencing litigation. In such an event, the Parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.

13. Entire Agreement/Authority

This Agreement and the attached Exhibits A, B, C, and D 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 authorized representatives of both Parties. If made, such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The failure of Subrecipient or TriMet to enforce any provision of this Agreement shall not constitute a waiver by the Party of that, or any other provision.

14. Severability

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

15. Authority

The individuals signing below represent and warrant that they have authority to bind the Party for which they sign. The Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

16. Counterparts

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

Subrecipient: Clackamas County

Name: _____

Title: _____

Date: _____

Address: 2051 Kaen Rd
Oregon City, OR 97045

Phone/FAX: _____

Federal Employer ID Number: _____

Signature: _____

Tri-County Metropolitan Transportation District of Oregon (TriMet):

Name: JC Vannatta

Title: Executive Director Public Affairs

Date: _____

Signature: _____

Tri-County Metropolitan Transportation District of Oregon (TriMet):

Name: Dee Brookshire

Title: Chief Financial Officer

Date: _____

Signature: _____

**EXHIBIT A
SPECIFIC AGREEMENT PROVISIONS**

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

1. Disbursement and Recovery of Funds.

- A. **Disbursement Generally.** TriMet shall disburse Funds to Subrecipient no later than thirty (30) days after ODOT disburses such funds to TriMet in accordance with and subject to Paragraph 6(a) Disbursement and Recovery of Funds of the Grant Agreement between ODOT and TriMet (Agreement No. 33503, attached hereto).
- B. **Conditions Precedent to Disbursement.** TriMet's obligation to disburse Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. TriMet has received funding, appropriations, limitations, allotments or other expense authority sufficient to allow TriMet, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient's representations and warranties set forth in Section 2 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iii. Subrecipient is in compliance with the terms of this Agreement.
 - iv. All Funds previously disbursed have been used in accordance with OAR Chapter 732.
 - v. Any audit findings relating to Subrecipient's use of Funds under this Agreement have been resolved.
- C. **Recovery of STF.** Any Funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement (Misexpended Funds) must be returned to TriMet. Subrecipient shall return all Misexpended Funds to TriMet within 10 days after the earlier of TriMet's written demand, or expiration or termination of this Agreement.

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

- A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient, (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's Charter, Articles of Incorporation or Bylaws, if applicable, and (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a Party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or

registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or Parties to sub agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- D. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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

3. **Records Maintenance and Access; Audit.**

- A. **Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account for and maintain all fiscal records related to this Agreement and the Project(s) in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and State standards for audits of municipal corporations, non-profit and for-profit organizations as applicable. Subrecipient shall require that each of its subrecipients and subcontractors complies with these requirements. The Oregon Secretary of State (Secretary of State), ODOT, the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA), TriMet and their duly authorized representatives shall have access to the books, documents, papers and records of Subrecipient that are directly related to this Agreement, the Funds provided hereunder, or the Project(s) for the purpose of making audits and examinations. In addition, the Secretary of State, ODOT, USDOT, FTA, TriMet and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Subrecipient shall permit authorized representatives of the Secretary of State, ODOT, USDOT, FTA to perform site reviews of the Project(s), and to inspect all vehicles, real property, facilities and equipment purchased by Subrecipient as part of the Project(s) and any transportation services rendered by Subrecipient.
- B. **Retention of Records.** Subrecipient shall retain and keep and require its subrecipients and subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Funds or the Project(s) for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient, its subrecipients and subcontractors shall retain the records until the questions are resolved.

C. **Expense Records. Subrecipient shall document the expense of all Funds disbursed by TriMet under this Agreement.** Subrecipient shall create and maintain all expense records in accordance with generally accepted accounting principles and in sufficient detail to permit TriMet to verify how the Funds were expended.

D. **Audit Requirements.**

- i. Subrecipient shall at Subrecipient's own expense, submit to TriMet and if requested by ODOT or its Public Transit Division, at 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 (or electronically to ODOTPTDreporting@odot.TriMet.or.us) a copy of its annual audit subject to this requirement covering the Funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any Subrecipient(s) and any of Subrecipient's contractor(s) or subcontractor(s) responsible for the financial management of Funds received under this Agreement.
- ii. To the fullest extent permitted by law, Subrecipient shall save, protect and hold harmless TriMet and ODOT from the cost of any audits or special investigations performed by the Secretary with respect to the Funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this Agreement or any other agreement between Subrecipient and TriMet or by ODOT.

4. **Subrecipient Sub agreements and Other Requirements**

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

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

B. **Subrecipient and Sub agreement indemnity; insurance.**

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

Subrecipient shall obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

- C. **Subrecipient's sub agreement(s) shall require any other Party to such sub agreements(s) that is not a unit of local government as defined in ORS 190.003, to indemnify, defend, save and hold harmless ODOT, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other Party to Subrecipient's sub agreement or any of such Party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that ODOT shall, in all instances, except for Claims arising solely from ODOT's negligent or willful acts or omissions, be indemnified by the other Party to Subrecipient's sub agreement(s) from and against any and all Claims.**

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

Subrecipient shall require the other Party, or Parties, to each of its sub agreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

- D. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project(s) under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.

5. Termination

- A. **Termination by TriMet.** TriMet may terminate or suspend this Agreement, in whole or part, effective upon 30 days' prior written notice to Subrecipient, or at such later date as may be established by TriMet in such written notice, for cause including, but not limited to, any of the following conditions:
- i. Subrecipient fails to perform the Project(s) within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project(s) by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. TriMet fails to receive funding, appropriations, limitations or other expense authority sufficient to allow TriMet, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if TriMet determines to terminate or suspend for its own convenience; or
 - iii. Federal or State laws, rules, regulations or guidelines are modified or interpreted in

such a way that the Project(s) are no longer allowable or no longer eligible for Funds funding under this Agreement; or

- iv. Subrecipient takes any action pertaining to this Agreement without the approval of TriMet and which under the provisions of this Agreement would have required the approval of TriMet.

- B. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon 30 days' prior written notice of termination to TriMet, or at such later date as may be established by Subrecipient in such written notice, if:
 - i. Upon notification to TriMet of subrecipient's desire to withdraw from eligibility to receive the Funds and providing to TriMet a reason acceptable to TriMet for the withdrawal; or
 - ii. Federal or State laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project(s) are no longer allowable or no longer eligible for funding under this Agreement.
- C. **Termination by Either Party.** If either Party fails to comply with any of the terms of this Agreement, the other Party may terminate this Agreement upon at least ten (10) business days' notice to the other Party, and the other Party's failure to cure within the period provided in the notice.

6. General Provisions

- A. **Responsibility for Funds.** In addition to any other remedies available to TriMet as provided for by law or under this Agreement, any Subrecipient receiving Funds, pursuant to this Agreement shall assume sole liability for that Subrecipient's breach of the provisions of this Agreement, and shall, upon Subrecipient's breach of any provision that requires TriMet to return Funds to ODOT, hold harmless and indemnify TriMet to the fullest extent allowed by law for an amount equal to the Funds received under this Agreement; or if state or federal law limitations apply to the indemnification ability of the Subrecipient of Funds, the indemnification amount shall be the maximum amount of Funds allowable, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- B. **Contribution.** If any third Party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against TriMet or Subrecipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which TriMet is jointly liable with Subrecipient (or would be liable if joined in the Third Party Claim), TriMet shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement

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

With respect to a Third Party Claim for which Subrecipient is jointly liable with TriMet (or would be liable if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by TriMet in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of TriMet on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of on the one hand and of TriMet on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. If Subrecipient is a public body, Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, if Subrecipient has sole liability in the proceeding.

- C. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- D. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America, TriMet or any other Party, organization or individual.
- E. **No Third Party Beneficiaries.** TriMet and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

- F. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 10 Communications of this Agreement, or to such other addresses or numbers as either Party

may hereafter indicate. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

- G. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. In no event shall this section be construed as a waiver by Subrecipient, TriMet or by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- H. Compliance with Law.** Subrecipient shall comply with all federal, State, and local laws, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Project(s). Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS659A.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.
- I. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its lower tier subrecipient(s), contractor(s) and subcontractor(s) complies with these requirements. Subrecipient shall include in any sub agreements to perform services pursuant to this Agreement, a provision requiring a subcontractor to comply with this Section I and to indemnify and hold TriMet harmless including reasonable attorney's fees for breach of this provision.
- J. Independent Contractor.** Subrecipient shall perform under this Agreement as an independent contractor or subrecipient and not as an agent or employee of ODOT or TriMet. Subrecipient shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient has no right or authority to incur or create any obligation for or legally bind ODOT or TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs its obligations under this Agreement, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performance. Subrecipient acknowledges and agrees that Subrecipient, its officers, directors, employees, subcontractors or volunteers are not an "officer," "employee," or "agent" of ODOT or TriMet, as those terms are used in ORS 30.265, and shall not make representations to third Parties to the contrary. Neither Subrecipient, nor its directors, officers, employees, subcontractors, or volunteers shall hold themselves out either explicitly or implicitly as officers, employees, or agents of TriMet for

any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise, or joint venture between the Parties.

EXHIBIT B
SUBRECIPIENT INSURANCE REQUIREMENTS

GENERAL

Subrecipient shall obtain and provide, and require in its first tier sub agreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the same insurance applicable to Subrecipient for subcontractor's performance under is sub agreement: (i) insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of this Agreement and of any sub agreement commences; and (ii) maintain the insurance in full force throughout the duration of this Agreement and sub agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to TriMet. Subrecipient shall not commence work under this Agreement, and shall not authorize work to begin under a sub agreement until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements in its sub agreements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the sub agreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a sub agreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a sub agreement in which the Subrecipient is a Party.

Subrecipient shall comply with any requirements of TriMet with respect to Subrecipient's compliance with these insurance requirements, including but not limited to TriMet issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Agreement as permitted by this Agreement, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

- I. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
- II. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to TriMet. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by TriMet:

Bodily Injury, Death and
Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.

- III. AUTOMOBILE Liability Insurance: Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by TriMet:

Bodily Injury, Death and
Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED

The Commercial General Liability Insurance and Automobile Liability insurance must include ODOT and TriMet, and their respective officers, employees and agents as Additional Insureds but only with respect to the Subrecipient's activities to be performed under the Agreement and, with respect to subcontractors, activities to be performed under their sub agreements. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE

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

NOTICE OF CANCELLATION OR CHANGE

The Subrecipient or its insurer must provide 30 days' written notice to TriMet before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE

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

on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. In lieu of submitting the certificate of insurance required herein, if Subrecipient is a local government as defined under ORS 190.003, Subrecipient may furnish a Declaration that it is self-insured for no less than the amounts required by applicable law.

EXHIBIT C CLACKAMAS COUNTY SCOPE OF SERVICE

Subrecipient contact information:

- Contact Person: Teresa Christopherson
- Address: 2051 Kaen Rd, PO Box 2950, Oregon City, Oregon 97045
- Telephone: (503) 650-5718
- E-Mail: teresachr@clackamas.us

TriMet contact information:

- Contact Person: Justin Trubiani, Project Manager
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: (971)223-9049
- E-Mail: trubianj@trimet.org

Term of Contract:

7/1/2021 through 6/30/2023

2022-23 STF Formula Funds Total: \$89,558

Project Title: Mt Hood Express Service Continuation

Project STF Formula Funds Total: \$21,500

Project Description:

Mt. Hood Express (formerly Mountain Express) provides commuter and point deviated fixed route bus service between the City of Sandy and various destinations along the Highway 26 corridor, ending at Timberline Lodge since 2008 and has been expanded to serve Government Camp and Timberline Lodge. Mt Hood Express (MHX) provides fully accessible public transit for employment, recreation and other needs to both local residents as well as visitors from the Metro area and beyond. MHX has expanded regional transit connectivity by linking with City of Sandy's service which connects to TriMet's light rail and bus service in Gresham.

The MHX commuter service delivers seven runs a day/seven days per week between Sandy and Timberline Lodge during the summer season (April 1 to November 1) and eight runs a day during the winter season.

The Villages Shuttle provides point deviated fixed route service between Sandy and Rhododendron four times daily seven days per week. The Hoodland Sr. Ctr. provides a limited rides to residents in the area, this is the only other transportation service available.

Project Funding:

Category	Year 1		Year 2		Total	
	STF/ Award	Total Project Cost	STF Award	Total Project Cost	STF Award	Total Project Cost
Planning:						
Operating:	\$10,750	\$726,063	\$10,750	\$734,427	\$21,500	\$1,460,490
Capital:		\$41,250		\$41,250		\$82,500
Administrative:		\$39,007		\$39,006		\$78,013
Other (describe):						
Total:	\$10,750	\$806,320	\$10,750	\$814,683	\$21,500	\$1,621,003

Project Funding Sources:

Funding Source	Year 1:	Year 2:	Total:
Source 1: STF/5310 Funds Requested	\$10,750	\$10,750	\$21,500
Source 2: FTA 5311 Ops	\$129,460	\$129,460	\$258,920
Source 3: FTA 5310 Ops	\$58,324	\$58,325	\$116,649
Source 4: WFL FLAP	\$290,919	\$312,441	\$603,360
Source 5: County Funds	\$64,500	\$64,500	\$129,000
Source 6: Private contributions	\$45,000	\$45,000	\$90,000
Source 7: Fares	\$130,000	\$135,000	\$265,000
Source 8:STIF Operations	\$100,000	\$101,339	\$201,339
Source 9: FTA 5310 Preventative Maintenance	\$17,867	\$17,868	\$35,735
Source 10: Other capital funds**			
Total:	\$806,320	\$814,683	\$1,621,003

**Includes FTA5311 (capital), FTA5339, WFL FLAP and STIF

Project Measurables:

Measurable	Year 1:	Year 2:
One way Rides	72,130	72,130
Senior/Person w/ Disability One way Rides	1,000	1,000
Total paid driver hours	9,087	9,087
Total volunteer driver hours	0	0
Cost per trip	\$11.00	\$11.00
# of individuals served	N/A	N/A
Vehicle Hours	9,087	9,087
Vehicle Miles	250,000	250,000

Project Title: STF Waivered Non-Medical Transportation Match

Project STF Formula Funds Total: \$32,513

Project Description:

All Clackamas County residents who are receiving community-based care through the State's Department of Human Services (DHS) Medicaid long-term support services in the community or in their home are eligible.

This award provides matching dollars for waived non-medical (T19) transportation program. Social Service has held a contract with the DHS to provide this service since 1995. Service is provided by the Transportation Reaching People (TRP) program and, through subcontracts, the area community centers. Funds from this grant request will pay the approximate 30-35% matching share required by DHS under these contracts.

All riders receive door to door service. Transportation is provided Monday through Friday. Riders, after service is authorized by the Case Manager, simply call the local provider, or TRP, to schedule a ride.

Rides are provided using both paid and volunteer drivers. The ride must originate within the service area, anywhere in Clackamas County, but can go to a destination outside the service area. The participating senior centers serve Canby, Estacada, Gladstone, Lake Oswego, Milwaukie, Molalla, Oregon City and Sandy with TRP

Project Funding:

Category	Year 1		Year 2		Total	
	STF/ Award	Total Project Cost	STF Award	Total Project Cost	STF Award	Total Project Cost
Planning:						
Operating:	\$16,017	\$1,180,844	\$16,497	\$1,204,766	\$32,513	\$2,385,610
Capital:		\$8,973		\$8,973		\$17,946
Administrative:		\$35,100		\$35,100		\$70,200
Other (describe):						
Total:	\$16,017	\$1,224,917	\$16,497	\$1,248,839	\$32,513	\$2,473,756

Project Funding Sources:

Funding Source	Year 1	Year 2	Total
Source 1: STF/STIF/5310 Funds Requested	17,510	18,035	35,545
Source 2: STF County Consortium	16,017	16,497	32,514
Source 3: STF Ride Connection Pass Through	672,498	692,671	1,365,169
Source 4: 5310 County Consortium	39,873	40,800	80,673
Source 5: STIF County Consortium	43,900	45,217	89,117
Source 6: OAA Title III-B	150,000	150,000	300,000
Source 7: Medicaid for Waivered Non-Medical Transportation	33,450	33,450	66,900
Source 8: In District (TriMet)	206,669	206,669	413,338
Source 9: Sr. Ctr. Agency Other	25,000	25,000	50,000
Source 10: Rider Donations	20,000	20,500	40,500
Total:	1,224,917	1,248,839	2,473,756

Project Measurables:

Measurable **	Year 1:	Year 2:
One way Rides		
Senior/Person w/ Disability One way Rides	3,500	3,500
Total paid driver hours		
Total volunteer driver hours		
Cost per trip*	\$5.60	\$5.60
# of individuals served		
Vehicle Hours		
Vehicle Miles		

* Estimated match portion of the \$14/rides paid by DHS to Social Services.

** Driver Hours, Vehicle Hours and vehicle Miles are not tracked separately for this project.

Project Title: Transportation Reaching People - Dedicated Dialysis Out of District

Project STF Formula Funds Total: \$35,545

Project Description:

This transportation project is open to all Clackamas County resident over age 18 who have limited access to transportation for dialysis treatment and utilizes underspent STF fund dedicated to Medicaid non-Medical transportation match. This funding request is specific to the portion of the operation that provides dedicated dialysis service to riders living outside the TriMet district. The ride must originate outside the Clackamas TriMet service district, but can go to a destination anywhere in the metro region.

These TRP rides are provided using two wheelchair accessible vans, two wheelchair accessible buses, and a non-wheelchair accessible sedan and operated by paid drivers. TRP volunteer drivers also provide limited rides in their own vehicles. Taxis are utilized on a limited basis and only when a TRP driver/vehicle, paid or volunteer, isn't available. Riders receive door to door service.

Transportation is provided Monday through Friday. Riders simply call the TRP office to schedule a ride.

Marketing is not done the traditional sense. Information about the service is regularly distributed to community partners & dialysis centers.

Project Funding:

Category	Year 1		Year 2		Total	
	STF Award	Total Project Cost	STF Award	Total Project Cost	STF Award	Total Project Cost
Planning:						
Operating:	\$17,510	\$1,180,844	\$18,035	\$1,204,766	\$35,545	\$2,385,610
Capital:		\$8,973		\$8,973		\$17,946
Administrative:		\$35,100		\$35,100		\$70,200
Other (describe):						
Other (describe):						
Total:	\$17,510	\$1,224,917	\$18,035	\$1,248,839	\$35,545	\$2,473,756

Project Funding Sources:

Funding Sources	Year 1	Year 2	Total
Source 1: STF Award	17,510	18,035	35,545
Source 2: STF County Consortium	16,017	16,497	32,514
Source 3: STF Ride Connection Pass Through	672,498	692,671	1,365,169
Source 4: 5310 County Consortium	39,873	40,800	80,673
Source 5: STIF County Consortium	43,900	45,217	89,117
Source 6: OAA Title III-B	150,000	150,000	300,000
Source 7: Medicaid for Waivered Non-Medical Transportation	33,450	33,450	66,900
Source 8: In District (TriMet)	206,669	206,669	413,338
Source 9: Sr. Ctr. Agency Other	25,000	25,000	50,000
Source 10: Rider Donations	20,000	20,500	40,500
Total:	1,224,917	1,248,839	2,473,756

*The number of 1-way rides, Driver Hours, Vehicle Miles and unduplicated riders is specific for this funding project and reflect ½ of the anticipated out of district rides provided.

Project Measurables:

Measurable	Year 1:	Year 2:
One-way Rides	N/A	N/A
Senior/Person w/ Disability One-way Rides*	1,175	1,225
Total paid driver hours*	300	325
Total volunteer driver hours *	550	575
Cost per trip	\$36.18	\$37.27
# of individuals served *		
Vehicle Hours	19,500	19,575
Vehicle Miles *		
Other (describe):		
Other (describe):		

EXHIBIT D

Quarterly Project Monitoring Report Form

Use this form to submit quarterly progress reports for EACH project receiving funding awarded through the STFAC solicitation process. Submit this form electronically to TriMet’s Project Manager, Justin Trubiani, or her designee, no later than 30 days after the close of each quarterly reporting period. TriMet will share your reports with ODOT and the STFAC. TriMet will work with ODOT, the STFAC, and Subrecipients to make changes to this Report Form, as necessary.

- 1. Project Title:**
- 2. Funding Source:**
- 3. Amount of Award:**
- 4. Attach a statement of revenues and expenses to-date and include local match contributions, if applicable.**
- 5. Project Budget:** Fill out the table below and attach statement of revenues and expenses, where applicable.

Category	Year 1 Q1 Estimates	Year 1 Q1 Actuals
Administration	\$	\$
Planning:	\$	\$
Operating:	\$	\$
Capital:	\$	\$
Total	\$	\$

- 6. Project Measurables:** Fill out the table below, where applicable.

Measurable	Year 1 Q1 Estimates	Year 1 Q1 Actuals
One Way Rides		
Older Adults/Person with Disability One Way Rides		
Total Paid Driver Hours		
Total Volunteer Driver Hours		
Cost Per Trip	\$	\$
Revenue Operations Hours		
Revenue Service Mileage		
Cost per Hour		
Cost Per Mile		

7. Ridership by County: Fill out the table below, where applicable.

Pick-Ups by County	Year 1 Q1 Actuals
Pick-Ups in Clackamas County	
Pick-Ups in Multnomah County	
Pick-Ups in Washington County	

8. Number of turn downs: Fill out the table below, where applicable.

Number of Turn Downs	Year 1 Q1 Actuals	Year to Date Actuals
Turn Downs		

9. Provide a description of project deliverables and how goals, deliverables, tasks, and schedule are being met this quarter. If goals, deliverables, tasks and/or schedule are not being met then explain why and what steps are being taken to meet them. (250 words or less)

August 12, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval to renew an Intergovernmental Agreement with City of Sandy,
Oregon, for Support for the Mt Hood Express Bus Service

Purpose/Outcomes	Intergovernmental Agreement with City of Sandy, Oregon, for support for the Mt Hood Express bus service
Dollar Amount and Fiscal Impact	The total agreement is \$81,450 and will be used by the City of Sandy to provide staffing to support the operations of the Mt Hood Express, facility rental for the bus service, shop supplies, and vehicle use fees for the Mt Hood Express
Funding Source	Local funds, 5311 FTA Small Rural Transportation funds, 5310 FTA funds, Federal Lands Access Funds, Statewide Transportation Improvement Funds and state Special Transportation Funds
Duration	Effective July 1, 2021, and terminates on June 30, 2022
Previous Board Action	010721-A4 previous agreement approved
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
Counsel Review	County Counsel reviewed and approved this document on 10/26/20 AN
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S#10266

The Social Services Division of the Department of Health, Housing and Human Services requests approval of an agreement with City of Sandy, Oregon, to support the Mt Hood Express bus service. The Mt Hood Express provides public transit bus service between the City of Sandy, Government Camp and Timberline, along with other locations in the Mt. Hood area, increasing access to employment and recreation opportunities.

This agreement provides funding to the City of Sandy to provide staffing to support the operations of the Mt Hood Express, facility rental for the bus service, reimbursement for shop supplies and vehicle use fees for the Mt Hood Express to address temporary fleet shortages. The City and County are now using a shared operations contractor to provide direct service.

The agreement is effective July 1, 2021 and continues until June 30, 2022. The maximum amount of the agreement is \$81,450.

RECOMMENDATION:

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

Page 2 – Staff Report: H3S #10266
August 12, 2021

Respectfully submitted

Mary Rumbaugh  Digitally signed by Mary
Rumbaugh
Date: 2021.07.21 07:02:00 -07'00'

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

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10266

Board Order #:

Division: SS
Contact: Babcock, Kristina
Program Contact:
Babcock, Kristina

- Subrecipient
 Revenue
 Amend # \$
 Procurement Verified
 Aggregate Total Verified

Non BCC Item BCC Agenda Date:

CONTRACT WITH: 21-23 City of Sandy

CONTRACT AMOUNT: \$81,450.00

TYPE OF CONTRACT

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

DATE RANGE

- | | |
|---------------------------------------------------------|----------------------------------------------------------------------------------|
| <input 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? 07/01/2021 - 06/30/2022 |

INSURANCE What insurance language is required?

Checked Off N/A

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

If no, explain why:

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

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

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

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

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

COUNTY COUNSEL

Yes by: Andrew Naylor _____ Date Approved: Monday, July 12, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

AGREEMENTS/CONTRACTS

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

ORIGINATING COUNTY

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

PURCHASING FOR: **Contracted Services** _____

OTHER PARTY TO

CONTRACT/AGREEMENT: **21-23 City of Sandy** _____

BOARD AGENDA ITEM

NUMBER/DATE: _____ DATE: _____

PURPOSE OF

CONTRACT/AGREEMENT: IGA with City of Sandy for MHX services. Renewed through 2023

H3S CONTRACT NUMBER: **10266** _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
AND
CITY OF SANDY, OREGON**

1. Purpose. This agreement (“Agreement”) is entered into between Clackamas County (“COUNTY”) and City of Sandy (“CITY”) for the cooperation of units of local government under the authority of ORS 190.010. This Agreement provides the basis for a cooperative working relationship for the purpose of providing administrative support to the COUNTY’s Mt. Hood Express (“MHX”) transit service in partnership with the CITY’s SAM transit service to increase operational efficiencies, collaboration and cost effective management of both services.

2. Scope of Work and Cooperation.
 - 2.1. Subject to the terms of this Agreement, CITY agrees to provide the following support functions for the MHX. :
 - 2.1.1. Partner with the County to oversee the coordination of the Sandy/Mount Hood Express semiannual rider surveys as required by grants and compile results for analysis.
 - 2.1.2. Work with the County on mutually agreeable policy and program development.
 - 2.1.3. Work with County for operational issues requiring County input.
 - 2.1.4. Assist with planning and coordination of events.
 - 2.1.5. Assist with finding meeting space for the Mt Hood Transportation Alliance, including booking the Sandy Operations Center if needed and arrangement of meeting space and accommodations.
 - 2.1.6. Update the MHX website, post notices to DoubleMap and respond to information requests.
 - 2.1.7. Interact with public, including sending information requests that dispatch can’t answer to county staff and handling on-site complaints if necessary.
 - 2.1.8. Post notices and display schedules at the Sandy Operation Center and other locations upon request
 - 2.1.9. General office and clerical duties as needed.
 - 2.1.10. Continue oversight, maintenance and updates to the DoubleMap system app and equipment on the MHX service, including posting notices as needed.
 - 2.1.11. Provide space for office staff, program materials, parking space for riders, parking of buses, vehicle equipment and shop supplies.
 - 2.1.12. Provide a vehicle for use by the Mt Hood Express in emergencies when existing Clackamas County owned vehicles are out of service.
 - 2.1.13. Act as on-sight liaison on behalf of the County with the shared operations contractor (MV Transportation) by Contractor, providing immediate communication for the contractor and their employees of policy and contractor functions.
 - 2.1.14. Other tasks and projects as needed.

2.2. Subject to the terms of this Agreement, COUNTY agrees to provide the following:

- 2.2.1. Provide ongoing fiscal support to the Mt Hood Express, as set forth in Section 3 of this Agreement. Changes in funding requiring changes in service levels will be communicated to CITY when notification is received from the funder, and the parties will negotiate in good faith to address those changes.
- 2.2.2. Complete and submit required reports to funders in a timely manner.
- 2.2.3. Participate in ongoing planning and coordination efforts, including participation in the Mt Hood Transportation Alliance.
- 2.2.4. Reimburse CITY for shop supplies and maintenance purchased by CITY
- 2.2.5. Pay a vehicle use fee of \$50 per day for the back-up bus if needed.
- 2.2.6. COUNTY will be responsible for all costs associated with accidents, including insurance deductibles, repairs not covered by insurance and towing for CITY-owned MHX back up bus for incidents occurring during its use for MHX routes.
- 2.2.7. Provide administrative and operational support as needed.

3. Compensation and Record Keeping.

- 3.1. Compensation. COUNTY shall compensate the CITY for satisfactorily performing the services beginning July 1, 2021 and identified in Section 2 in the amounts set forth in *Exhibit B: Budget*, attached hereto and incorporated by this reference herein. Total maximum compensation under this Agreement shall not exceed \$81,450. Any continuation or extension of this Agreement after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Agreement, as determined by the COUNTY in its sole administrative discretion.
- 3.2. Method of Payment. To receive payment, CITY shall submit invoices and accompanying progress reports as required in *Exhibit A: Reporting Requirements*, attached hereto and incorporated by this reference herein.
- 3.3. Withholding of Contract Payments. Notwithstanding any other payment provision of this Agreement, should CITY 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 may immediately withhold payments hereunder. The COUNTY may continue to withhold payment until CITY 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 CITY.
- 3.4. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement and all other pending matters are closed.
- 3.5. Access to Records. COUNTY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts. Likewise, CITY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the

books, documents, papers, and records of COUNTY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts.

4. Manner of Performance.

- 4.1. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CITY and COUNTY shall comply with all federal laws and regulations, Oregon laws and regulations, local ordinances and rules applicable to this Agreement, including, but not limited to, all applicable federal and Oregon civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibits D, E and F attached and incorporated into this Agreement.
- 4.2. Precedence. When a requirement is listed both in the Agreement and in an Exhibit to it, the requirement in the Exhibit shall take precedence.
- 4.3. Subcontracts. CITY shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from COUNTY.

5. General Provisions.

- 5.1. Contact. All routine correspondence and communication regarding this Agreement, as well as requests for written acknowledgment, shall be directed to the following representatives:

For COUNTY: Teresa Christopherson, 2051 Kaen Rd, Oregon City, OR 97045 (teresachr@clackamas.us) (503-650-5718)

For CITY: Andi Howell, Transit Director, City of Sandy, 16610 Champion Way, Sandy, OR 97055 (ahowell@ci.sandy.or.us) (503-489-0925)

Either party may change the contact or its associated information by giving prior written notice to the other party.

Each party shall give the other party immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

- 5.2. Indemnification. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other against all claims, demands, actions and suits of any kind or nature for personal injury, death, or damage to property arising out of this Agreement where the loss or claim is attributable to the negligent acts or omissions of the indemnitor or the indemnitor's officers, commissioners, councilors, employees, agents, subcontractors, or anyone over which the party has a right to control. Each party shall give the other party immediate written

notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

- 5.3. Severability. If any provision of this Agreement is found to be unconstitutional, illegal or otherwise unenforceable by a court or authority of competent jurisdiction, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision, to give effect to the intentions of the parties to the maximum extent possible.
- 5.4. Modifications. Any modification or change to the terms of this Agreement shall be effective only when reduced to writing and approved by the governing bodies of both parties. Any modification or change, including any additional agreement providing descriptions of tasks, standards of performance or costs, shall be in writing, shall refer specifically to this Agreement and shall be valid only when approved by the governing bodies of both parties.
- 5.5. Integration. This Agreement contains the entire agreement between the parties concerning its subject matter.
- 5.6. Third-Party Beneficiaries. The CITY and COUNTY are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 5.7. Applicable Law. The laws of the State of Oregon govern this Agreement without respect to conflict of laws principles. Any litigation between the parties arising out of or related to this Agreement will be conducted exclusively in the Circuit Court for the State of Oregon, Clackamas County. The parties accept the personal jurisdiction of this court.
- 5.8. Dispute Resolution.
 - 5.8.1. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this Agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the party shall not be considered in default for purposes of termination or instituting legal proceedings.
 - 5.8.2. The parties shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this Agreement that cannot be resolved by mutual agreement, the parties may mutually agree to mediate the dispute prior to a party commencing litigation. The mediation shall take place in Clackamas County, Oregon. The parties will equally bear the mediator's fees and costs.

5.9. Term and Termination.

- 5.9.1. Term. This Agreement is effective upon signature of both parties and will terminate on June 30, 2022, unless the parties agree in writing to extend the Agreement.
- 5.9.2. Termination For Convenience. Either party may terminate this Agreement by providing at least 30 days prior written notice to the other party.
- 5.9.3. Termination For Cause. Either party may immediately terminate this Agreement if that party complied with Section 5.8.1 of this Agreement and the other party did not cure its default within the time provided by Section 5.8.1.
- 5.9.4. Termination for Lack of Appropriation. Either party may terminate this Agreement in the event that party fails to receive expenditure authority, including but not limited to receipt of state or federal funds, sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either party is prohibited from paying for such work from the planned funding source.
- 5.10. Effective Date. This Agreement will only become effective upon approval by the governing bodies of COUNTY and CITY.
- 5.11. Necessary Acts. Each party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement including, but not limited to, any additional requirements imposed by state or federal funding sources.
- 5.12. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF SANDY
Stan Pulliam, Mayor

CLACKAMAS COUNTY

Signing on behalf of the Board
Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Mark Shull
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of the Mayor & Council

Jordan Wheeler, City Manager

Tootie Smith, Chair

Date

Date

EXHIBIT A

REPORTING REQUIREMENTS

Reporting:

CITY shall submit on a quarterly basis a narrative summary of the work performed on behalf of the Mt Hood Express, including progress on any planning or special projects.

Invoicing

CITY, through designated staff, shall submit to COUNTY a monthly invoice for project management services, bus rental, reimbursement of shop supplies, and preventative maintenance and repair costs. Any bus rental fees will include a summary of rental use. Preventative maintenance and shop supply cost reimbursement requests will require documentation sufficiently detailed to allow for reimbursement from the applicable funding source, as determined by the COUNTY in its sole administrative discretion.

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by COUNTY on or before the 15th of each quarter following the billing period.

E-mail address: teresachr@clackamas.us

COUNTY shall make payment to CITY within 30 days of receipt of each invoice submitted.

EXHIBIT B

BUDGET

\$13,916	Staff support for MHX project
\$24,034	Space for staff, program materials, and bus parking
\$1,500	Vehicle rental
\$2,000	Shop supplies, misc. equipment, COVID Supplies or program expenses
\$5,000	Reimbursement of preventative maintenance and repair paid by City
\$35,000	ITS equipment and/or service fees

Total maximum compensation under this contract shall not exceed \$81,450

EXHIBIT C

SPECIAL REQUIREMENTS

1. CITY certifies to the best of its knowledge and belief that neither it nor any of its principals:
 - (a) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or CITY;
 - (b) Have within a three-year period preceding this agreement 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;
 - (c) Are 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
 - (d) Have within a three-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the CITY is unable to certify to any of the statements in this certification, such CITY shall attach an explanation to this proposal.

2. In case of suspected fraud by applicants, employees, or vendors, CITY shall cooperate with all appropriate investigative agencies, and shall assist in recovering invalid payments.
3. CITY shall protect the confidentiality of all information concerning applicants for and recipients of services funded by this agreement and shall not release or disclose any such information except as directly connected with the administration of the particular Clackamas County program(s) or as authorized in writing by the applicant or recipient. All records and files shall be appropriately secured to prevent access by unauthorized persons.

CITY shall ensure that all officers, employees, and agents are aware of and comply with this confidentiality requirement.

4. CITY shall ensure that no person or group of persons shall, on the ground of age, race, color, national origin, primary language, sex, religion, handicap, political affiliation or belief, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by funds delegated under this agreement.
5. CITY will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity covered by this contract.
6. CITY will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).
7. CITY will establish safeguards to prohibit employees and volunteers from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. CITY certifies, to the extent required by federal law, that it will provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in CITY's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
 - (b) Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) CITY's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
 - (c) Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required by subsection (a) above.
 - (d) Notifying the employee in the statement required by subsection (a) that as a condition of employment on such contract, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
 - (e) Notifying the County within 10 days after receiving notice under subsection (d)(2) from an employee or otherwise receiving actual notice of such conviction.
 - (f) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5154 of the Drug-Free Workplace Act of 1988.
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of subsections (a) through (f).

Exhibit D: ODOT 5311 Contract
Exhibit E: FTA assurances

August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Apply to Funding Opportunity HRSA-21-114 with Health Resources and Services Administration (HRSA) for American Rescue Plan (APR) – Health Center Construction and Capital Investment

Purpose/Outcomes	One-time supplemental funding for a 3-year period offered to health centers funded under the Health Center Program to: support construction, expansion, alteration, renovation, and other capital improvements to modify, enhance, and expand health care infrastructure. Health Centers Division intends to utilize funds on the equipment costs of the new Sandy Health Center.
Dollar Amount and Fiscal Impact	The maximum agreement value is \$700,134.
Funding Source	Health Resources and Services Administration (HRSA). No County General Funds are involved.
Duration	Effective September 1, 2021 and terminates on August 31, 2024
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improve Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	Not required, renewal application only
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. This is a direct procurement of a grant.
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	N/A – Approval to Apply

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval to apply to funding opportunity HRSA-21-114 issued by the Health Resources and Services Administration (HRSA). The funding opportunity is being offered to Health Centers based on its status as an FQHC. Health Centers is requesting permission to apply for this funding. HRSA determined the amount of funding based on the following formula: (1) \$500,000, plus (2) \$11 per patient reported in the 2019 Uniform Data System (UDS). Health Centers will focus these dollars on the construction of the new integrated Sandy Health Center in Sandy, OR.

This Agreement has a maximum value of \$700,134. It is effective September 1, 2021 and terminates on August 31, 2024.

Healthy Families. Strong Communities.

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

Clackamas.us/h3s

RECOMMENDATION:

Staff recommends approval of this agreement and authorizes the Director of Health, Housing and Human Services to sign this agreement.

Respectfully submitted,

Mary Rumbaugh

Digitally signed by Mary
Rumbaugh
Date: 2021.07.21 08:28:27 -07'00'

Rodney A. Cook, Interim Director
Health, Housing & Human Services Department

Financial Assistance Application Lifecycle Form

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

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

** CONCEPTION **

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

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

Lead Department & Fund:

H3S-Health Centers Division

Application for: Subrecipient Assistance Direct Assistance

Grant Renewal? Yes No

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

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

Name of Funding Opportunity:

American Rescue Plan - Health Center Construction and Capital Improvements (HRSA-21-114)

Funding Source: Federal State Local

Requestor Information (Name of staff person initiating form):

Jennifer Stone

Requestor Contact Information:

JStone@clackamas.us; 503-742-5967

Department Fiscal Representative:

Sarah Jacobson

Program Name or Number (please specify):

Sandy Health Center (08544)/253.40.4005.400502.40050214

Brief Description of Project:

The purpose of this one-time funding opportunity is to support construction, expansion, alteration, renovation, and other capital improvements to modify, enhance, and expand health care infrastructure. Clackamas County Health Centers intends to utilize funds to cover the equipment costs of the new fully integrated Sandy Health Center in Sandy, OR.

Name of Funding Agency:

HRSA (Health Resources & Services Administration)

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

<https://bphc.hrsa.gov/program-opportunities/american-rescue-plan/arp-capital-improvements>

OR

Application Packet Attached: Yes No

Completed By:

Jennifer Stone

5.13.2021

Date

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

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

Competitive Application

Non-Competing Application

Other

CFDA(s), if applicable:

93.526

Funding Agency Award Notification Date:

August 2021

Announcement Date:

4/27/2021

Announcement/Opportunity #:

HRSA-21-114

Grant Category/Title:

American Rescue Plan-Health Centers

Max Award Value:

\$700,134.00

Allows Indirect/Rate:

Yes/NA

Match Requirement:

No

Application Deadline:

8/24/2021

Other Deadlines:

N/A

Award Start Date:

9/1/2021

Other Deadline Description:

N/A

Award End Date:

8/31/2024

Completed By:

Jennifer Stone

Program Income Requirement:

N/A

Pre-Application Meeting Schedule:

5/6/2021

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

Mission/Purpose:

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

Support to assist in keeping individuals, families and the community safe and healthy through the construction/completion of the new fully integrated Sandy Health Center in Sandy, OR

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

None

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

The purpose of this one-time funding opportunity is to support construction, expansion, alteration, renovation, and other capital improvements to modify, enhance, and expand health care infrastructure. We will meet these objectives by purchasing equipment and furniture new Sandy Health Center in Sandy, OR

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

The new integrated health center will fall under the Primary Care, Dental and Behavioral Health MFR programs.

Organizational Capacity:

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

Not applicable as this is a construction and capital investment opportunity.

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

No

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

This not a pilot project.

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

No, it will not create a new MFR program. We will expect the program to continue on after the funding ends. The program will be funded by revenue generated from services provided.

Collaboration

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

N/A

Reporting Requirements

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

Quarterly progress reports into the HRSA Electronic Handbooks (EHB). Reports will describe the status of the activities and use of funds.

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

Progress reports will consist of a narrative of project activities, project completion status (percent complete), actual versus projected budget information, timeline or construction schedule, earned value management (as applicable).

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

Annual Federal Financial Report (FFR), quarterly Federal Cash Transaction Report (FCTR)-FFR, Quarterly Progress Reports, and close out reporting at the end of project period.

Fiscal

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

Yes the cost to administer the grant will be minimal.

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

Other funding sources are not required but are being pursued.

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

No

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

No, the grant/financial assistance does not cover indirect costs.

Program Approval:

Sarah Jacobson

7-19-2021

Name (Typed/Printed)

Date

Signature

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

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

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Deborah Cockrell	7-20-2021	
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Mary Rumbaugh for Rodney A Cook	7-20-2021	Mary Rumbaugh <small>Digitally signed by Mary Rumbaugh Date: 2021.07.20 08:16:50 -07'00'</small>
Name (Typed/Printed)	Date	Signature

FINANCE ADMINISTRATION		
Elizabeth Comfort	7.21.2021	Elizabeth Comfort <small>Digitally signed by Elizabeth Comfort Date: 2021.07.21 07:34:00 -07'00'</small>
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
N/A		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

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

For applications less than \$150,000:

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

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

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

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

August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Apply to the 2021-2023 OSBHA ACTION grant with Oregon School-Based Health Alliance
for School Based Health Center programs

Purpose/Outcomes	To support healthy youth relationships, adolescent sexual health, and SBHC staff skill development relating to youth social and sexual health. Clackamas County Health Centers intends to utilize the funds to provide quality, evidence-based pediatric care, to children and teens in order to support and promote their optimal health, growth and development.
Dollar Amount and Fiscal Impact	The maximum agreement value is \$22,000
Funding Source	Oregon School-Based Health Alliance (OSBHA). No County General Funds are involved.
Duration	Effective September 17, 2021 and terminates on June 30, 2023
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improve Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	Not required, renewal application only
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. This is a direct procurement of a grant.
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	N/A – Approval to Apply

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval to apply to the 2021-2023 OSBHA ACTION grant funding opportunity issued by Oregon School-Based Health Alliance (OSBHA). Health Centers will utilize the funds to establish a Healthy Teen Relationships psycho-education group that will create a space for teens to ask critical questions about their values-driven decisions in relationships, review if different types of relationships, healthy boundaries, power and control influences on relationships, gender expressions and how to impact relationship roles.

This funding opportunity has a maximum value of \$22,000. It is effective September 17, 2021 and terminates on June 30, 2023.

Healthy Families. Strong Communities.

RECOMMENDATION:

Staff recommends approval of this agreement and authorizes the Director of Health, Housing and Human Services to sign this agreement.

Respectfully submitted,

Mary Rumbaugh Digitally signed by Mary Rumbaugh
Date: 2021.07.21 08:27:29 -07'00'

Rodney A. Cook, Interim Director
Health, Housing & Human Services Department

Financial Assistance Application Lifecycle Form

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

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

** CONCEPTION **

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

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

Lead Department & Fund:

H3S-Health Centers, Fund 253

Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No

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

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

Name of Funding Opportunity:

OSBHA ACTION Grants: 2021-2023

Funding Source: Federal State Local

Requestor Information (Name of staff person initiating form):

Ben DeGiulio

Requestor Contact Information:

BDeGiulio@clackamas.us

Department Fiscal Representative:

Sarah Jacobson

Program Name or Number (please specify):

MFR Program 400503 - Gladstone Pediatrics Clinic and School Based Health Centers

Brief Description of Project:

The ACTION grant program funds School Based Health Centers based projects that support healthy youth relationships, adolescent sexual health, and SBHC staff skill development relating to youth social and sexual health.

Name of Funding Agency:

Oregon School Based Health Alliance

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

<https://osbha.org/>

OR

Application Packet Attached: Yes No

Completed By:

Adam Kearl

7-19-2021

Date

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

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

Competitive Application

Non-Competing Application

Other

CFDA(s), if applicable:

N/A

Funding Agency Award Notification Date:

8/9/2021

Announcement Date:

6/30/2021

Announcement/Opportunity #:

N/A

Grant Category/Title:

OSBHA-ACTION Grant

Max Award Value:

\$22,000.00

Allows Indirect/Rate:

No

Match Requirement:

N/A

Application Deadline:

7/30/2021

Other Deadlines:

N/A

Award Start Date:

9/17/2021

Other Deadline Description:

N/A

Award End Date:

06/30/2023

Completed By:

Adam Kearl

Program Income Requirement:

N/A

Pre-Application Meeting Schedule:

Conducted via email 7-6-2021

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

Mission/Purpose:

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

This grant would help support Health Center's goal to provide quality, evidence-based pediatric care, to children and teens in order to support and promote their optimal health, growth and development.

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

None, Health Centers operates the three, soon to be five SBHC's in Clackamas County.

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

The objective of the funding opportunity is to provide services that support healthy youth relationships, adolescent sexual health, and SBHC staff skill development relating to youth social and sexual health. Health Centers will meet these objectives by putting together a Healthy Teen Relationships psycho-education group that will create a+

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

Yes it will be part of the Gladstone Pediatric Clinic and School Based Health Centers MFR program.

Organizational Capacity:

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

Health Centers has adequate capacity to provide these services.

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

No partnerships required

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

This is not a pilot project.

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

This grant will not create a new program.

Collaboration

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

None

Reporting Requirements

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

There will be required semi-annual progress reports on the program.

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

Performance will be evaluated based on the progress made on the project. The data used for the progress reports comes for our electronic health record.

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

Semi-annual financial reports will be required.

Fiscal

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

Yes, the cost to administer will be minimal.

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

No other revenue sources will be required.

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

N/A

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

No, the grant/financial assistance does not cover indirect costs.

Program Approval:

Ben DeGiulio

7/19/2021

Name (Typed/Printed)

Date

Signature

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

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

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Deborah Cockrell	7.20.2021	Deborah Cockrell <small>Digitally signed by Deborah Cockrell Date: 2021.07.20 07:39:15 -07'00'</small>
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Mary Rumbaugh for Rodney A Cook	7-20-2021	Mary Rumbaugh <small>Digitally signed by Mary Rumbaugh Date: 2021.07.20 08:14:41 -07'00'</small>
Name (Typed/Printed)	Date	Signature

FINANCE ADMINISTRATION		
Elizabeth Comfort	7.21.2021	Elizabeth Comfort <small>Digitally signed by Elizabeth Comfort Date: 2021.07.21 07:48:31 -07'00'</small>
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
N/A		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

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

For applications less than \$150,000:

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

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

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

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



OSBHA ACTION Grants: 2021 – 2023

OVERVIEW

Through the generous support of the EC Brown Foundation, Oregon School Based Health Alliance's (OSBHA) ACTION grant program assists school-based health centers (SBHCs) as they work with adolescents to develop healthy relationship skills and knowledge, with a specific focus on social and sexual health. OSBHA and the EC Brown Foundation have determined that there is a lack of opportunities for youth to learn about healthy relationships, to develop the skills necessary for participating in healthier relationships, and become advocates for healthy relationships in their communities.

WHAT WE ARE FUNDING

The ACTION grant program funds SBHC-based projects that support healthy youth relationships, adolescent sexual health, and SBHC staff skill development relating to youth social and sexual health. **This year, we are not requiring that SBHCs implement any specific sexual health-related curricula.**

Projects should have a budget up to \$20,000 and must be achievable within a two-year timeframe. If projects involve youth, SBHCs can apply for an extra \$2,000 for youth stipends (totaling their budget to \$22,000). Grant funding will vary based on the scope of the activities in approved grants as well as the number of SBHCs or partners involved.

WHO SHOULD APPLY

Eligible applicants meet one of the following criteria:

- The SBHC must be a current member of the Oregon School-Based Health Alliance. If you have questions about membership contact Jen Shin, Operations Manager, at jen@osbha.org.
- AND
- Certified school-based health centers in the State of Oregon or
 - Single sites or multiple site systems, or
 - Planning sites

GRANT REQUIREMENTS

- A. Your project must include one or more SBHCs or planning sites
- B. All projects should be related to sexual health and/or healthy youth relationships
- C. All projects should include a positive youth development strategy or focus (<https://www.acf.hhs.gov/fysb/positive-youth-development>)
- D. Ideas for projects include (these are merely suggestions and not required):
 - a. Administer curriculum to students, such as It's All One or My Future-My Choice. If you choose this route, obtaining support from the Principal will be necessary.
 - b. Conduct a Youth Participatory Action Research (YPAR) project to investigate meaningful topics (e.g., STI, teen dating violence, Healthy Teen Relationship Act) to research and take action to influence or resolve the challenges they face.
 - c. Organize and implement youth-led events like youth summits where youth can learn how to coordinate and run events while creating presentations that address healthy youth relationships.
 - d. Establish a support group to implement strategies supporting healthy youth relationships.

- e. Partner with a school nurse, counselor or health teacher to address intimate partner violence or bullying related to gender or sexual identity.
- f. Create an affinity group with youth of color to talk about healthy relationships.

EXCLUSIONS AND PRIORITIES

The following **will not be funded** under this grant:

- Out of state travel
- Medical services
- **Programs / projects not directly related to healthy youth relationships**

IMPORTANT DEADLINES AND DATES

- **June 30, 2021:** Application released. Contact OSBHA with questions.
- **July 30, 2021:** ACTION Grant applications due. Please submit your completed application electronically to jen@osbha.org.
- **August 9, 2021:** Grantees notified.
- **By September 17, 2019:** Grantees will work with OSBHA to refine their Project Plan Grids, confirm school and/or community partners, and submit final project and budget to OSBHA (see Appendix A).

IF YOUR PROJECT IS FUNDED

The following is **required** of all grantees:

- The SBHC needs to be an OSBHA member. If membership is difficult for your SBHC, you can choose to join as a member after being notified that you've been awarded an ACTION grant. Contact Jen Shin, Operations Manager, for membership details at jen@osbha.org.
- A signed sub-grantee agreement between the Oregon School-Based Health Alliance and your SBHC or medical sponsor.
- Completed **mid-year and year-end progress reports** which demonstrate project evaluation, and financial reports to be submitted to OSBHA. Evaluation technical assistance is provided **at no cost**.
- **Please note that the ACTION grant *NO LONGER* operates on a reimbursement model.** Grant funding will be distributed in 4 rounds – once in September 2021, again in January 2022, in September 2022 and in January 2023. Grantees will maintain internally reliable systems to track funds, which will be subject to audit by OSBHA, as requested.
- Attendance at OSBHA School Health Advocacy Day. ACTION funds may be used to support travel, if applicable.
- Participation in ACTION technical assistance and training activities (e.g., site visits, monthly phone calls, webinars).
- Share project successes and challenges of ACTION project with SBHC staff in the field.

APPLICATION SUBMISSION

- **We are not requiring completed project grids for the application this year;** however, if your application is accepted, we will require that you complete this grid with OSBHA support during the planning phase.
- Complete the two sections below. Completed applications should include:
 - Section I: Contact Information
 - Section II: Application Questions
 - Completed Budget Template
- Applications can be emailed to Jen Shin, Operations Manager, at jen@osbha.org **by end of day July 30, 2021.**

OSBHA Action Grant 2021-2023 Application

I. Contact Information

A. SBHC Information

Name of SBHC	
SBHC Address	
Telephone Number	

Name and Title of SBHC Coordinator	
Address	
Telephone Number	
Email Address	

Name of School	
Name of School Principal	
School Address	
Telephone Number	
E-mail Address	

Would the SBHC Coordinator act as the grant manager?

Yes No

If no, please name a grant manager who will act as the main contact person for the grant in section B below.

B. Grant Manager Information

Name and title of grant manager	
Address	
Telephone Number	
Email Address	

C. If grant is awarded, where shall we send the expense reimbursement checks?

Name of Fiscal Agency	
Name and Title of Fiscal Coordinator	
Address	
Telephone Number	
Email Address	

II. Application

A. Please describe your proposed project. (500 words max)

What are your goals for this project? What specific activities will you do? Who will be involved? What is the timeline?

B. Please describe why this project is important for your SBHC and school(s). (500 words max)

How will your project help your school's youth?

C. Please describe who will be leading this work. (500 words max)

Who will be working with and supporting youth through this project? Who will you be partnering with?

D. Please complete the budget using the template in Appendix A. Below, provide a narrative summary of the budget. (500 words max)

What are your personnel or program supplies needs? For an example of the budget, see Appendix A below.

E. Please provide a plan for monitoring progress. (500 words max)

How will you make sure you're on track to meet your goals? How will you be able to tell if your project had an effect on: 1.) your organization and 2.) the youth at your school?

Appendix A

I. Sample Project Budget -\$7250- Year 1

Category	Funding Request
Personnel <ul style="list-style-type: none"> • ACTION grant administration, monthly phone calls, training, technical assistance, grant reporting (55 hours) • ACTION grant outreach and planning with school administration, teachers, and community members (20-30 hours) • Planning and implementing 10-15 YAC meetings (20-30 hours) • Planning and implementing school-wide awareness and educational activities (20 hours) 	\$3,000
Program Supplies <ul style="list-style-type: none"> • T-Shirts for YAC members: \$300 • Food for YAC meetings: \$450 • Materials for school-wide awareness campaigns and educational activities: \$2,300 	\$3,050
Training/Conference <ul style="list-style-type: none"> • \$175 x 2 SBHC Staff attending relevant training opportunity 	\$350
Travel to relevant training opportunity <ul style="list-style-type: none"> • Mileage reimbursement (\$0.575/mile); hotel room (\$189/room); per diem (\$66/day) 	\$860
Total	\$7,260

II. Project Budget Template

Category	Funding Request
Personnel <ul style="list-style-type: none"> • 	\$
Program Supplies <ul style="list-style-type: none"> • 	\$
Training/Conference <ul style="list-style-type: none"> • 	\$
Travel to relevant training opportunity <ul style="list-style-type: none"> • 	\$
Total	\$

August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Local Subrecipient Grant Amendment #4 with
Northwest Family Services for Student Resource Coordination

Purpose/Outcome	Northwest Family Services (NWFS) Amend 4 adds funding to continue Student Resource Coordination services. Student Resource Coordination will provide pre-assessment and referral to relevant resources, services, and assistance navigating healthcare, education and judicial systems to drug and alcohol affected youth and families living in Clackamas County.
Dollar Amount and Fiscal Impact	Amendment #4 adds \$60k for a revised maximum of \$330,950.
Funding Source	Amendment is funded through Clackamas County Behavioral Health (\$40,000) and Clackamas County Children, Family & Community Connections Marijuana Tax Funds (\$20,000)
Duration	July 1, 2021-June 30, 2022
Previous Board Action/Review	091020
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities
Counsel Review	This Subrecipient Grant amendment has been reviewed and approved by County Counsel on 05/26/21, KR
Procurement Review	Was the item processed through Procurement? No. Subrecipient grant amendment, selected through a competitive process
Contact Person	Adam Freer 971-533-4929
Contract No.	CFCC 8642

BACKGROUND:

The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of Amendment #4 with Northwest Family Services for Student Resource Coordination. Services will identify and serve youth at risk of or involved in the use of alcohol and drugs, strengthen collaboration and promote integration among schools, nonprofits, local diversion panels, and State and County service agencies.

This Grant Amendment is effective upon signature by all parties for services starting on July 1, 2021 and terminating on June 30, 2021. This Amendment #4 adds \$60,000 for a revised maximum of \$330,950.

RECOMMENDATION:

Staff recommends the Board approval of this Agreement and authorizes Tootie Smith, Board Chair, to sign on behalf of Clackamas County.

Respectfully submitted,

Mary Rvanbauge for Rodney A. Cook

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

Local Subrecipient Grant Amendment (FY 21-22)
H3S – Children, Family & Community Connections Division

<u>Local Subrecipient Agreement Number: 8642</u>	<u>Board Order Number: 091020</u>
<u>Department/Division: H3S-CFCC</u>	<u>Amendment No. 4</u>
<u>Local Subrecipient: Northwest Family Services</u>	<u>Amendment Requested By: Adam Freer</u>
Changes: <input checked="" type="checkbox"/> Scope of Service <input checked="" type="checkbox"/> Agreement Time	<input checked="" type="checkbox"/> Agreement Budget <input type="checkbox"/> Other:

Justification for Amendment:

This Amendment adds funding to support Student Resource Coordination programming services for July 1, 2021 through June 30, 2022. Student Resource Coordinator provides pre-assessment and referral to relevant resources, services, and assistance navigating healthcare, education and judicial systems to drug and alcohol affected youth and their families living in Clackamas County.

Maximum compensation is increased by \$60,000 for a revised maximum of \$330,950. It becomes effective July 1, 2021 and terminates June 30, 2022.

Except as amended hereby, all other terms and conditions of the contract remain in full force and effect. The County has identified the changes with ***“bold/italic”*** font for easy reference.

AMEND:

4. Grant Funds. COUNTY’s funding for this Agreement is Clackamas County Behavioral Health Fund Balance and Children, Family & Community Connections Fund Balance.

The maximum, not to exceed, grant amount that the COUNTY will pay is \$270,950.

This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit C-1: Financial Report and Reimbursement Request and Exhibit A-2: Performance Reporting Schedule and Work Plan Quarterly Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

TO READ:

4. Grant Funds. COUNTY’s funding for this ***Amendment*** is ***Clackamas County Behavioral Health (\$40,000) and Children, Family & Community Connections County General Fund (\$20,000)***.

The maximum, not to exceed, grant amount that the COUNTY will pay is ***\$330,950***.

This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit C-1: Financial Report and Reimbursement Request and Exhibit A-2: Performance Reporting Schedule and Work Plan Quarterly Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

AMEND:

10. General Agreement Provisions.

c) **Insurance.** During the term of this Agreement, RECIPIENT shall maintain in force, at its own expense, each insurance noted below:

3) **Professional Liability.** If the Agreement involves the provision of professional services, RECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$2,000,000 combined single limit per occurrence for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

TO READ:

3) **Professional Liability.** If the Agreement involves the provision of professional services, RECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$2,000,000 combined single limit per occurrence for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy. ***Contractor shall carry Abuse and Molestation Insurance as an endorsement to the Commercial General Liability policy, in a form and with coverage that are satisfactory to the County, covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. These limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate***

REPLACE:

Exhibit A-2: Northwest Family Services – Student Resource Coordination Work Plan Quarterly Report for July 1, 2021 – June 30, 2022

**Clackamas County – Children, Family & Community Connections
 Work Plan and Quarterly Report**

Provider: Northwest Family Services
Activity: Student Resource Coordination
Contact: Michele Bradfute/Jenna Napier
Contract Period: July 1, 2021-June 30, 2022

Activities/Outputs	Intermediate Outcomes/Measurement Tool		Jul-Sep21	Oct-Dec21	Jan-Mar22	Apr-Jun22
By June 30, 2022, provide pre-engagement and referral to relevant resources and services and assistance navigating healthcare, education, judicial systems, etc. for a minimum of 120 drug/alcohol affected youth and their families.	85% of participating youth and their families will be connected to relevant services and resources, and assistance navigating systems including, but not limited to health/mental health care, education, judicial, etc. and prosocial activities <i>**Measured by client feedback survey responses (successful connection to service/activity, satisfaction with service/needs were met)</i>	# youth met with (met with prior to assessment)**				
		# youth connected (referred/scheduled for assessment)**				
		# families served (communicated/met with)				
		# families connected (referred)				
By June 30, 2022, provide standard D&A assessment and UA to a minimum of 90 youth suspected of drug/alcohol use. Provide 0.5-1.0 outpatient treatment or referral to higher level treatment to a minimum of 80 youth identified as using drugs/alcohol.	85% of youth will demonstrate reduction in 30-day use. <i>**Measured by random UA and program data</i> 85% of youth will demonstrate improved attendance. <i>**Measured by Synergy or other school data collection system</i> 85% of youth will be connected to additional resources or supports or prosocial activities, as deemed appropriate.	# youth assessed				
		# youth receiving UA				
		# youth receiving ASAM .5-1.0 outpatient treatment				
		# youth referred to higher level of treatment				
		# youth receiving treatment that reduced 30 day use				
		# youth receiving treatment that improved attendance over 12 weeks				

	<i>**Measured by program records and youth survey responses</i>	# youth receiving treatment that participate in prosocial activities and are connected to additional resources/supports (referred)				
By June 30, 2022, provide support and referral to resources to a minimum of 40 parents of youth served.	85% of parents of youth served will be referred to a minimum of 3 additional resources and/or supports	# parents served (communicated/met with)				
		# parents connected to 3 additional supports/resources (referred)				

EXHIBIT A-2
PERFORMANCE REPORTING SCHEDULE AND WORK PLAN QUARTERLY REPORT

1. SUBRECIPIENT must submit a **monthly** Performance Report (Exhibit C-2), to the Clackamas County Program Manager, no later than the **15th** day of the following month. It should accompany the Fiscal Report and Reimbursement Request. Included in the report will be the following metrics:
 - (a) Number of at-risk families and children served
 - (b) Number and type of activities conducted during the month

2. SUBRECIPIENT must submit a **quarterly** Performance Report, to the Clackamas County Program Manager, no later than the 15th day of the month following the end of the calendar quarter. Quarterly reports must be submitted electronically on the SRC Work Plan Quarterly Reporting document template (see Exhibit A–2). The Final Performance Report should be submitted no later than **July 15, 2022**.

3. In addition to the Quarterly Performance Reports, SUBRECIPIENT must notify Clackamas County Program Manager of developments that have a significant impact on the grant supported activities. SUBRECIPIENT must inform Clackamas County Program Manager as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified above. This notification shall include a statement of the action taken or contemplated and any assistance needed to resolve the situation

REPLACE:

Exhibit B: Northwest Family Services – SRC Budget July 1, 2021-June 30, 2022

WITH:

EXHIBIT B: BUDGET					
Organization: Northwest Family Services					
Funded Program Name: Student Resource Coordination			Contract 8642		
Program Contact: Rose Fuller rf Fuller@nwfs.org			Amend 4		
Agreement Term: July 1, 2021-June 30, 2022					
Approved Award Budget Categories	Approved Budget A4 (July 1, 2021-June 30, 2022)		Total Award Amount	Match	
Personnel (List salary, FTE & Fringe costs for each position)					
Student Resource Coordinator/CADC (.8 FTE @ \$45,500)	\$ 36,400.00		\$ 36,400.00	<i>No match is required on this award</i>	
Supervision (\$68,000 x .10 FTE)	\$ 6,800.00		\$ 6,800.00		
Clinical/Medical Supervision	\$ 1,200.00		\$ 1,200.00		
Fringe/Tax @ .24	\$ 10,656.00		\$ 10,656.00		
Total Personnel Services	\$ 55,056.00		\$ 55,056.00		
Program					
Materials/Supplies	\$ 500.00		\$ 500.00		
UAs (~40 youth/year x 1@\$12.2)	\$ 488.00		\$ 488.00		
Monthly phone (\$20x 12)	\$ 240.00		\$ 240.00		
Travel					
Mileage	\$ 1,000.00		\$ 1,000.00		
Travel/Training/Conference	\$ 250.00		\$ 250.00		
Additional (please specify)					
Client assistance & engagement incentives (bus tickets, etc.)	\$ -		\$ -		
Total Programmatic Costs	\$ 2,478.00		\$ 2,478.00		
Administration (accounting, audit, IT, Insurance, facilities, etc.)					
	\$ 2,466.00		\$ 2,466.00		
Total Grant Costs	\$ 60,000.00		\$ 60,000.00		

REPLACE:

Exhibit C-1: Northwest Family Services – SRC Financial Report and Reimbursement Request

WITH:

EXHIBIT C-1: FINANCIAL REPORT AND REIMBURSEMENT REQUEST				
Organization: Northwest Family Services		Requests for reimbursement and supporting documentation are due monthly by the 15th of the month, including: 1. Request for Reimbursement with an authorized signature 2. General Ledger backup to support the requested amount 3. Monthly Activity Report showing numbers served and activities conducted during the month of request (The Monthly Activity Report is NOT required on months when quarterly reports are due).		
Funded Program Name: Student Resource Coordination				
Program Contact: Rose Fuller rfuller@nwfs.org				
Agreement Term: July 1, 2021 - June 30, 2022				
Claim Period				
Contract #8642 Amend 4				
Approved Award Budget Categories	Approved Budget 7/1/21-6/30/22	MONTHLY EXPENDITURE	PREVIOUSLY REQUESTED	BALANCE REMAINING
Personnel (List salary, FTE & Fringe costs for each position)				
Student Resource Coordinator/CADC (.8 FTE @ \$45,500)	\$ 36,400.00	\$ -	\$ -	\$ 36,400.00
Supervision (\$68,000 x .10 FTE)	\$ 6,800.00	\$ -	\$ -	\$ 6,800.00
Clinical/Medical Supervision	\$ 1,200.00	\$ -	\$ -	\$ 1,200.00
Fringe/Tax @ .24	\$ 10,656.00	\$ -	\$ -	\$ 10,656.00
Total Personnel Services	\$ 55,056.00	\$ -	\$ -	\$ 55,056.00
Program				
Materials/Supplies	\$ 500.00	\$ -	\$ -	\$ 500.00
UAs (~40 youth/year x 1@\$12.2)	\$ 488.00	\$ -	\$ -	\$ 488.00
Monthly phone (\$20x 12)	\$ 240.00	\$ -	\$ -	\$ 240.00
Travel				
Mileage	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00
Travel/Training/Conference	\$ 250.00	\$ -	\$ -	\$ 250.00
Additional (please specify)				
Client assistance & engagement incentives (bus tickets, etc.)	\$ -	\$ -	\$ -	\$ -
Total Programmatic Costs	\$ 2,478.00	\$ -	\$ -	\$ 2,478.00
Administration (accounting, audit, IT, Insurance, facilities, etc.)	\$ 2,466.00	\$ -	\$ -	\$ 2,466.00
Total Grant Costs	\$ 60,000.00	\$ -	\$ -	\$ 60,000.00
Clackamas County retains the right to inspect all financial records and other books, documents, papers, plans, records of shipments and payments and writings of the AGENCY 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 this 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).				

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

AGENCY

Northwest Family Services
6200 SE King Rd
Portland, OR 97222

By: Rose Fuller
Rose Fuller, Executive Director

Date: 5/27/2021

CLACKAMAS COUNTY

Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull

Signing on Behalf of the Board:

Tootie Smith, Board Chair
Health, Housing and Human Services

Date: _____

August 12, 2021

Board of County Commissioners
Clackamas County

Dear Board of County Commissioners:

Approval of Intergovernmental Agreement with Oregon Department of
Transportation Rail and Public Transit Division for HB2017 State Transportation
Improvement Fund Discretionary Program Funds
for an Integrated Website for all Clackamas County Transit Providers.

Purpose/Outcomes	The purpose of this grant is to fund an integrated website for the small transit providers of Clackamas County to simplify the riding experience for customers travelling between multiple transportation providers, and to gain travel trend information for reporting and planning purposes
Dollar Amount and Fiscal Impact	The maximum grant award is \$145,000. Funded through the Oregon Department of Transportation
Funding Source	HB2017 State Transportation Improvement Fund (STIF) Discretionary Funds. The match rate is 20% (\$29,000) and will be split between the 5 transit providers in Clackamas County. Social Services BETC funds will be used for Clackamas County's part. County general funds are not involved.
Duration	July 1, 2021 to June 30, 2023
Previous Board Action	None
Strategic Plan Alignment	1. This aligns with the Social Service Division's strategic priority to provide services that allow individuals and families to remain in their own homes and communities. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	7/19/21 - AN
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	H3S #10278

BACKGROUND:

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval to apply for HB2017 State Transportation Improvement Fund Discretionary Program Funds from the Oregon Department of Transportation for implementation of an integrated website to simplify the riding experience for customers travelling between multiple transportation providers in Clackamas County. Partners for this project include Canby Area Transit (CAT), Clackamas County (Mt Hood Express), Sandy Area Metro Transit (SAM), South Metro Area Regional Transit (SMART), and the South Clackamas Transportation District (SCTD).

The partners are interested in an integrated website that meets criteria to include simple and convenient customer experience, seamless trip planning between providers, flexible and scalable platform that is readily accessible from multiple locations, and provide a platform to further expand the integrated fare project schedule to be completed this fiscal year.

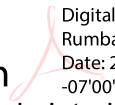
The HB 2017 State Transportation Improvement Fund Discretionary grant is for \$116,000. The match requirement of \$29,000 will be paid equally by the five partner organizations. Social Services' share will be paid by dedicated transportation fund balance (BETC funds). No County General Funds are involved.

RECOMMENDATION:

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

Respectfully submitted

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



Digitally signed by Mary Rumbaugh
Date: 2021.07.26 08:28:31 -07'00'

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10278	Division: SS	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Christopherson, Teresa	<input checked="" type="checkbox"/> Revenue
	Program Contact: Babcock, Kristina	<input type="checkbox"/> Amend # \$
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda Date: _____

CONTRACT WITH: 21-23 ODOT Rail and Public Transit Division STIF Discretionary (#35064)

CONTRACT AMOUNT: \$116,000.00

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 checked="" type="checkbox"/> Intergovernmental Agreement	<input type="checkbox"/> Property/Rental/Lease
<input type="checkbox"/> Interagency Services Agreement	<input type="checkbox"/> One Off

DATE RANGE

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

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived
If no, explain why: _____

Business Automobile Liability: Yes No, not applicable No, waived
If no, explain why: _____

Professional Liability: Yes No, not applicable No, waived
If no, explain why: _____

Approved by Risk Mgr _____
Risk Mgr's Initials and Date

BOILER PLATE CHANGE

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

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

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

COUNTY COUNSEL

Yes by: Andrew Naylor _____ Date Approved: Monday, July 19, 2021
OR
 This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____
Date: _____

H3S Admin Only	Date Received: _____
	Date Signed: _____
	Date Sent: _____

AGREEMENTS/CONTRACTS

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

ORIGINATING COUNTY

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

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT: 21-23 ODOT Rail and Public Transit Division STIF Discr

BOARD AGENDA ITEM

NUMBER/DATE: _____

DATE: _____

PURPOSE OF

CONTRACT/AGREEMENT: The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval to apply for HB2017 State Transportation Improvement Fund Discretionary Program Funds from the Oregon Department of Transportation for implementation of an integrated website to simplify the riding experience for customers travelling between multiple transportation providers in Clackamas County. Partners for this project include Canby Area Transit (CAT), Clackamas County (Mt Hood Express), Sandy Area Metro Transit (SAM), South Metro Area Regional Transit (SMART), and the South Clackamas Transportation District (SCTD).

H3S CONTRACT NUMBER: 10278

PUBLIC TRANSPORTATION DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Public Transportation Division, hereinafter referred to as "State," and **Clackamas County**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2021** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2023** (the "Expiration Date"). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Financial Information

Exhibit C: Subagreement Insurance Requirements and Recipient Insurance Requirements

Exhibit D: Summary of Federal Requirements, incorporating by reference Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement

Exhibit E: Information required by 2 CFR 200.332(a), may be accessed at <https://www.oregon.gov/odot/RPTD/Pages/index.aspx>, Oregon Public Transit Information System (OPTIS), as the information becomes available

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit D; Exhibit E; this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. **Project Cost; Grant Funds; Match.** The total project cost is estimated at **\$145,000.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **\$116,000.00** (the "Grant Funds") for eligible costs described in Section 6.a. hereof. Recipient shall provide matching funds for all Project Costs as described in Exhibit A. Recipient will be responsible for all Project Costs not covered by the Grant Funds.
4. **Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.a hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <https://www.oregon.gov/odot/RPTD/Pages/index.aspx>. If Recipient is unable to access OPTIS, reports must be sent to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be

necessary to comply with federal or state reporting requirements.

6. Disbursement and Recovery of Grant Funds.

- a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Funds amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.
- b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement including, without limitation, Exhibit D and the requirements incorporated by reference in Exhibit D.
 - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.
- c. **Recovery of Grant Funds.**
 - i. **Recovery of Misexpended Funds or Nonexpended Funds.** Any Grant Funds disbursed to Recipient under this Agreement that are either (i) disbursed but unexpended as of the Expiration Date ("Unexpended Funds") or (ii) expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to State. Recipient shall return all Misexpended Funds to State no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 15 days after the earlier of expiration or termination of this Agreement.
 - ii. **Recovery of Funds upon Termination.** If this Agreement is terminated under either Section 10(a)(i) or Section 10(a)(v) below, Recipient shall return to State all funds disbursed to Recipient within 15 days after State's written demand for the same.

7. Representations and Warranties of Recipient. Recipient represents and warrants to State as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient

of this Agreement.

- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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

8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, including, without limitation, records relating to capital assets funded by this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the Grant Funds were expended.
- d. **Audit Requirements.**
 - i. Recipients receiving federal funds in excess of \$750,000 are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at Recipient's own expense submit to State, Public Transportation Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDReporting@odot.state.or.us, a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit

of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.

- ii. Recipient shall indemnify, save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

This Section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of Recipient's subagreement with the contractor and to name State as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide State with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon request by State. This paragraph 9.a.iii. shall survive expiration or termination of this Agreement.
 - iv. Recipient must report to State any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. Recipient shall review the *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, available on the FTA website: www.fta.dot.gov/grants/13054_6037.html
- c. **Subagreement indemnity; insurance**
 - i. ***Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.***
 - ii. **Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Recipient's Subrecipient(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's Subrecipient is prohibited from defending State or that Recipient's Subrecipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to**

pursue claims it may have against Recipient's Subrecipient if State elects to assume its own defense.

- iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance requirements provided in Exhibit C to this Agreement. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- d. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code and rules, and in conformance to FTA Circular 4220.1F, Third Party Contracting Requirements including:
 - i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
 - ii. All procurement transactions are conducted in a manner providing full and open competition;
 - iii. Procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements);
 - iv. Construction, architectural and engineering procurements are based on Brooks Act procedures unless the procurement is subject to ORS 279C.100 to 279C.125.
- e. **Additional requirements**
 - i. Recipient shall comply with 49 CFR sections 37.77(c) and 37.105 regarding "Certification of Equivalent Service" when purchasing vehicles under this Agreement. If non-accessible vehicles, as defined by the Americans with Disabilities Act, are being purchased for use by a public entity in demand responsive service for the general public, Recipient will certify to State at the time of applying for a project that, when viewed in its entirety, the demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service.
 - ii. Recipient shall comply with 49 CFR 663 regarding pre-award and post-delivery reviews. Every Recipient purchasing rolling stock or facilities under this Agreement must certify to State that a pre-award and post-delivery review has been conducted in accordance with ODOT requirements. This review ensures compliance to bid specifications including, but not limited to, FTA requirements, State requirements, and Federal Motor Carrier Safety Standards, as applicable to the type of project. Each Recipient's certification must include assurance that required documents have been received from manufacturers or vendors of products, or from both, and that Recipient possesses such documents. Acceptable certification forms are available from State. Recipient must provide certification forms to State when reimbursement is requested for vehicles. For facilities projects, Recipient must provide pre-award certifications to State at time of first payment, and post-delivery certifications upon completion of the post-delivery review, and in no event later than with Recipient's request for final payment.
 - iii. Recipient shall comply with 49 CFR 604 in the provision of any charter service provided with vehicles, facilities, or equipment acquired with FTA assistance under this Agreement.
 - iv. Recipient shall submit an annual vehicle inspection report to State for any vehicle purchased under this Agreement. Vehicle inspections shall be conducted by a vehicle maintenance technician certified by a nationally recognized organization in the field of vehicle service and maintenance. Reports covering required areas of inspection shall be submitted on forms provided by State.
 - v. All drivers of vehicles purchased with FTA funds under this Agreement must complete a standard defensive driving course before operating an FTA-funded vehicle, and are advised to complete a standard defensive driving course before

operating a State-funded vehicle.

- vi. Recipient shall maintain all vehicles, equipment, and facilities purchased under this Agreement in good condition per manufacturer's recommendations. Recipients are required to develop preventive maintenance plans for all rolling stock and facilities and to provide the plans to State upon request.
 - vii. Recipient shall be the owner of the property for facility construction projects and of vehicles purchased under this Agreement. Such ownership shall be recorded on real property deeds for facility construction projects and on vehicle titles. If Recipient contracts the operation of vehicles to a third party, then the third party may be shown as the owner or lessee with Recipient listed as the second security interest holder or lessor. In all cases, Oregon Department of Transportation, Public Transportation Division shall be shown as the first security interest holder on vehicle titles. If Recipient fails to show Oregon Department of Transportation, Public Transportation Division as the first security interest holder, Recipient shall pay any expenses to re-submit the necessary documents to Oregon Department of Transportation, Driver and Motor Vehicle Services (DMV). If a vehicle is damaged or destroyed at any time when Recipient fails to show Oregon Department of Transportation, Public Transportation Division, as the first security interest holder, Recipient shall be liable to State for any damage in an amount in the same manner as if Oregon Department of Transportation, Public Transportation Division, were shown as the first security interest holder.
 - viii. Recipient shall bear the cost of insuring assets purchased under this Agreement.
 - ix. Recipient shall file a restrictive covenant with the property deed for all construction projects and purchases of real estate, with the exception of passenger shelters, amenities, and right-of-way infrastructure improvements. The restrictive covenant will limit the use of the building and property to the stated purpose specified in the statement of work associated with this Agreement.
 - x. Recipient shall complete all purchases, including installation, and all construction of capital assets funded under this Agreement prior to the Expiration Date of this Agreement. If local circumstances prevent purchase, installation, or construction by the specified date, Recipient will notify State in writing of the circumstances regarding the delay. Such notification must be received at least forty-five (45) days prior to the expiration of the Agreement. Agreement amendment for time will be considered in extenuating circumstances.
- f. **Conflict of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 et seq., as those laws may be subsequently amended.

10. Termination

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
 - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. 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; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the

approval of State.

- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:
 - i. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. General Provisions

- a. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- b. **Contribution.**
 - i. 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 Recipient 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.
 - ii. Except as otherwise provided in Paragraph 11.c below, with respect to a Third Party Claim for which State is jointly liable with Recipient (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 Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient 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 Recipient 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.
 - iii. Except as otherwise provided in Paragraph 11.c below, with respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient 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 Recipient 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 Recipient 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. Recipient'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.

c. Indemnification.

- i. Subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement:
- ii. Where Recipient contracts for services or performs project management for a project, Recipient shall accept all responsibility, defend lawsuits, indemnify, and hold State harmless, for all contract-related claims and suits. This includes but is not limited to all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement.

Sections 11.b and 11.c shall survive termination of this Agreement.

d. Recovery of Misexpended Funds and Unexpended Funds.

e. Insurance. Recipient shall meet the insurance requirements within Exhibit C.

f. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

g. Responsibility for Grant Funds. Any recipient of Grant Funds, pursuant to this Agreement with State, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

h. Duplicate Payment. Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

i. No Third Party Beneficiaries. State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

j. Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this subsection. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to

State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

- k. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- l. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient 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.
- m. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- n. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- o. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- p. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- q. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- r. **Survival.** The following provisions survive termination of this Agreement: Sections 6.c.,

8 and 11.

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

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Public Transportation Division Administrator.

SIGNATURE PAGE TO FOLLOW

Clackamas County, by and through its

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Teresa Christopherson
Social Services Department
Oregon City, OR 97045
1 (503) 650-5718
teresachr@co.clackamas.or.us

State Contact:

Valerie Egon
555 13th Street NE
Salem, OR 97301-4179
1 (971) 301-0909
Valerie.Egon@odot.state.or.us

Signed Agreement Return Address: ODOTPTDReporting@odot.state.or.us

State of Oregon, by and through its
Department of Transportation

By _____
Karyn Criswell
Public Transportation Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____ Valerie Egon

Date _____ 07/06/2021

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

N/A

EXHIBIT A

Project Description and Budget

Project Description/Statement of Work

Project Title: 5311 Clackamas County 35064				
<i>Integrated Website for Clackamas County Small Transit Providers.</i>				
Item #1: General Development/Comprehensive Planning				
	Total	Grant Amount	Local Match	Match Type(s)
	\$145,000.00	\$116,000.00	\$29,000.00	Local
Sub Total	\$145,000.00	\$116,000.00	\$29,000.00	
Grand Total	\$145,000.00	\$116,000.00	\$29,000.00	

1. PROJECT DESCRIPTION

This Agreement funds a planning project to develop an integrated website with trip planning capabilities that will serve customers traveling between multiple transportation service providers. Partners for this project include Canby Area Transit, Clackamas County, Sandy Area Metro Transit, South Metro Area Regional Transit, and the South Clackamas Transit District. Program reimbursements under this project shall not exceed \$116,000.

2. PROJECT DELIVERABLES, TASKS and SCHEDULE

This project will deliver an integrated website that shows the schedules, routes, and fares for each transit provider and allows a single platform for Fare purchase. The website will have the following features:

- *Trip planning platform that will allow a rider to plan their entire trip, including transfers between providers*
- *Scheduling software platform that will help providers optimize resources and align with the other small transit providers in Clackamas County*
- *Platforms will be flexible and scalable, allowing expansion of the system to other transit providers outside of Clackamas County, as well as the potential to add other transportation services*

Recipient, in coordination with its regional transit coordinator, will produce a work plan guiding the delivery of this project.

Recipient plans to use a Contractor to implement the project. Recipient, in coordination with its regional transit coordinator, will publish an RFP and select a contractor through a competitive RFP process that complies with federal, state, and local procurement laws.

Estimated completion date: All project tasks must be completed prior to the expiration date of this Agreement on June 30, 2023.

Recipient, in the performance of this Project, shall document steps taken to improve accessibility of public transportation for vulnerable populations and/or historically marginalized communities. Vulnerable populations include low-income individuals or households, veterans, Tribal communities or groups, individuals of age 65 and older, individuals with disabilities, and individuals with limited English proficiency. Information on this topic shall be provided to State through reporting.

3. PROJECT ACCOUNTING and MATCHING FUNDING

Sources of funding that may be used as Recipient's matching funds for this Agreement include local funds; Statewide Transportation Improvement Formula Funds; Special Transportation Formula Funds; service contract revenue, advertisement and other earned income; cash

donations; and verifiable in-kind contributions integral to the project budget. In-kind contributions claimed as matching funding must be reported to State. Recipient may not use passenger fares as matching funding.

4. REPORTING AND INVOICING REQUIREMENTS

Recipient will request reimbursement for covered expenses incurred during each period as prescribed by State. Copies of invoices must be submitted for all products, services, and vendor charges. In-house charges must be documented showing time specifically associated with the project. In addition, Recipient must provide a summary of the work performed to date pursuant to this Agreement in each agency periodic report. Photographs of the planning process are encouraged to memorialize the achievement of project deliverables, if applicable. Recipient will submit a draft or final plan, as appropriate, before final payment will be made by State.

Project Progress Reporting

Recipient shall report Project progress quarterly through the Oregon Public Transit Information System (OPTIS) Agency Periodic Report (APR) and shall include a brief status update for each deliverable. Project reporting should align with project deliverables identified in this Agreement. State will use reporting information to assess Recipient's progress by comparing task-based expenditures to progress on deliverables.

Outcomes Achieved Reporting

Recipient shall report outcomes achieved through project performance. Continued funding under this Agreement is contingent upon reporting of outcomes achieved.

On a quarterly basis, in addition to continuing required elements in the APR, Recipient shall complete a short narrative describing outcomes achieved in performance of the Project. For the final quarter of the biennium, Recipient shall report on quarterly outcomes achieved as well as summarize outcomes achieved over the duration of the Agreement. Recipient shall provide additional information on outcomes achieved when and where directed to do so by State in reporting guidance.

Recipient shall identify the actions taken towards completing planning deliverables, including, but not limited to, identifying partners and other stakeholders consulted for the project and description of feasibility studies or other studies completed in the course of meeting project objectives.

Expenditures

Expenditures of funds will be tracked in OPTIS. Recipient must submit reimbursement requests in OPTIS to receive reimbursement for Project expenditures.

EXHIBIT B
FINANCIAL INFORMATION

The information below will assist auditors to prepare a report in compliance with the requirements of 2 CFR part 200, subpart F.

This Agreement is financed by the funding source indicated below:

Federal Program 49 U.S.C. 5311	Federal Funding Agency U.S. Department of Transportation Federal Transit Administration 915 Second Avenue, Suite 3142 Seattle, WA 98174	CFDA Number 20.509 (5311)	Total Federal Funding \$116,000.00
------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------	-----------------------------------------------------

Administered By Public Transportation Division 555 13th Street NE Salem, OR 97301-4179

EXHIBIT C

Insurance Requirements

Subagreement Insurance Requirements

GENERAL.

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

TYPES AND AMOUNTS.

WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000**.

AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subagreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

"TAIL" COVERAGE.

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

NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **The Recipient shall immediately notify State of any change in insurance coverage.**

CERTIFICATE(S) OF INSURANCE.

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

Recipient Insurance Requirements

GENERAL.

Recipient shall: i) obtain at the Recipient's expense the insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force and at its own expense throughout the duration of this Agreement. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Coverage shall be primary and non-contributory with any other insurance and self-insurance with the exception of Professional Liability and Workers' Compensation. Recipient shall pay for all deductibles, self-insurance retention and self-insurance, if any.

INSURANCE REQUIREMENT REVIEW.

Recipient agrees to periodic review of insurance requirements by State under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and State.

TYPES AND AMOUNTS.

WORKERS COMPENSATION.

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employers liability insurance with coverage limits of not less than \$500,000 must be included.

COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury, death, and property damage and shall include personal and advertising injury liability, products and completed operations and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Commercial General Liability Insurance shall not be less than the following amounts as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000**.

AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering business-related automobile use on all owned, non-owned or hired vehicles for bodily injury and property. Automobile Liability Insurance shall not be less than the following amount as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/ Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the Recipient's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

"TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Recipient shall maintain either "tail" coverage or continuous "claims made" liability

coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) Recipient's completion and State's acceptance of all Services required under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is granted, Recipient shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE.

Recipient or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE.

State shall obtain from Recipient a certificate(s) of insurance for all required insurance before the effective date of this Agreement. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

STATE ACCEPTANCE.

All insurance providers are subject to State acceptance. If requested by State, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to State's representatives responsible for verification of the insurance coverages required under this **Exhibit C**.

EXHIBIT D

Summary of Federal Requirements and Incorporating by Reference Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement ("Master Agreement")

Recipient and Recipient's subrecipient(s), contractor(s), or subcontractor(s), at any tier, if any, must comply with all applicable federal requirements contained in the Certifications and Assurances available at www.transit.dot.gov. The Certifications and Assurances, including as they may be changed during the term of this Agreement, are by this reference incorporated herein.

Recipient further agrees to comply with all applicable requirements included in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available upon request from State by calling (503) 986-3300, or at www.transit.dot.gov. Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Exhibit A:

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 State 252, 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the Parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipient's DBE program, if applicable, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to State of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
4. Recipient must include the following language in each subagreement Recipient signs with a subcontractor or subrecipient:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor 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 Recipient deems appropriate.

5. Recipient and contractors receiving in excess of \$100,000 in federal funds, other than Indian tribes, must certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other federal award. If non-federal

funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

August 5, 2021

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the City of Molalla to affirm maintenance responsibility of improvements as required by the Oregon Department of Transportation

Purpose/ Outcomes	A developer is seeking Immediate Opportunity Funds from the Oregon Department of Transportation to construct improvements along a portion of Molalla Avenue, a county road. This agreement confirms that the county will maintain these improvements. Such an agreement is required for the developer to seek and obtain these funds.
Dollar Amount and Fiscal Impact	There will be no fiscal impact as the county would be obligated to maintain these improvements regardless of the agreement.
Funding Source	Road Fund
Duration	Ongoing
Previous Board Action/Review	7/27/21: Discussion item at issues
Strategic Plan Alignment	<ol style="list-style-type: none">1. Helps keep a strong infrastructure and ensures safe communities2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.
Counsel Review	Reviewed and approved by County Counsel on 6/21/21 NB
Procurement Review	<ol style="list-style-type: none">1. Was the item processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>2. If no, provide brief explanation. Item is not procurement related.
Contact Person	Rick Nys, Development Engineering Supervisor, 503-742-4702

BACKGROUND:

The purpose of this agreement is to facilitate a developer's application for Immediate Opportunity Funds ("IOF") via the Oregon Department of Transportation for the construction of typical frontage improvements associated with development such as sidewalk, landscape strip, curb, bicycle lane and pavement improvements along a portion of Molalla Avenue.

The county already maintains this portion of Molalla Avenue and this agreement does not increase the maintenance responsibilities of the county. This agreement confirms the maintenance responsibility of the subject improvements as required by the Oregon Department of Transportation's IOF application process.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with the City of Molalla.

Respectfully submitted,

Rick Nys

Rick Nys, P.E
Development Engineering Supervisor

INTERGOVERNMENTAL AGREEMENT
Maintenance Agreement
South Molalla Ave Improvements

THIS AGREEMENT is made on the date all required signatures have been obtained, and entered into by and between CLACKAMAS COUNTY, hereinafter referred to as "County," and the CITY OF MOLALLA, hereinafter referred to as "City," each herein referred to individually as a "Party" and collectively as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, local governments may enter into agreements with other units of local government 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. The portion of South Molalla Ave, as shown in Exhibit 1, is a County Road as defined in ORS 368.001, and part of the County transportation system under the jurisdiction and control of the County, and lies outside, but in close proximity to, the boundaries of the City.
3. A project is planned that would result in the construction of a half-street improvement along the frontage of the property described below, which will include up to 20 feet of pavement, a bikeway up to eight feet in width, curb & gutter, planter strip, and sidewalk and stormwater improvements within an area up to 14 feet in width (the "Project").
4. The City is applying with the State of Oregon for Immediate Opportunity Funds to assist with the costs of the Project described above. The Immediate Opportunity Fund Policy Guidelines state that "The improvements must be on a public right-of-way with the local government agency that will assume ownership identified (right-of-way must be acquired before project completion). The local government agency, or the future owner, must also demonstrate how it has adequate ability to fully maintain the improvements."
5. The Parties desire to define their respective obligations to maintain the transportation system improvements along the South Molalla Ave frontage of map and tax lot 52E17A 00102, more fully described as Parcel X (10) of Deed recorded in Clackamas County as Doc No. 2007-055363 for purposes of fulfilling the requirements of the ODOT Immediate Opportunity Fund grant applicable to the Project. The Parties do not intend that this Agreement allocate responsibility to the County for the design or construction of the Project described above.

TERMS OF AGREEMENT

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

1. **Term.** This Agreement shall be effective upon execution. This Agreement shall expire automatically after seven years from the date of completion of the Project.
2. County agrees to maintain the roadway improvements within the right of way under County jurisdiction for the useful life of the Project, which is defined as seven years from the date of completion of the Project, unless the maintenance obligation is transferred during that time period pursuant to ORS 368 or ORS 373.
3. County shall be exclusively responsible for all costs and expenses related to its

performance of work under this agreement. The County shall not be responsible for any costs associated with the design or construction of the Project or, pursuant to ORS 368.910, any costs associated with maintenance of any sidewalk and curb improvement that may be constructed adjacent to the county road.

4. City shall be exclusively responsible for all costs and expenses related to its performance of work under this agreement.

5. **Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project or any of the obligations contained in this Agreement. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. **General Provisions**

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in

equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.

- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.


- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.

- M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

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.

CITY OF MOLALLA

Sign 

Print Dan Huff

Date 6-23-2021

COUNTY OF CLACKAMAS

Sign _____

Print _____

Date _____

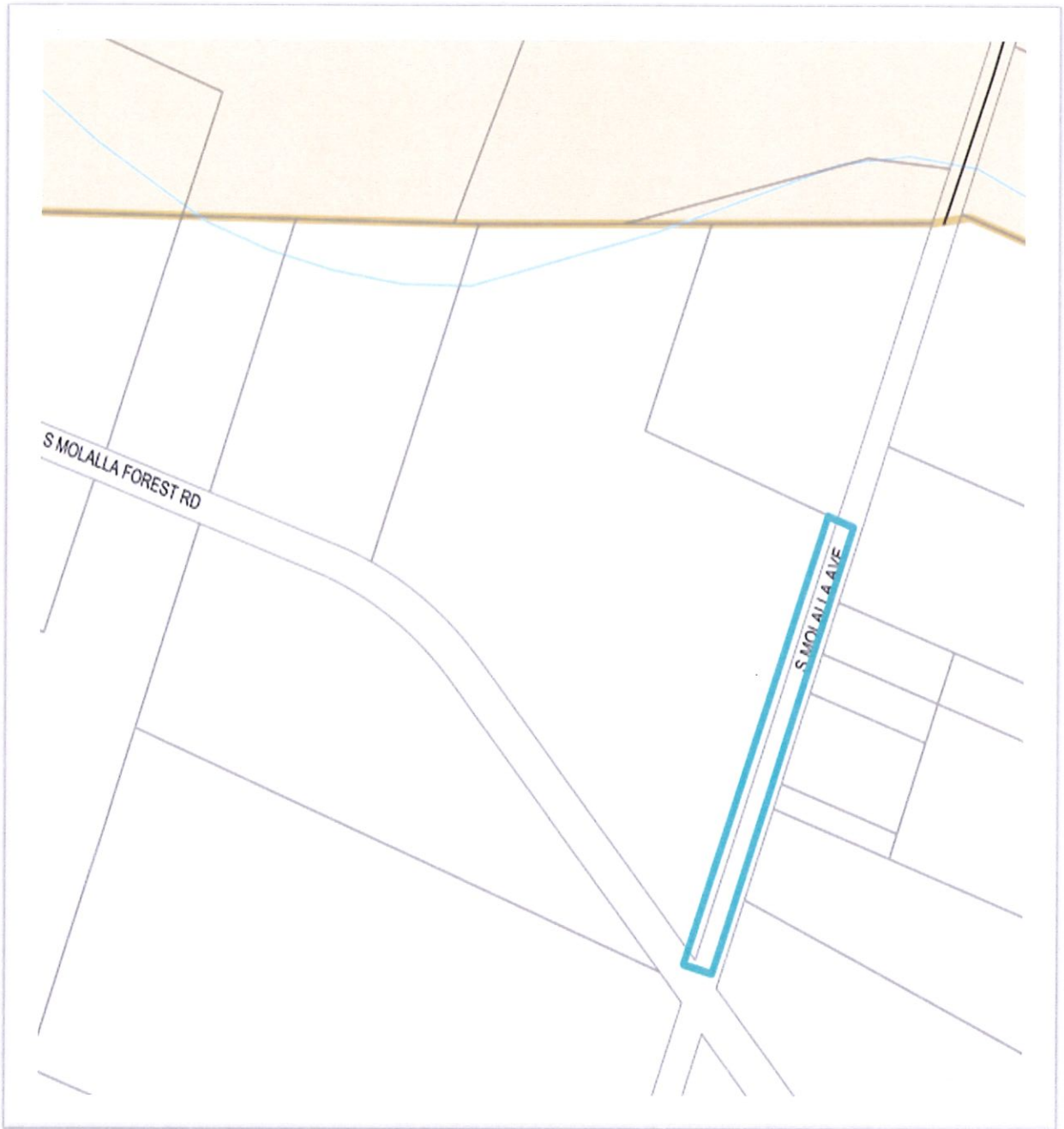
CITY OF MOLALLA – Agency Contact

Mac Corthell, Planning Director
 117 N Molalla Ave, PO Box 248
 Molalla, OR 97038
 (503) 759-0219
 mcorthell@cityofmolalla.com

COUNTY OF CLACKAMAS – Agency Contact

Rick Nys, Development Engineering Supervisor
 150 Beaver Creek Road
 Oregon City, OR 97045
 (503) 742-4702
 richardnys@clackamas.us

Exhibit 1 – Project Location



RECORDING REQUEST AGREEMENTS/CONTRACTS

New Agreement/Contract :
Amendment/Change Order Original Number:

ORIGINATING COUNTY
DEPARTMENT:

DTD – Engineering
Attn: Laura Kitts

OTHER PARTY TO
CONTRACT/AGREEMENT: City of Molalla

BOARD AGENDA ITEM

NUMBER: _____

DATE: 07/29/21

PURPOSE OF
CONTRACT/AGREEMENT:

**INTERGOVERNMENTAL AGREEMENT WITH CITY OF MOLALLA FOR THE
MAINTENANCE AGREEMENT SOUTH MOLALLA AVE IMPROVEMENTS**

Please return recorded document to Engineering Attn: Laura Kitts



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 12, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Board Order Vacating a Portion of Dusty Lane, Public Road No.5032

Purpose/Outcomes	Vacates a portion of Dusty Lane right of way
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	Vacation of south 150 feet Board Order No. 2007-471 8/3/21: Discussion item at issues
Counsel Review	Reviewed and approved by County Counsel on 7/28/21
Procurement Review	This item was not processed through Procurement. This is a Petition for a Road Vacation.
Strategic Plan Alignment	Build public trust through good government
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

Dusty Lane, created May 9, 1927, through “Etheletha Park”, Plat Number 550, is a paved and gravel road that dead ends at three tracts of private property identified as mostly wetlands. Only one of the tracts can be developed for a single family dwelling. Dusty Lane cannot be extended beyond its current terminus without major mitigation. The petitioner proposes to vacate the southerly 149.00 feet of the 40-foot wide road right-of-way and, has recorded an access easement over this vacated section for all of the properties currently using the road. This portion of road Right-of-Way serves no public need and is no longer a benefit to the traveling public.

The portion to be vacated contains approximately 5,960 square feet, of right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to

this vacation, provided that utility rights are reserved.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of Dusty Lane right of way.

Sincerely,

Douglas Cutshall

Douglas Cutshall

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

In the matter of the Vacation of
a portion of Dusty Lane,P 5032,
situated In Section 7,
T.2 S., R.5 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 1 of 2

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of Dusty Lane right of way, described as follows:

All of that portion of Dusty Lane, P 5032, in Etheletha Park, Plat 550, Clackamas County Plat Records, situated in the SE¼ of Section 7, T.2 S., R.5 E., W.M., Clackamas County, Oregon, lying one foot southeasterly of the southwesterly projection of the southeast line of Lot 2, Block 1 of said plat and, between the north end of that portion of previously vacated Dusty Lane right of way described in Board Order 2007-471, Deed Document 2007-87547, Clackamas County Deed Records, also depicted on attached Exhibit "A" and, by this reference being a part of this description. Containing 5,960 square feet more or less.

Whereas the Board having read said petition and report from the County Road Official, have determined the vacation of the above described portion of roadway to be in the public interest; and,

Whereas the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated April 30, 2021; and,

Whereas the Petitioner has provided an access and utility easement over and across this section of vacated right of way per Deed Document 2021-055036 dated June 04, 2021; and,

Whereas Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation provided that utility rights are reserved; now therefore,

IT IS HEREBY ORDERED that the above described portion of Dusty Lane as depicted on attached Exhibit "B", containing, 5,960 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED that rights for all existing utilities within the vacated Dusty Lane right of way, be reserved, nothing contained herein shall cause or require the removal or abandonment of any storm or sanitary sewer, water main, gas line, conduit of any kind, wires, or poles which are now installed in said right-of-way and used or intended to be used for any public service or utility. In addition, the rights are reserved to access, maintain, repair, construct or reconstruct, install, renew, and enlarge all utilities that are now used for any public service or utility; and,

IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

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

In the matter of the Vacation of
a portion of Dusty Lane, P 5032,
situated In Section 7,
T.2 S., R.5 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 2 of 2

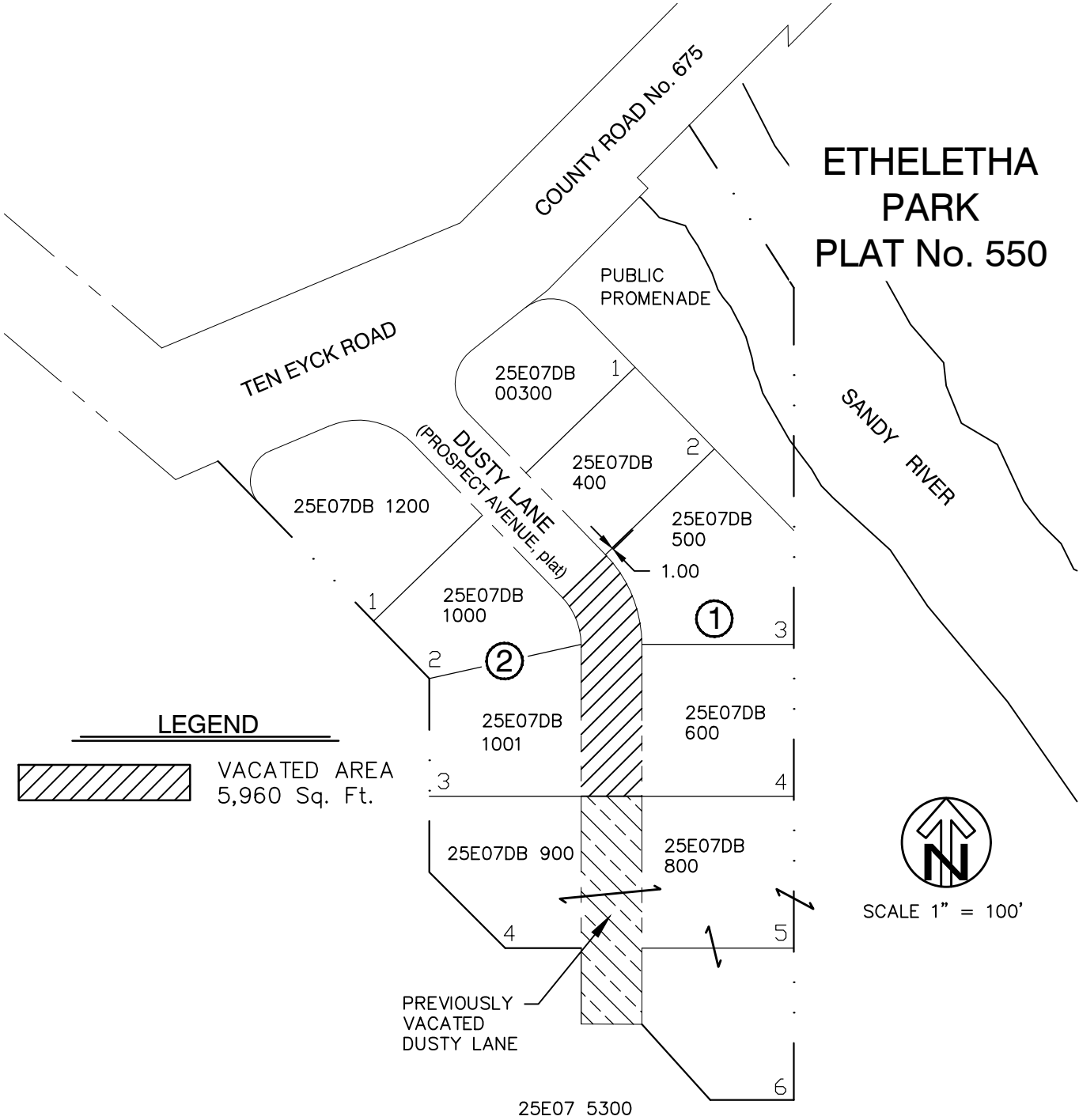
ADOPTED this _____ day of _____, 2021
BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

SITUATED IN THE SE $\frac{1}{4}$ OF
SECTION 7, T.2 S., R.5 E., W.M.

ETHELETHA
PARK
PLAT No. 550



LEGEND

 VACATED AREA
5,960 Sq. Ft.



SCALE 1" = 100'

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: April 30, 2021

SUBJ: **BOARD ORDER VACATING A PORTION OF DUSTY LANE**

LOCATION: The proposed road vacation is located in the southeast quarter of Section 7, Township 2 South, Range 5 East, Willamette Meridian, northeasterly of the City of Sandy.

FACTS AND FINDINGS: Dusty Lane, Public Road No. 5032, created May 9, 1927, through "Etheletha Park", Plat Number 550, is a paved and gravel road that dead ends at three tracts of private property identified as mostly wetlands. Only one of the tracts can be developed for a single family dwelling. Dusty Lane cannot be extended beyond its current terminus without major mitigation. The petitioner proposes to vacate the southerly 149.00 feet of the 40-foot wide road right-of-way and has recorded an easement over the vacated section to provide access to all affected properties. This portion of road right-of-way serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies have been contacted and do not have any objections to this vacation, provided that utility rights are reserved.

This road vacation does not violate any portion of Clackamas County Code 7.03.095 (4) (A). Said Code enumerated as follows;

a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is available via recorded Ingress Egress and Utility Easement per Document 2021-055036

b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: Dusty Lane has been constructed to the southerly limit of the subdivision and conveys current residential traffic.

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It was economically feasible to build a road in a portion of this right of way however there is no public need to further improve this right of way.

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

Finding: There are no other roads that effectively provides the same access.

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

Finding: The right of way has present and future value to only the adjoining properties.

f. Whether there are present and future likely benefits of the right-of way to the traveling public;

Finding: There are no present and future likely benefits of the right of way to the traveling public.

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

Finding: There are no anticipated impacts to the future use of the right of way proposed to be vacated.

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

Finding: Not applicable.

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

Finding: Not applicable.

It is my assessment that the proposed vacation is in the public interest.

Draft

Approval of Previous Business Meeting

Minutes:

July 29, 2021

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

<https://www.clackamas.us/meetings/bcc/business>

Thursday, July 29, 2021 – 10:00 AM

Virtual Meeting via Zoom and in Person

PRESENT: Chair Tootie Smith
Commissioner Sonya Fischer
Commissioner Mark Shull
Commissioner Martha Schrader

EXCUSED: Commissioner Paul Savas

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Cooling Shelter Update: Rod Cook and Mary Rumbaugh gave update
~Board Discussion~

I. PUBLIC HEARING <https://www.clackamas.us/meetings/bcc/business>

1. Third Reading of an Ordinance Amending Chapter 8.03 of the Clackamas County Code
– Secondhand Dealers (Scott Ciecko, County Counsel)

Opened Public Comment

2nd hand dealers Public Comment in Person:

Steve Souza – Oregon City – 2nd hand dealers

2nd hand dealers Public Comment zoom:

N/A

Closed Public Comment

Chair Smith: I move we set this matter over for a third hearing.

Commissioner Fischer: Second

Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Shull: Aye.

Commissioner Schrader: Aye

Chair Smith: Aye.–the motion carries 4-0

II. CONSENT AGENDA <https://www.clackamas.us/meetings/bcc/business>

A. Health, Housing & Human Services

1. Approval of an Amendment #01 to a Subrecipient Agreement with Lifeworks NW for Intensive Case Management Services. Amendment adds \$44,301.60 for a maximum contract value of \$310,111.20, through the State of Oregon, Community Mental Health Program. No County General Funds are involved. – *BH*
2. Approval of Amendment #04 to Intergovernmental Agreement #166036 with the State of Oregon, Acting by and through its Oregon Health Authority, for Operation and Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention Services, and Problem Gambling Programs. Amendment does not change the funds available under the agreement. It changes the source of the funds. Funded provide by the State of Oregon, Oregon Health Authority. The current amount if the IGA is \$9,086,559.18. No County General Funds are involved. – *BH*

3. Approval of Amendment #05 to an Intergovernmental Agreement #166036 with the State of Oregon, Acting by and through its Oregon Health Authority, for Operation and Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention Services, and Problem Gambling Programs. Amendment adds \$53,067.66 for a maximum agreement of \$9,139,626.84, through the State of Oregon, Oregon Health Authority. No County General Funds are involved. – *BH*
4. Approval of Intergovernmental Agreement #160440, Amendment 4 with The State of Oregon Department of Human Services, Aging and People with Disabilities Division for Provision of Services to Clackamas County Residents. Amendment adds \$224,000 for a new total of \$8,391,334. No additional County General Funds. – *SS*
5. Approval of an Intergovernmental Agreement with Oregon Department of Transportation Rail and Public Transit Division for HB2017 State Transportation Improvement Fund Discretionary Program Funds for the I205 / Borland Rd / Bridgeport Village Pilot Transit Service. Maximum award amount is \$900,000 through HB2017. 20 % matching funds will be covered through Clackamas County STIF funds and Washington County committed match funds. No County General Funds are involved. - *SS*

B. Department of Transportation and Development

1. Approval of an Amendment to a Contract with Harper Houf Peterson Righellis, Inc. for the Linwood Avenue Improvement Project. Amendment adds \$205,948.88 for a total contract not to exceed \$1,332,343.90 through the North Clackamas Revitalization Area Urban Renewal funding. No County General Funds are involved.
2. Approval of a Contract with Eagle-Elsner, Inc. for the Thiessen I Area Paving Package No. 1: Total Contract Value \$480,000; Community Road Fund. No County General Funds are involved. - *Procurement*
3. Approval of a Contract with Murraysmith, Inc., for the Construction Engineering Support and Inspection Services for the 2021 Paving Packages Project: Total Contract Value \$214,217; Community Road Fund and Road Fund. No County General Funds are involved. - *Procurement*

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of an Intergovernmental Agreement between Clackamas County on behalf of the Clackamas County Sheriff's Office and the United States, acting by and through the Department of Homeland Security, Seattle Field Office for the use of the Public Safety Training Center Complex. This is an estimated annual revenue of \$50,000, billed to the Department of Homeland Security. No County General Funds are involved. – *CCSO*
3. Approval to Apply for the 2021-2023 Victims of Crime Act (VOCA) and Criminal Fine Account (CFA) Non-Competitive Grant for Prosecutor Based Victim Program Grant. These are two grants through one application: VOCA in the amount of \$1,023,466 and CFA in the amount of \$369,136. Funded through the Oregon Department of Justice Crime Victim's Services Division. No County General funds are involved. – *DA*

D. County Administration – Pulled for Discussion

1. Approval of a FY 20/21 Work and Financial Plan with United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services for Predator Management. Maximum contract value is \$79,500 through County General Fund.

E. Technology Services

1. Approval of a Service Level Agreement between CBX and Western Independent Networks, Inc. for a Dark Fiber Connection. Total contract value is \$30,780 (\$855/month for 36 months, funded through CBX. No County General Funds are involved.

F. Juvenile

1. Approval of Intergovernmental Agreement No. DCJ-IGA-R-10721-2019 (Formerly Contract Number 0607133 Amendment #11) Between Multnomah and Clackamas Counties. This amendment reduces the number of beds that Clackamas and Washington Counties can utilize free of charge in excess of the 13 beds we pay for, from 34 to 31 beds.

G. Human Resources

1. Approval of the Section 125 Cafeteria Plan Document. Total cost is \$3,415 in legal fees. Funded through Department Monthly Benefit Administration Fees.

H. Community Corrections

1. Approval of an Intergovernmental Agreement #1 between Clackamas County Community Corrections and City of Wilsonville to Provide Work Crew Services. IGA will provide approximately \$62,800 in revenue, funded through the City of Wilsonville. No County General Funds are involved.
2. Approval of an Intergovernmental Agreement Amendment #2 between Clackamas County Community Corrections and Metro to Provide Work Crew Services. IGA will provide \$12,200 in revenue, funded through Metro. No County General Funds are involved.
3. Approval of an Intergovernmental Agreement Amendment #2 between Clackamas County Community Corrections and Clackamas River Water to Provide Work Crew Services. IGA will provide \$8,000 in revenue, funded through Clackamas River Water. No County General Funds are involved.

Read Consent Agenda

MS asked to pull item D.1 for discussion

~Board Discussion~

Commissioner Shull: I move for approval of the content agenda with removal of item D.1 for discussion.

Commissioner Schrader: Second

Clerk called the Poll

Commissioner Schrader: Aye

Commissioner Fischer: Aye.

Commissioner Shull: Aye.

Chair Smith: Aye.–the motion carries 4-0

~Board Discussion~

Commissioner Shull: I for approval of D.1

Commissioner Schrader: Second

Clerk called the Poll

Commissioner Schrader: Aye

Commissioner Fischer: Abstain.

Commissioner Shull: Aye.

Chair Smith: Aye.–the motion carries 3-0-1

Announce the Board will recess as Board of County Commissioners and Convene as the Board for Water Environment Services for the consent agenda

III. WATER ENVIRONMENT SERVICES CONSENT AGENDA

<https://www.clackamas.us/meetings/bcc/business>

1. Approval of Contract between Water Environment Services and Kennedy/Jenks Consultants, Inc. for the Boring Pump Station and Force Main Engineering Services. Total contract value is \$1,907,043 until July 1, 2022. Funded through Direct Capital Projects fund. No County General Funds are involved.

Announce the Board will adjourn as the Water Environment Services and Re-convene as the Board of County Commissioners for the remainder of the meeting.

IV. PUBLIC COMMUNICATION <https://www.clackamas.us/meetings/bcc/business>

Opened Public Comment

General Public Comment in Person:

1. **Angel Falconer - Clackamas County - Milwaukie Bay Park**
2. **Lisa Batey - Clackamas County - Milwaukie Bay Park**

~Board Discussion~

3. Laurie Tauscher – Clackamas - Resolution to support citizens by not enforcing mandates that do not comply with the United States and/or Oregon constitutions
4. Brenda Ruble - Clackamas County - Public comment non agenda item
5. Beki Cowling – Estacada – myself and my family what mask and shutdown mandates have done to my children

~Board Discussion~

6. Les Poole – Gladstone – Public Comment, Metro; COVID
7. Janice Wenzel – Oregon City – Bees; Boo Poop
8. Lisa Peirce – Oregon City – Resolution like Douglas County

~Board Discussion~

General Public Comment Zoom: *Registered but did not speak

1. Don Powers – Sherwood – US and Oregon Constitutional role of government
2. *Rene Gomez – Milwaukie – Mask Mandate / First Amendment
3. *Amanda Fisk – Milwaukie – Violation of ADA
4. Brett Duax – Happy Valley - Masks, Vaccine ID, Rights and a solution to the board
5. *Farin Da Silva – Oregon City - Adopting Douglas Resolution To Follow The Constitution Vis 'Covid'
6. Michael Weber – Milwaukie – COVID
7. *Jackson Calhoun – Gladstone - Please adopt a resolution stating that Clackamas County will not uphold any lower level laws that violate the Constitution
8. *Jennifer Pitcairn – Gladstone - 4. Public Communication regarding state of emergency
9. Dana Hindman-Allen – Sandy - Citizen communication/ Covid Measures
10. Bill Wehr - Clackamas County - public policy
11. Christine Kennedy – Lake Oswego - Covid public communication

~Board Discussion~

12. Cris Waller – Milwaukie - COVID

~Board Discussion~

Closed Public Comment

V. COUNTY ADMINISTRATOR UPDATE <https://www.clackamas.us/meetings/bcc/business>

VI. COMMISSIONERS COMMUNICATION <https://www.clackamas.us/meetings/bcc/business>

Adjourned 12:10 PM



Tami Little
County Assessor

Assessment & Taxation

July 27, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of ORMAP (the Oregon Map) Intergovernmental Agreement Contract # DOR-318-21 between the Clackamas County Assessor's Office and the Oregon Department of Revenue for the Administration of the Ad Valorem Property Tax System

Purpose/Outcomes	This IGA will provide funding to continue the conversion of Clackamas County Mylar Assessor maps to digital Assessor maps, which benefits Oregon's base map system and helps facilitate and improve the administration of the ad valorem property tax system as required under ORS 306.135.
Dollar Amount and Fiscal Impact	This semi-annual IGA Contract is \$35,000 for this funding period. Amount varies with each ORMAP grant request due to funding availability and resources needed. The A&T Department dedicates an additional \$10,000 annually, to support the conversion of maps through quality control, new plat maintenance, plat and deed research and project management.
Funding Source	State of Oregon, Department of Revenue
Duration	Terminates June 30, 2022
Previous Board Action/Review	The County has participated in this program since 1999 with the BCC approval of IGA Contracts with the Dept. of Revenue up to twice a year in varying amounts.
Strategic Plan Alignment	1. This item aligns with the department's strategic business plan goals by providing Assessment & Taxation customers the ability to conduct business online. 2. This item aligns with the following County Strategic Priority: Build public trust through good government.
Counsel Review	Counsel Reviewed on 7/13/2021 by Stephen L. Madkour
Procurement Review	This item was not processed through procurement since it is an IGA grant and procurement review is not required.
Contact Person	Bronson Rueda, Deputy Assessor – Department of Assessment & Taxation 503-655-8304

BACKGROUND:

This program, legislated in 1999 as ORS 306.135, provides for the funding from the Oregon Department of Revenue for GIS digital tax lot capture and the creation of digital Assessor's tax lot maps. The ORMAP program collects \$1.00 for each recorded land related document from all Oregon Counties. These funds go into a pool administered by the Oregon Department of

Revenue. Funds are distributed to Counties based on competitive grant applications twice a year. This contract represents our spring 2021 award of our grant request for continuing work to retire Mylar Maps (paper maps created in the 1960's) and create digital maps for the ORMAP program, which satisfies ORMAP Goal 6.

The product created by funds from this IGA contract benefits the County, the State, and most importantly, the public. Having an accurate ownership GIS layer allows users of the data to make more informed decisions and provides a more accurate base map for other GIS map data.

This project is a collaborative effort between the Clackamas County's Assessor's Office and the GIS Division of the Technology Services Department. Also assisting in this effort is the County's Surveyor. County Counsel has reviewed, and approved, these on-going ORMAP contracts.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve Intergovernmental Agreement Contract # DOR-318-21 with the State of Oregon Department of Revenue for the continued conversion of Mylar maps to a digital GIS database.

Respectfully submitted,

A handwritten signature in black ink that reads "Tami Little". The signature is written in a cursive, flowing style.

Tami Little
County Assessor

**DEPARTMENT OF REVENUE
ORMAP INTERGOVERNMENTAL AGREEMENT
CONTRACT #DOR-318-21**

This Agreement is entered into by and between the State of Oregon, acting by and through the Department of Revenue (“Department”) and Clackamas County A&T (“County”).

WHEREAS, under ORS 306.135 the Department is charged with developing a base map system to facilitate and improve the administration of the ad valorem property tax system;

WHEREAS, pursuant to ORS 190.110, the Department may cooperate, by agreement or otherwise, with a unit of local government in performing the duties imposed upon it by ORS 306.135.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and the County agree to the following:

I. EFFECTIVE DATE OF AGREEMENT; AWARD; PROJECT COMPLETION

- A. Effective Date of Agreement. This Agreement shall become effective on the date this Agreement has been signed by every party and all required approvals have been obtained.
- B. Award. The Department shall provide funds in the amount of **\$35,000.00** (the “Award”) to the County to fund all or part of the activities set forth in Exhibit A (“Proposal”) which is attached hereto and by this reference made a part hereof. The part of the activities set forth in the Proposal which is funded by the Award shall be called the “Project”. All of the activities set forth in the Proposal, whether funded by the Department or by other sources, shall be referred to as the “Total Project”. (If there are no other funders beside the Department for the activities described in the Proposal, the Total Project is the same as the Project.) The Department shall not be obligated to provide to the County, and the County shall not use the Award other than for costs for the Project.
- C. Project Completion. County agrees to complete the Total Project in accordance with the terms and specifications of the Proposal by **June 30, 2022** (“Project Completion Date”). Final billing for the Project shall be submitted to the Department on or before **July 8, 2022**.

II. DISBURSEMENTS.

- A. Disbursement of Funds by the Department. Subject to Section IV, upon receipt of the County’s request for disbursement, the Department shall disburse the

Award to the County on a cost reimbursement basis. The Department may, in its sole discretion, impose a minimum or maximum dollar amount for each disbursement request or limit the frequency of disbursement requests.

- B. Overpayment. In the event that the aggregate amount of the Department's disbursements hereunder exceeds the costs of the County for the Project, the County agrees to refund to the Department the amount paid in excess of such costs within thirty (30) days of final billing by the County or the Project Completion Date, whichever is earlier.
- C. Disallowed Costs. The County agrees that payment(s) under this Agreement shall be subject to offset or reduction for amounts previously paid hereunder which are found by the Department not to constitute allowable costs under this Agreement. If such disallowed amount exceeds the payment(s); the County shall immediately upon demand pay the Department the amount of such excess.
- D. Cost Savings. Any cost savings realized on the Total Project shall be prorated between the funding sources based on the percentage of their respective cash contributions as set forth in the Proposal. In no event shall the Department pay for more than its pro rata share of the County's actual out-of-pocket cost of the Total Project.
- E. No Duplicate Payment. The County shall not be compensated for, or receive any other duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party.

III. REPRESENTATIONS AND WARRANTIES

County represents and warrants to the Department that (1) it has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms, (3) the Total Project shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) those persons performing work on the Total Project shall, at all times during the term of this Agreement, be qualified, professionally competent and duly licensed to perform work on the Total Project, and (5) Exhibit A presents a good faith estimate of the costs of the Total Project and the Project and accurately states the amount of other funds, whether in cash or through binding commitment(s), available for payment of the costs of the Total Project.

IV. CONDITIONS TO DISBURSEMENT

- A. Conditions Precedent to Disbursement. The Department shall not be obligated to disburse any funds hereunder for Project costs unless (1) there exists no event of default or default which with notice or lapse of time or both will become an event of default hereunder, and (2) the Department has received from the County (i) a request for disbursement signed by a duly authorized representative of the County (which shall, among other things, state that the County has or will have sufficient funds to complete the Total Project by the Project Completion Date), (ii) an itemized invoice and (iii) such other documentation as the Department may require, all in form and substance satisfactory to the Department; further, the Department shall only be obligated to disburse Award funds to the extent that the portion of the Award represented by the aggregate amount of all disbursements made through the date of the disbursement request (including the amount of the disbursement request) does not exceed the percentage of the Project completed through the date of the disbursement request, as determined by the Department.
- B. Conditions Precedent to Final Disbursement. The Department shall not be obligated to make final disbursement hereunder until a final payment request and such documentation as may be required by the Department, all in form and substance satisfactory to the Department, shall be submitted by the County to the Department. Final payment will be made to the County within forty-five (45) days of approval by the Department.

V. COVENANTS

- A. Assignment. If the County hires a contractor(s) to do all or part of the Project, the County shall remain liable for compliance with the terms and conditions of this Agreement and shall not in any way be relieved of any of its obligations under this Agreement. The County shall be responsible for all cost overruns.
- B. Payments. To the extent required by state and federal law, the County agrees to:
1. Make payment promptly as due to all contractors, subcontractors, vendors and other persons supplying labor and/or materials for the Project; and
 2. All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.

- C. Liabilities. County shall perform its obligations under this Agreement as an independent contractor. Each party shall be responsible exclusively with respect to its employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

Each party shall be responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

- D. Compliance with Applicable Law. The County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. The Department's performance under this Agreement is conditioned upon the County's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230 and 279B.270, as amended from time to time, which are incorporated by reference herein. The parties shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg))
- E. Records Maintenance. The County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles and the Oregon Local Budget Law, ORS 294.305 to 294.565.. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate.
- F. Access. The County acknowledges and agrees that the Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the County that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. The County shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of five (5) years, or such longer period as may be required by applicable law, following final payment under this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

- G. Project Ownership. The Department acknowledges and agrees that the Project is the exclusive property of the County. The County acknowledges and agrees that the Department is not responsible or liable in any manner for the completion or maintenance of the Project or Total Project.

VI. TERMINATION; REMEDIES

- A. Termination for Convenience. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party; provided, however, that the County shall, within thirty (30) days of such termination, reimburse the Department for all funds disbursed by the Department hereunder to the extent that the amount of funds disbursed exceeds the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department; provided further that until the County has fully reimbursed the Department for such funds, the County shall comply with the terms of this Agreement.
- B. Termination Because of Non-Appropriation or Project Ineligibility.
1. The Department, at any time upon prior written notice to the County, may terminate this Agreement if the Department fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to pay for the allowable costs of the Project to be funded hereunder or any state law, regulation or guideline is modified, changed or interpreted in such a way that the Total Project, or any portion of the Total Project, is no longer eligible for Award funds.
 2. In the event insufficient funds are appropriated by the County for its share of the costs of the Total Project and the County has no other lawfully available funds, then the County may terminate this Agreement at the end of its current fiscal year, with no further liability to the Department. The County shall deliver to the Department written notice of such termination within thirty (30) days of its determination of such shortfall.
- C. Termination for Default. The Department may, at any time upon thirty (30) days prior written notice to the County, terminate this Agreement if:
1. The design and implementation of the Total Project is not pursued with due diligence; or
 2. The cadastral portions of the Total Project do not conform to the Department of Revenue Oregon Cadastral Map System; or

3. The County fails to receive funding for portions of the Total Project from outside sources as described in its Proposal; or
 4. The County, without the prior written approval of the Department, uses the funds provided by the Department hereunder in a way other than the Project described in the Proposal.
 5. The County violates any other provision of this Agreement.
- D. Rights and Remedies. The County shall, within thirty (30) days of its receipt of the notice described in Section VI.C above, reimburse the Department for all funds disbursed hereunder to the extent that the funds disbursed exceed the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department as of the date of County's receipt of the notice described in Section VI.C above. Further, the Department shall have any and all rights and remedies available at law or in equity.

VII. GENERAL PROVISIONS

- A. Force Majeure. Neither the Department nor the County shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.
- B. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall derive any unfair knowledge or financial benefit from this Agreement that is not offered to others in a competitive process.
- C. No Third Party Beneficiaries. The Department and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- D. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Department and County and their

respective successors and assigns; provided however that the County may not assign this Agreement or any interest therein without the prior written consent of the Department, which consent may be withheld for any reason.

- E. Severability. The Department and the County agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
- F. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Department or the County at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- G. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
- H. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Department and/or other agency or department of the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- I. Merger Clause; Amendment; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE DEPARTMENT AND THE

COUNTY ON THE SUBJECT MATTER HEREOF. NO MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE DEPARTMENT AND THE COUNTY, AND NO CONSENT OR WAIVER SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM SUCH CONSENT OR WAIVER IS BEING ENFORCED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF THE DEPARTMENT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE DEPARTMENT OF THAT PROVISION OR ANY OTHER PROVISION. THE COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS.

DEPARTMENT:

State of Oregon, acting by and through its
Department of Revenue
Authorized Agency Signature

By: _____

Kathryn Jones, Senior Operations Analyst, DPO

Date: _____

COUNTY:

Clackamas County (A&T)

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

EXHIBIT A

AWARD LETTER
COUNTY GRANT PROPOSAL



Oregon

Kate Brown, Governor

Department of Revenue
Property Tax Division
955 Center St NE
PO Box 14380
Salem, OR 97309-5075
www.oregon.gov/dor

May 11, 2021

Kevin Clarke
Clackamas County Assessment & Taxation
Development Services Building
150 Beaver Creek Rd
Oregon City, OR 97045

Dear Mr. Clarke

I am pleased to inform you that the Department of Revenue has approved your request for funding through the ORMAP program. You will soon receive a contract to formalize the ORMAP grant agreement with the Department of Revenue. The agreement will be effective from July 1, 2021 through June 30, 2022.

Listed below are the deliverables as outlined in your grant request. In order to expedite the payment process for you, please use the "ORMAP Invoice" form, you can download a copy from the ORMAP site. Please state the correct contract number on the chart and complete the information requested for each task or deliverable.

Contract Number:		
Task	Deliverable	Award Amount
1	285 Remapped Tax Maps	\$35,000.00
2		
Total		\$35,000.00

If you have questions, please contact the ORMAP Coordinator, Philip McClellan (503-586-8128).

Best wishes for a successful project.

With regards,

Jason D. Brockie
Property Tax Assistance and Oversight Section Manager
Oregon Department of Revenue

cc: County Assessor
DOR Finance Department
File

ORMAP Grant Application

Section I. County and Grant Information			
A. County: Clackamas County A&T		B. Funding Cycle: Spring 2021	
C. Project will help meet ORMAP Goal(s): 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input checked="" type="checkbox"/>		D. Fund Request: \$35,000	
Section II. Summary of Project			Department Assessment
A. Brief Overview of the Request			<input type="checkbox"/> Pass <input type="checkbox"/> Fail
This project is a continuation of Clackamas County's ORMAP Tax Map conversion program. The funds requested for this period will be used to annotate and prepare final Digital Assessor Maps. With full funding, 285 tax maps will be completed to ORMAP standards for this project period.			
Scope and Deliverables			
Check	Deliverables	Brief description of the deliverables	
<input type="checkbox"/>	Tax Lot Conversion		
<input checked="" type="checkbox"/>	Tax Map Conversion	Conversion of Mylar Assessor Maps to final Digital Assessor Maps.	
<input type="checkbox"/>	Control Points		
<input type="checkbox"/>	Development		
<input type="checkbox"/>	Other Assistance		
<input type="checkbox"/>	Other Deliverable		
<input type="checkbox"/>	Hardware/Software		
B. Projected Project Completion Date (projects should not exceed one year)			
C. Total Costs of Project (add lines as necessary)			
Deliverable	Number of Items	Cost per Item	Total Cost
Assessor Map Annotation	285	\$122.81	\$35,000
County Contribution (Detailed below)			
D. Partnerships and Contributions (add lines as necessary)			
Partner	Contribution		
Clackamas County Assessment & Taxation Dept.	\$10,000 – New plat maintenance, plat and deed research and quality control.		
A. Assessor's Signature & Date:	April 8, 2021		
F. Fiscal Coordinator – Name & Contact Number:	Megan Nava 503-655-8671		
G. Project Coordinator – Name & Title:	Kevin Clarke 503-655-8671		
E-mail address:	KClarke@clackamas.us		

Phone Number:	503-655-8671
Mailing Address:	Clackamas County Assessment & Taxation Development Services Building 150 Beaver Creek Rd Oregon City, OR 97045

Section III. Detail Project Information –Answer all questions

A. Overview

1. Describe what the project is trying to accomplish.

Clackamas County is continuing retire Mylar Maps that were created in the 1960’s. As the Digital tax lot layer is upgraded, A&T updates & annotates Digital Assessor Maps in a Final form in accordance with ORMAP Goal 6 standards to retire Mylar maps.

2. What part(s) of the county does this project cover (Township, Range, and Sections, if applicable)?

The project will cover a variety of areas in the remaining 15% of the incomplete Final Digital Assessor maps.

3. What is the status/outcome of all previously funded ORMAP projects? (Please include funding cycles and a “status map” of your county.)

Prior to the Fall 2006 ORMAP contract, all efforts were to re-map urban areas. As the digital GIS database developed through ORMAP funding and regular maintenance, we started to finalize Digital Maps and retire Mylar Assessment Maps that were up to ORMAP Goal 4 standards. This was through our normal maintenance process. The Fall 2020 grant was used for annotating maps that have line work up to ORMAP standards and are now designated as “ready for Cartography” in our map status list by temporary employee/s. The Spring 2021 grant will continue this work.

4. Describe, in detail, your technical approach to the project (such as, mapping methodology).

Take converted digital maps and newly created tax lot parcel maps and identify missing Cartographic Elements that are required by the Department Of Revenue for Goal 6 compliant Assessor’s cadastral maps by comparing the digital elements with the current Assessor’s Mylar maps. Add those elements into an ORMAP/ESRI compliant geodatabase to produce final maps. Deeds, surveys, GPS points in our construction fabric layer, orthophotography, and existing tax lot maps are used to annotate and adjust tax maps to create final digital tax maps. To ensure quality, staff will use the ESRI ArcMap 10.7 tools as well as the ORMAP Parcel editing tools to add annotation to create the cartographic features necessary to produce final maps.

5. Describe the project deliverables.

This project will deliver 285 additional final maps, fully annotated, rectified to control meeting ORMAP tax lot standards. As new subdivisions are created those tax lots are mapped to ORMAP standards under our maintenance process.

6. Who will be doing the work (county staff, contractor, or DOR staff)? Please define their roles.

Temporary staff working under the supervision of the Cartography staff will do the work. They will annotate, verify deed and survey information to complete the assessor Map. Cartography staff will QC the maps to verify that everything is to ORMAP Goal 6 standards. Control points will be obtained from County staff.

7. How will the county cartographer integrate the deliverables into the County’s maintenance plan?

The County Cartographer will use various tools developed for maintenance to update any changes that might occur for the Assessor Maps finalized in this project. The projects deliverables will be part of the overall countywide GIS tax lot layer. The deliverables from this project will be used to complete the tax maps, directed exclusively by the County Cartographer.

8. Provide a project timeline with milestones or completion dates.

This project deals with tax maps, of which 85% are completed. Based on current resources and anticipated ORMAP funding, we estimate completion of Goal 6 in April 2022. Thus far, we have finalized 2890 tax maps to ORMAP specifications to date.

9. Does this project have any partnerships? If yes, please identify them.

Yes. The deliverables from this project are used by many agencies as a base to map infrastructure and other details. Typical agencies outside the County who have entered into partnership agreements include cities, water districts, utilities providers, school districts, community planning organizations, and a variety of state and federal agencies. Additionally, Clackamas County has developed boundary agreements with all our County neighbors. We have agreements covering 100% of the area that bounds our county.

10. Describe any innovations utilized by this project.

We use the tools developed by the ORMAP tools group and have participated in that group from its inception either to be part of the application development team or as a test group. We are also using the latest tools developed by ESRI to stay current with ArcGIS releases. Finally, the deliverables from this project are allowing the Assessor's Cartographers to retire the old Mylar tax maps and completely replace them with a digital product.

11. Detail Costs (who is paying for what).

100% of this current project is funded by ORMAP.

B. Quality Control

1. Who will be responsible for quality control (QC)?

All Quality Control is the responsibility of Clackamas County's Departments of Assessment and Taxation and Technology Services, GIS Division.

2. Will county cartography staff review the deliverables?

Yes. The cartography staff in the Assessor's Office performs the final QC. They insure all components are present and correct for map production to DOR and Clackamas County standards.

3. Will there be a review by Department of Revenue's cartography staff?

That is arranged by A&T Cartographers. DOR Cartography staff has come to the county to review our technique and process and are always welcome to see what we are doing with tax lot capture.

4. Describe QC procedures.

The quality control process is very extensive. A quality control checklist was developed for those entering COGO information and for those checking it. Ground control is evaluated as to its level of survey accuracy for the plat rectification process. If customary ground control is not available, rectified orthophotos are used. Plats controlled in this manner will be revisited when better ground control is obtained. Plats are never rubber sheeted. The County Surveyor resolves any errors that occur when rectifying to ground control (i.e. gaps and overlaps). In summary, all quality control efforts will meet or exceed ORMAP Technical Specifications.

C. Project Detail

1. Is this project an "edge matching project"? If so, how much of the county boundary will be completed?

No. 100% of edge matching has been completed with surrounding counties with prior projects and we have agreements with all our neighbors.

2. Is this project part of an ongoing or multi-phased remapping project?

Yes, this project is a continuation of our on-going re-mapping project as outlined in our Business Plan. In addition, this project is likely to be the first of three where ground control will be requested.

3. What percentage of the county tax lots and tax maps meet the ORMAP technical specifications?

	Total Countywide	Meet Tech Specs	Percent Complete
Tax Lots	163,102	162,840	99.8%
Tax Maps	3,412	2,897	84.9%

4. Upon completion of this project will your county meet goal 6 (100% of tax maps meeting technical specification)?

Current projected completion date is April 2022.

5. Is this project part of a multi-county effort? If so, please explain.

No.

6. Will the project cost be affected if it is not fully funding this cycle?

Yes. It will delay our overall completion time.

D. Data Availability

1. Does the county have a data sharing agreement with the State?

Yes.

2. Identify any data restrictions or licensing issues.

All data produced under the ORMAP program is freely available through a Data Sharing Agreement to other government agencies. Clackamas County has entered into an IGA with the State for data sharing. All publication of this data, particularly via the Internet, must comply with all Clackamas County policies and disclaimers as adopted by County Administration or the Board of County Commissioners. All data is governed by a data licensing agreement. The public has access to digital tax lot lines freely over a GIS Data Portal.

E. Background Information

Any other information that you feel may help support the project.

F. Other Issues - Please identify.

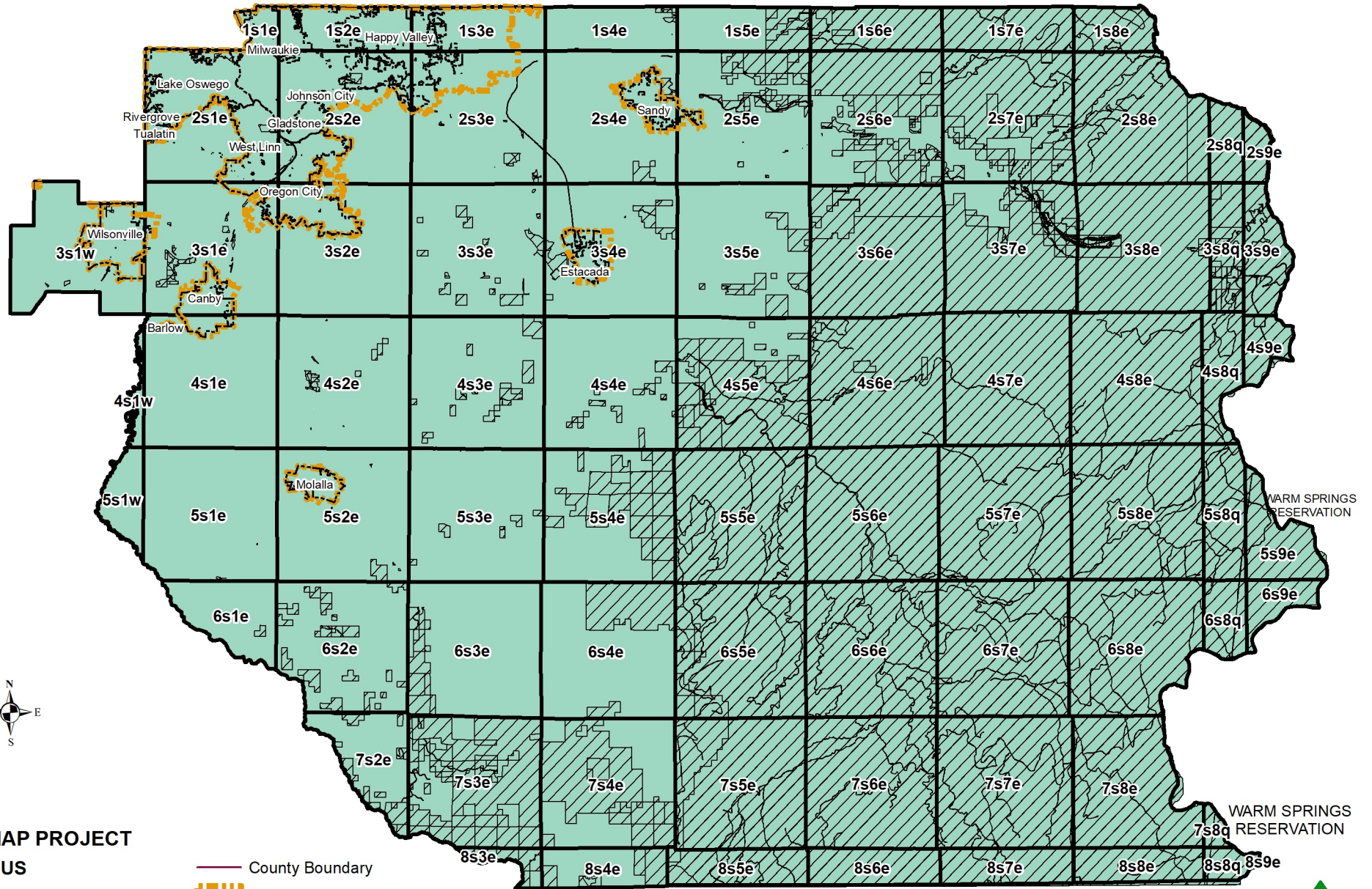
We have entered areas of the County that have insufficient survey ground control to map tax lots to rural ORMAP standards. Acquiring this control will be time consuming and expensive. This may affect the progress towards our completion timeframe.

Submit completed forms to:

Mail	Contact Information
ORMAP Project Coordinator Oregon Department of Revenue Property Tax Division 955 Center St. NE Salem OR 97301-2555	Tel: 503-586-8128 Fax: 503-945-8737 or.map@state.or.us

ATTACHMENT 1

ORMAP PROJECT STATUS MARCH 2021



ORMAP PROJECT STATUS

- Completed or In Progress
- Not Started
- County Boundary
- Metro Urban Growth Boundary
- USFS, BLM, and ODF Resource Lands



COUNTY COUNSEL DOCUMENT REVIEW
TRANSMITTAL FORM

DATE: July 13, 2021

TO: COUNTY COUNSEL

ATTORNEY: Stephen L. Madkour

FROM: Bronson W. Rueda__ (name)

EXTENSION: x7627__ DEPARTMENT/DIVISION: A&T__

BILL TO A&T__ (Department/Division to be billed)

TYPE OF DOCUMENT: State ORMAP IGA__

NAME OF DOCUMENT: #DOR 318-21__

REQUESTED RETURN DATE: July 14, 2021__

APPROVED AS TO FORM:

County Counsel: __

Date: 7/13/21

Counsel Comments:



August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Modification No. 8 to Stewardship
Agreement 13-SA-11060600-013 between
Clackamas County and USDA, Forest Service Mt. Hood National Forest

Purpose/Outcome	The Clackamas County Dump Stoppers program is requesting approval of Modification No. 8 to a Stewardship Agreement with the USDA, Forest Service Mt. Hood National Forest to support program operations.
Dollar Amount and Fiscal Impact	USDA Forest Service has awarded \$30,777.28 Stewardship Retained Receipts funds, and the Dump Stoppers program has pledged \$7,960.80 from the FY21-22 budget to pay for law enforcement labor for approximately two months, and one month of vehicle operation expense.
Funding Source	Total funding is \$38,738.08 with \$30,777.28 in USDA Forest Service Stewardship Retained Receipts funds, and \$7,960.80 from the FY 21-22 Dump Stoppers program funding. No general funds are involved.
Duration	Effective upon signature from the USDA Forest Service Acting Forest Supervisor through December 31, 2022.
Previous Board Action/Review	May 2013 – Original Agreement; Modification #1 August 2014; Modification #2 June 2015; Modification #3 June 2016; Modification #4 June 2017; Modification #5 June 2018; Modification #6 May 2019; Modification #7 April 2020
Strategic Plan Alignment	<p>1. Business and Community Services mission statement as described in its Strategic Business Plan is to “provide essential economic development, public spaces, and community enrichment services”. The Dump Stoppers program is a crucial part of maintaining forest and timber lands located within Clackamas County.</p> <p>2. Honor, Utilize, Promote, and Invest in our National Resources: This funding will provide staff labor for cleanup and law enforcement related to illegal dumpsite activities on forestlands in Clackamas County.</p>
Counsel Review	<p>1. Date of Counsel review: 7/27/2021</p> <p>2. Initials of County Counsel performing review. ARN</p>

Procurement Review	No, item is a grant.
Contact Person	Tom Riggs, BCS Parks and Forestry Manager, (503) 788-3137
Contract No.	N/A

BACKGROUND:

The Dump Stoppers program operating within the Forestry division of Business & Community Services has been in operation since 2003. The goals of the program are: 1) to locate and cleanup dumpsites on forested lands in Clackamas County, 2) enforcement of anti-dumping laws and regulations and when evidence is found, pursue, fine, and/or prosecute offenders, and 3) educate the public about the potential consequences of illegal dumping. The program is operated with two part-time staff and one Clackamas County Sheriff Deputy from March through December each year. The funds received through this agreement with the USDA Forest Service Mt. Hood National Forest will provide for approximately two months of law enforcement services, and one month of vehicle operation expense in FY21-22.

RECOMMENDATION:

Staff respectfully recommends the approval of Modification No. 8 of the Stewardship Agreement with USDA Forest Service Mt. Hood National Forest, and further recommends the Board delegate authority to the Interim Director of Business and Community Services to sign the agreement.

ATTACHMENTS:

Modification No. 8 Stewardship Agreement 13-SA-11060600-013 between Clackamas, County of and the USDA, Forest Service Mt. Hood National Forest.

Respectfully Submitted,



Sarah Eckman, Interim Director
Business & Community Services



MODIFICATION OF GRANT OR AGREEMENT

PAGE	OF PAGES
1	3

1. U.S. FOREST SERVICE GRANT/AGREEMENT NUMBER: 13-SA-11060600-013 Dump Stoppers	2. RECIPIENT/COOPERATOR GRANT or AGREEMENT NUMBER, IF ANY:	3. MODIFICATION NUMBER: 8
4. NAME/ADDRESS OF U.S. FOREST SERVICE UNIT ADMINISTERING GRANT/AGREEMENT (unit name, street, city, state, and zip + 4): Mt. Hood National Forest 16400 Champion Way Sandy, OR 97055	5. NAME/ADDRESS OF U.S. FOREST SERVICE UNIT ADMINISTERING PROJECT/ACTIVITY (unit name, street, city, state, and zip + 4): Mt. Hood National Forest Clackamas River Ranger District 16400 Champion Way Sandy, OR 97055	
6. NAME/ADDRESS OF RECIPIENT/COOPERATOR (street, city, state, and zip + 4, county): Clackamas, County of 2051 Kaen Rd Oregon City, OR 97045	7. RECIPIENT/COOPERATOR'S HHS SUB ACCOUNT NUMBER (For HHS payment use only): N/A	

8. PURPOSE OF MODIFICATION

CHECK ALL THAT APPLY:	This modification is issued pursuant to the modification provision in the grant/agreement referenced in item no. 1, above.
<input checked="" type="checkbox"/>	CHANGE IN PERFORMANCE PERIOD: Extend from 12/31/21 to 12/31/22.
<input checked="" type="checkbox"/>	CHANGE IN FUNDING: Add \$30,000.00 for continuation of the project. All previously obligated funds remaining are available for use. The current technical proposal remains in effect.
<input checked="" type="checkbox"/>	ADMINISTRATIVE CHANGES: See Box 9 for a point of contact change and updated provisions. The due date for the final invoice and performance report has been changed from 90 to 120 days.
<input type="checkbox"/>	OTHER (Specify type of modification):

Except as provided herein, all terms and conditions of the Grant/Agreement referenced in 1, above, remain unchanged and in full force and effect.

9. ADDITIONAL SPACE FOR DESCRIPTION OF MODIFICATION (add additional pages as needed):

The expenditure of stewardship retained receipts is approved for use on off-forest sites in which potential pollutants and hazardous waste have a direct impact on water quality in streams that flow onto or from national forest lands. Please document with photos the types of trash and debris being cleaned up from various off-forest locations. The documentation is to be kept with the contract or agreement folder in the event of an audit. While removing abandoned cars, washers, and refrigerators, and picking up trash along forested roads, turnouts, and landings not impacting forest resources is a worthwhile project, it cannot be funded with retained receipts. Stewardship retained receipts also cannot be expended on enforcement of dumping laws, educating the public on the negative resource impacts of trash dumping, signs, or for other various prevention methods and programs.

Rachel LaMedica replaced Jane Dalgliesh as the U.S. Forest Service Contact. She can be reached at:

Mt. Hood National Forest
16400 Champion Way
Sandy, OR 97055
Telephone: 503-668-1776
E-mail: rachel.lamedica@usda.gov

The following provisions have been updated to the following:

PAYMENT/REIMBURSEMENT The Forest Service shall reimburse the County for the Forest Service's share of actual expenses incurred, not to exceed the amount shown in the Financial Plans. In order to approve a Request for Reimbursement, the Forest Service shall review such requests to ensure payments for reimbursement are in compliance and otherwise consistent with the terms of the agreement. The Forest Service shall make payment upon receipt of the County's monthly invoice. Each invoice from the County shall display the total project costs for the billing period, separated by Forest Service and the County's share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs available for reimbursement. The final invoice must display the County's full match towards the project, as shown in the financial plan, and be submitted no later than 120 days from the expiration date.



Each invoice must include, at a minimum:

1. The County’s name, address, and telephone number.
2. Forest Service agreement number.
3. Invoice date.
4. Performance dates of the work completed (start & end).
5. Total invoice amount for the billing period, separated by Forest Service and share with in-kind contributions displayed as a separate line item.
6. Display all costs, both cumulative and for the billing period, by separate cost element as shown on the financial plan.
7. Cumulative amount of Forest Service payments to date.
8. Statement that the invoice is a request for payment by “reimbursement”.
9. If using SF-270, a signature is required.
10. Invoice Number, if applicable.

The invoice must be forwarded to:

EMAIL: SM.FS.ASC_GA@USDA.GOV
 FAX: 877-687-4894
 POSTAL: USDA Forest Service
 Albuquerque Service Center
 Payments – Grants & Agreements
 101B Sun Ave NE
 Albuquerque, NM 87109

Send a copy to: Rachel LaMedica at rachel.lamedica@usda.gov

AGREEMENT CLOSEOUT. Within 120 days after expiration or notice of termination the parties shall close out the award/agreement.

Any unobligated balance of cash advanced to the County must be immediately refunded to the Forest Service, including any interest earned in accordance with 7CFR3016.21/2CFR 215.22.

Within a maximum of 120 days following the date of expiration or termination of this grant, all financial performance and related reports required by the terms of the agreement must be submitted to the Forest Service by the County.

If this agreement is closed out without audit, the Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

PROGRAM MONITORING AND PROGRAM PERFORMANCE REPORTS. The parties to this agreement shall monitor the performance of activities under this Stewardship Agreement to ensure that performance goals are being achieved.

Performance reports must contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output, if applicable.
- Reason(s) for delay if established goals were not met.
- Additional pertinent information.

The County shall submit annual performance reports to the U.S. Forest Service Program Manager. These reports are due 90 days after the reporting period. The final performance report shall be submitted either with the County’s final payment request, or separately, but not later than 120 days from the expiration date of this Stewardship Agreement.

10. ATTACHED DOCUMENTATION (Check all that apply):

Revised Scope of Work



<input type="checkbox"/>	Revised Financial Plan
<input checked="" type="checkbox"/>	Other: Appendix A Financial Plan

11. SIGNATURES

AUTHORIZED REPRESENTATIVE: BY SIGNATURE BELOW, THE SIGNING PARTIES CERTIFY THAT THEY ARE THE OFFICIAL REPRESENTATIVES OF THEIR RESPECTIVE PARTIES AND AUTHORIZED TO ACT IN THEIR RESPECTIVE AREAS FOR MATTERS RELATED TO THE ABOVE-REFERENCED GRANT/AGREEMENT.

11.A. THE COUNTY SIGNATURE	11.B. DATE SIGNED	11.C. U.S. FOREST SERVICE SIGNATURE	11.D. DATE SIGNED
(Signature of Signatory Official)		(Signature of Signatory Official)	
11.E. NAME (type or print): SARAH ECKMAN		11.F. NAME (type or print): DUANE BISHOP	
11.G. TITLE (type or print): Interim Director, Business and Community Services		11.H. TITLE (type or print): Acting Forest Supervisor	

12. G&A REVIEW

12.A. The authority and format of this modification have been reviewed and approved for signature by:	12.B. DATE SIGNED
<p>_____ (13-SA-11060600-013 Mod 8) JESSICA CLARK U.S. Forest Service Grants & Agreements Specialist</p>	

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

Attachment:

USFS Agreement No.:
Cooperator Agreement No.:

Mod. No.:

Agreements Financial Plan (Short Form)

Financial Plan Matrix: Note: All columns may not be used. Use depends on source and type of contribution(s).

COST ELEMENTS	FOREST SERVICE CONTRIBUTIONS		COOPERATOR CONTRIBUTIONS		(e) Total
	(a) Noncash	(b) Cash to Cooperator	(c) Noncash	(d) In-Kind	
Direct Costs					
Salaries/Labor	\$680.00	\$25,536.00	\$7,660.80	\$0.00	\$33,876.80
Travel	\$14.00	\$4,282.08	\$300.00	\$0.00	\$4,596.08
Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supplies/Materials	\$0.00	\$181.92	\$0.00	\$0.00	\$181.92
Printing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Subtotal	\$694.00	\$30,000.00	\$7,960.80	\$0.00	\$38,654.80
Coop Indirect Costs		\$0.00	\$0.00		\$0.00
FS Overhead Costs	\$83.28				\$83.28
Total	\$777.28	\$30,000.00	\$7,960.80	\$0.00	\$38,738.08
Total Project Value:					\$38,738.08

Matching Costs Determination	
Total Forest Service Share = (a+b) ÷ (e) = (f)	(f) 79.45%
Total Cooperator Share (c+d) ÷ (e) = (g)	(g) 20.55%
Total (f+g) = (h)	(h) 100.00%

WORKSHEET FOR

FS Non-Cash Contribution Cost Analysis, Column (a)

Salaries/Labor

Standard Calculation

Job Description	Cost/Day	# of Days	Total
Program Manager	\$340.00	2	\$680.00

Non-Standard Calculation

Total Salaries/Labor	\$680.00
-----------------------------	-----------------

Travel

Standard Calculation

Travel Expense	Employees	Cost/Trip	# of Trips	Total
Annual Meeting	1	\$14.00	1	\$14.00

Non-Standard Calculation

Total Travel	\$14.00
---------------------	----------------

Equipment

Standard Calculation

Piece of Equipment	# of Units	Cost/Day	# of Days	Total
				\$0.00

Non-Standard Calculation

Total Equipment	\$0.00
------------------------	---------------

Supplies/Materials

Standard Calculation

Supplies/Materials	# of Items	Cost/Item	Total
			\$0.00

Non-Standard Calculation

Total Supplies/Materials	\$0.00
---------------------------------	---------------

Printing

Standard Calculation

Paper Material	# of Units	Cost/Unit	Total
			\$0.00

Non-Standard Calculation

Total Printing	\$0.00
-----------------------	---------------

Other Expenses

Standard Calculation

Item	# of Units	Cost/Unit	Total
			\$0.00

Non-Standard Calculation

Total Other	\$0.00
--------------------	---------------

Subtotal Direct Costs	\$694.00
------------------------------	-----------------

Forest Service Overhead Costs

Current Overhead Rate	Subtotal Direct Costs	Total
12.00%	\$694.00	\$83.28

Total FS Overhead Costs	\$83.28
--------------------------------	----------------

TOTAL COST	\$777.28
-------------------	-----------------

WORKSHEET FOR

FS Cash to the Cooperator Cost Analysis, Column (b)

Salaries/Labor

Standard Calculation

Job Description	Cost/Day	# of Days	Total
Dump Stoppers Coordinator	\$332.50	48	\$15,960.00
Dump Stoppers Assistant	\$199.50	48	\$9,576.00

Non-Standard Calculation

Total Salaries/Labor

\$25,536.00

Travel

Standard Calculation

Travel Expense	Employees	Cost/Day	# of Days	Total
Mileage - Ford Ranger	1	\$42.53	48	\$2,041.44
Mileage - F450	1	\$46.68	48	\$2,240.64

Non-Standard Calculation

Total Travel

\$4,282.08

Equipment

Standard Calculation

Piece of Equipment	# of Units	Cost/Day	# of Days	Total
				\$0.00

Non-Standard Calculation

Total Equipment

\$0.00

Supplies/Materials

Standard Calculation

Supplies/Materials	# of hours	Cost/Hour	Total
Misc trash pick up supplies			\$181.92

Non-Standard Calculation

Total Supplies/Materials

\$181.92

Printing

Standard Calculation

Paper Material	# of Units	Cost/Unit	Total
			\$0.00

Non-Standard Calculation

\$0.00

Total Printing

\$0.00

Other Expenses

Standard Calculation

Item	# of hours	Cost/Hour	Total
			\$0.00

Non-Standard Calculation

Total Other

\$0.00

Subtotal Direct Costs

\$30,000.00

Cooperator Indirect Costs

Current Overhead Rate	Subtotal Direct Costs	Total
	\$30,000.00	\$0.00

Total Coop. Indirect Costs

\$0.00

TOTAL COST

\$30,000.00

WORKSHEET FOR

Cooperator Non-Cash Contribution Cost Analysis, Column (c)

Salaries/Labor

Standard Calculation

Job Description	Cost/Day	# of Days	Total
Dump Stoppers Deputy	\$383.04	20	\$7,660.80

Non-Standard Calculation

Total Salaries/Labor	\$7,660.80
-----------------------------	-------------------

Travel

Standard Calculation

Travel Expense	Employees	Cost/Trip	# of Trips	Total
Mileage-Ford Ranger	1	\$42.53	7	\$297.71

Non-Standard Calculation

Total Travel	\$297.71
---------------------	-----------------

Equipment

Standard Calculation

Piece of Equipment	# of Units	Cost/Day	# of Days	Total
				\$0.00

Non-Standard Calculation

Total Equipment	\$0.00
------------------------	---------------

Supplies/Materials

Standard Calculation

Supplies/Materials	# of Items	Cost/Item	Total

Non-Standard Calculation

Total Supplies/Materials	\$0.00
---------------------------------	---------------

Printing

Standard Calculation

Paper Material	# of Units	Cost/Unit	Total
			\$0.00

Non-Standard Calculation

Total Printing	\$0.00
-----------------------	---------------

Other Expenses

Standard Calculation

Item	# of Units	Cost/Unit	Total
			\$0.00

Non-Standard Calculation

Total Other	\$0.00
--------------------	---------------

Subtotal Direct Costs	\$7,958.51
------------------------------	-------------------

Cooperator Indirect Costs

Current Overhead Rate	Subtotal Direct Costs	Total
	\$7,958.51	\$0.00

Total Coop. Indirect Costs	\$0.00
-----------------------------------	---------------

TOTAL COST	\$7,958.51
-------------------	-------------------



Daniel Nibouar
Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #1 to FY19 Urban Area Security Initiative (UASI) grant agreement
between the City of Portland and Clackamas County

Purpose/Outcomes	The Subrecipient Agreement Amendment is the first amendment between the City of Portland and Clackamas County to increase the total amount from \$337,700 to \$387,700.
Dollar Amount and Fiscal Impact	Increase of grant funds received by Clackamas County in the amount of \$50,000.
Funding Source	The funding source for the FY19 UASI grant is the United States Department of Homeland Security.
Duration	The agreement is effective from the date both parties have signed and shall end, unless otherwise terminated or extended, on February 28, 2022.
Previous Board Action	The Board of County Commissioners approved the FY19 UASI Intergovernmental Agreement with the City of Portland on May 13, 2020.
Strategic Plan Alignment	3. Ensure Safe, Healthy and Secure Communities
Counsel Review	7/21/2021 AN
Procurement Review	1. Was the item processed through Procurement? No. 2. This is a grant agreement, not a procurement contract.
Contact Person	Daniel Nibouar, Interim Director, 503-650-3381
Contract No.	N/A

BACKGROUND:

The Urban Area Security Initiative (UASI) is comprised of the City of Portland and the contiguous counties of Clackamas, Multnomah, Washington, Columbia and Clark County, Washington. Clackamas County was awarded \$337,700 in UASI Year 2019 for four projects, Cybersecurity (for CCOM) and Citizen Corps, Training, Equipment, and Exercise (for Fire District CERT programs). This amendment will increase funding to the Cybersecurity project by \$50,000.

RECOMMENDATION:

Staff respectfully recommends the Board approve this agreement.

Sincerely,

Daniel Nibouar, Interim Director
Clackamas County Disaster Management

Subrecipient AGREEMENT

Between

THE CITY OF PORTLAND, OREGON

and

Clackamas County

AMENDMENT #1

This is Amendment #1 to Contract #32002332 effective May 19, 2020, between the City of Portland (“City”) and Clackamas County, Oregon (“Agency”).

THE AGREEMENT IS AMENDED AS FOLLOWS:

Section D Compensation

The total Agreement amount **is increased from** \$337,700 to \$387,700

Section E Reimbursement

City will reimburse Grantee its qualified costs incurred in carrying out the Scope of Work, as identified in this Agreement. The not to exceed amount **is increased from** \$337,700 to \$387,700.

Exhibit A-Scope of Work

Projects

Adds

Reallocation Cybersecurity Project

Exhibit A-Scope of Work

Adds

Reallocation Cybersecurity Project

Goals and Performance Measures

Adds

Reallocation Cybersecurity Project	Purchase, install and successfully test standby SD-WAN devices deployed throughout the region to ensure 911 employees are able to work from home or at an alternate or back up dispatch center.	February 1, 2022
------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------

Exhibit A Scope of Work
Grant Total Budget-All Projects
Adds

UA19-012	Reallocation Cybersecurity Project	\$50,000
----------	------------------------------------	----------

Federal Awarding Agency grant funds to be reimbursed to Grantee not to exceed **is increased from \$337,700 to \$387,700.**

Exhibit C-Information Required by 2 CRF 200.331

(vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: **is increased from \$337,700 to \$387,700.**

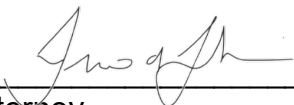
All other terms and conditions shall remain unchanged and in full force and effect.

This amendment may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same amendment. The parties agree the City and Agency may conduct this transaction by electronic means, including the use of electronic signatures.

City of Portland

Date _____

APPROVED AS TO FORM



Attorney

Date 2/23/2021

Clackamas County, Oregon

Date _____

APPROVED AS TO FORM

Attorney

Date _____

2020 Urban Area Security Initiative

THIS AGREEMENT is between **City of Portland** ("City"), a municipal corporation organized under the laws of the State of Oregon, and **Clackamas County** ("Grantee").

A. Background

1. City of Portland, through its Portland Bureau of Emergency Management (PBEM), is the subrecipient of United States Department of Homeland Security (DHS) Urban Area Security Initiative (UASI) grant funds passed through the Oregon Military Department Office of Emergency Management (OEM) and wishes to enter into this Agreement with Grantee as a subrecipient of the federal funds.

2. The following exhibits are attached and incorporated into this Agreement by reference.

Exhibit A: **Scope of Work**

Exhibit B: **Federal Requirements and Certifications (including Attachments A, B, and C)**

Exhibit C: **Information required by 2 CFR 200.331**

Exhibit D: **Subrecipient Insurance**

Exhibit E: **Request for Reimbursement (RFR)**

Exhibit F: **OEM and City UASI 2020 grant award (including Exhibits A, B, C, and D)**

Exhibit G: **Equipment Transfer and Disposition form**

Exhibit H: **Equipment Inventory Report**

3. City selected Grantee, through a process created by the Regional Disaster Preparedness Organization (RDPO) that serves in the capacity of Urban Area Work Group (UAWG) to coordinate program development and decision-making processes for allocating UASI sub-grants, to receive funding.

B. Effective Date and Duration

This Agreement is effective from the date both parties have signed until, and including, June 1, 2023 unless terminated or extended as provided in this Agreement. Grantee may not spend grant funds after the Agreement terminates or expires.

C. Scope of Work

Grantee shall provide all services and materials specified in **Exhibit A** ("Scope of Work") which is incorporated into this Agreement by this reference as if set forth in full as described in grant documents approved by OEM. Grantee shall provide all services and materials in a competent and professional manner in accordance with the Scope of Work.

D. Compensation

The total Agreement amount is \$375,833. Funds may only be used for the specific budget line items they were awarded. See Exhibit A for detail. City may only distribute funds under this Agreement to Grantee to perform the work specified in Exhibit A.

E. Reimbursement

1. City will reimburse Grantee its qualified costs incurred in carrying out the Scope of Work, as identified in this Agreement, not to exceed \$375,833. All invoice payments are conditional upon presentation of properly documented reimbursement requests. Reimbursements will be made upon approval by City of a Request for Reimbursement (RFR) as specified in **Exhibit E**. RFRs shall be submitted bimonthly on or before 30 days following the end of the billing period. Final RFR shall be submitted no later than 30 days following the end of the grant. Reimbursements for expenses will be withheld if Performance Reports are not submitted by the dates as listed in **Exhibit A**.

2. Qualified costs are direct project costs incurred by Grantee, its personal services contractor(s), and Grantee's subrecipients eligible to receive federal funds during the term of this Agreement. City will reimburse Grantee for qualified costs for work described in **Exhibit A** and eligible under the following:

- a. 2 CFR 200.420-475 (General Provisions for Selected Items of Cost);
- b. Department of Homeland Security, Notice of Funding Opportunity, viewable at: https://www.fema.gov/sites/default/files/2020-07/fy_2020_hsgp_nof.pdf
- c. Exhibit F, the OEM and City UASI 2020 grant award
- d. Personnel costs shall be reimbursed less TriMet taxes. Documentation is required.

3. Reimbursement requests shall display one hundred percent (100%) of the total project costs incurred during the period of the reimbursement. See **Exhibit E** for a detailed checklist for types and sources of acceptable documentation required before payment can be made. In addition, City may require a more detailed budget breakdown, and Grantee shall provide the supplementary budget information in a timely manner in the form and content reasonably prescribed by City. Any amendments to the budget must be approved in writing by the City. Amendments to the budget in excess of 10% of the total value of this agreement must be approved in writing by OEM.

F. Recovery of Grant Funds

Grantee shall return to City, within fifteen (15) days after the City's written request, any funds disbursed to Grantee under this Agreement that, in City's reasonable judgment, are spent in violation of the provisions of this Agreement or that remain unspent upon termination or expiration of this Agreement.

G. Representations and Warranties

Grantee represents and warrants to City as follows:

1. **Organization and Authority.** Grantee has full power, authority, and legal right to enter into this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

2. **NIMS Compliance.** By accepting FY 2020 funds, Grantee certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx

3. **Cybersecurity.** Grantee certifies that it has completed the [2020 Nationwide Cybersecurity Review](#) as required by the federal funder and can document compliance with this requirement.

Subrecipient Agreement

City of Portland

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

H. Universal Identifier and Contract Status

Grantee shall apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, Grantee shall maintain an active registration in the Central Contractor Registration database, located at www.sam.gov.

I. Program Income

Grantee shall report monthly on all program income (as defined by 2 CFR 200.1) generated by activities carried out with the grant funds made available under this Agreement. The use of program income by Grantee shall comply with the requirements set forth by 2 CFR 200.307.

J. Procurement

The parties shall comply with all applicable procurement procedures and regulations, including applicable federal and state laws. In addition, the parties shall comply with the applicable provisions of 2 CFR Part 200. This agreement also authorizes City to procure on Grantee's behalf for costs related to Scope of Work.

1. Subcontracts.

- a. Grantee may enter into subcontracts for the performance of this grant. Grantee must comply with all terms outlined in **Exhibit F** and contained in this Agreement.
- b. Any subcontract entered into by Grantee shall not relieve Grantee of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to Grantee, and subcontractors have no right to payment directly from City.
- c. Grantee is solely responsible for paying Grantee's subcontractors and nothing contained herein shall create, or be construed to create, any contractual relationship between any subcontractor and City.
- d. All subcontracts, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition and use small, minority, or women-owned or disadvantaged business to the extent practicable.
- e. Grantee agrees to include all relevant provisions of this Agreement in all subcontracts entered into as part of the activities undertaken in furtherance of this Agreement and will take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of regulations issued by any federal agency or the State of Oregon.

2. **Suspension and Debarment.** Grantee agrees not to subcontract with an entity where it has notice or knowledge that the latter has been found in violation of regulations under 2 CFR 200.213 "Suspension and Debarment." Grantee is responsible for further requiring this inclusion of a similar term or condition in any subsequent lower tier covered transactions. Grantee may access the Excluded Parties List System at www.sam.gov.

3. **Conflict of Interest.** Grantee must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to City within five (5) calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.

4. **City Procurement Delegation.** Grantee may, upon written request, authorize City to procure goods and services on behalf of Grantee and solely for purposes of performing the work described in Exhibit A. If City is procuring on Grantee's behalf, City's procurement policies will be followed. When City has purchased goods or services for Grantee or Grantee's subrecipient, arrangements for delivery will be made between the parties. Grantee or Grantee's subrecipient shall be the Owner of said goods or services and shall be responsible for complying with all applicable requirements as outlined in the Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) Circulars, the State grant agreement, and this Agreement. For equipment purchases where City takes initial receipt, an Asset Transfer Form will be completed to document transfer of ownership. See **Exhibit G**.

K. Records Maintenance – Access

1. Grantee shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, Grantee shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Grantee's performance.
2. Grantee acknowledges and agrees that City, the Federal Awarding Agency, the Comptroller General of the United States or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Grantee that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.
3. Grantee shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final expenditure report and termination of this Agreement or final disposition of asset, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Consistent with 2 CFR 200.333 through 200.337, Grantee is required to retain the records relating to this Agreement.

L. Audits

If Grantee spends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with provisions of 2 CFR 200 Subpart F.

A copy of the audit shall be submitted to City within thirty (30) days of completion.

M. Lobbying

Grantee certifies that none of the funds provided under this Agreement will be used to pay any person to influence or attempt to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress in connection with any Federal action concerning the award or renewal.

N. Mandatory Disclosures

Grantee must immediately notify City in writing of all violations of local, state and federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the funds under this Agreement as provided in 2 CFR 200.113.

O. Ownership

Grantee shall be the owner of all equipment and supplies purchased under this Agreement, unless otherwise outlined in a Grantee subcontract.

P. Equipment – Cooperative Use

All equipment purchased with funds under this Agreement will be made available to all eligible regional partners [per 2 CFR 200.313\(c\)\(2\)](#). All reasonable requests must be met when sufficient notice is given, and no reasonable conflict exists. Owners may not charge “rental” fees for equipment but may seek reimbursement for normal expenses (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, when appropriate.

Q. Equipment Tracking and Reporting Requirements

Grantee agrees to comply with all property and equipment tracking and monitoring processes required by the grant, this Agreement, City, and State policies and procedures, to treat all single items of equipment valued over \$5,000 as capital assets, to provide City with a list of such equipment on a biennial basis falling on even years, using PBEM's Equipment Inventory Report (see **Exhibit H**), and to complete and return the report to PBEM on or before June 30th of the reporting year. The list shall include, but is not limited to, status and condition, asset number, funding source (including the federal award identification number), who holds the title, date of purchase and cost, equipment description, serial number, location where the equipment is housed or stored, and disposition information (date of disposal and sale price of the property). All requirements for the tracking, monitoring, disposition, and transfer of fixed assets are set forth in 2 CFR 200.313, which can be found here:

http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d75f90044e30262070fe0bc233c337f&mc=true&n=pt2.1.200&r=PART&ty=HTML#_top

Grantee or Grantee's subrecipient shall maintain and store all equipment and supplies, provided or purchased, in the manner that will keep it safe, secure, and prolong its useful life and be maintained in good working condition throughout its useful life.

R. Amendment.

This Agreement may be modified or amended only by the written agreement of both parties but must remain consistent with the requirements of the UASI program and the Agreement between the State and City.

S. Termination

1. Termination by Failure to Receive Funding. Either party may terminate this Agreement if it fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that part, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement; or if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Scope of Work is no longer allowable or no longer eligible for funding under this Agreement.

2. Cause for Termination; Cure Period. It shall be a material breach and cause for termination of this Agreement if Grantee uses grant funds outside of the scope of this Agreement, or if either party fails to comply with any other term or condition or to perform any obligations under this Agreement within thirty (30) days after written notice and opportunity to cure from the other party. If the breach is of such nature that it cannot be completely remedied within the thirty (30) days cure period, the breaching party shall commence cure within the thirty (30) days, notify the non-breaching party of the steps for cure and estimated time table for full correction and compliance, proceed with due diligence and good faith to correct any failure or noncompliance, and obtain written consent from the non-breaching party for a reasonable extension of the cure period.

3 **No Payment Authorized During Cure Period.** During the cure period, City is under no obligation to continue providing additional grant funds notwithstanding any payment schedule indicated in this Agreement, and Grantee shall not perform services or take actions that would require City to pay additional grant funds to Grantee. Grantee shall not spend unused grant funds, and such unused funds shall be deemed held in trust for City. Grantee shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.

4. **Termination for Cause.** Termination for cause based on Grantee's misuse of grant funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the thirty (30) days period unless a written extension of cure period is granted by the non-breaching party. Grantee shall return all grant funds to City that had not been spent as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by Grantee under this Agreement shall, at the option of City, become the property of City; and Grantee may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination in City's reasonable discretion in a sum not to exceed the grant funds already expended.

5. **Penalty for Termination for Cause.** If this Agreement is terminated for cause, Grantee shall repay grant funds tendered under this Agreement to City that were spent in violation of this Agreement and City, in its sole discretion, may decline to approve or award future grant funding requests to Grantee.

6. **Termination by Agreement or for Convenience of City or Grantee.** City and Grantee may terminate this Agreement at any time by mutual written agreement. Alternatively, City or Grantee may, upon thirty (30) days written notice, terminate this agreement for any reason deemed appropriate in its sole discretion. If the Agreement is terminated as provided in this paragraph, Grantee shall return any unspent grant funds within thirty days after the effective date of termination. Unless the parties agree otherwise, Grantee shall finish any work and services covered by any grant funds already paid and shall not commence any new work or services which would require payment from any unused grant funds. City shall not be liable for indirect or consequential damages. Termination by either party for convenience shall not waive any claim or remedies the parties may have against each other.

T. Hold Harmless

1. Grantee shall hold harmless, defend, and indemnify the City and Oregon Emergency Management and their officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them and arising solely from the negligent actions or omissions of Grantee in the performance of this Agreement. Grantee shall require its subcontractors or subrecipients, if any, to hold harmless, defend, and indemnify the City and Oregon Emergency Management and their officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them.

2. The obligations of Oregon public bodies, as defined by ORS 30.260(4), under this section are limited by, and subject to, the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

U. Independent Contractor Status

1. Grantee shall be an independent Contractor for all purposes and shall be entitled only to the compensation provided in this Agreement. Under no circumstances shall Grantee be considered an employee of City.

2. Grantee shall provide all tools or equipment necessary to carry out this Agreement and shall exercise complete control in achieving the results specified in the Scope of Work.

3. Grantee is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise

Subrecipient Agreement

City of Portland

specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement.

V. Choice of Law

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the State of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

W. No Waiver of Claims

The failure to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.

X. Modification

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing, signed by both parties.

Y. Severability

If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

Z. Third Party Beneficiaries

There are no third-party beneficiaries to this Agreement, and it may only be enforced by the Parties.

Subrecipient Agreement

City of Portland

GRANTEE, BY EXECUTION OF THIS AGREEMENT, ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Clackamas County

By: _____
Printed: _____
Title: _____
Date: _____

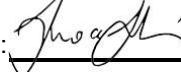
City of Portland

By: _____
Printed: _____
Title: _____
Date: _____

Approved as to Legal Sufficiency (if required for Grantee)

Legal Counsel: Digitally signed by Andrew Naylor
Date: 2021.07.20 06:02:32 -0700
Date: _____

City of Portland

City Attorney: 
Date: 7/13/2021

Grantee Program Contact

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

City of Portland Program & Fiscal Contact

Name: Beth Crane
Title: Grant Coordinator
Address: 9911 SE Bush, Portland, Oregon 97266
Phone: (503) 823-2027
Email: _____

PBEM-UASIGrants@portlandoregon.gov

Grantee Fiscal Contact

Name: _____
Title: _____
Phone: _____

Exhibit A – Scope of Work

This scope of work is comprised of the projects described below

1. Plan/Train/Exercise
2. Computer Aided Dispatch Enhancements
3. Fuel Plan Tabletop Exercise
4. Citizen Corps Equipment, Training and Exercises

Goals and Performance Measures

Project	Milestones	Completion Date (following execution of this agreement)
Plan/Train/Exercise Project	Establish a project plan 1. Establish a project plan and submit for approval	45 days
Computer Aided Dispatch Enhancements (CAD to CAD)	Bidirectional Component of CAD to CAD Project 1. Complete bidirectional CAD to CAD preliminary conceptual architecture 2. Complete initial systems testing of component CAD systems to TELLUS 3. Complete interim systems testing 4. Complete user training and go live Portal System Component of CAD to CAD Project 5. Complete portal system preliminary conceptual architecture 6. Complete installation and build out of TELLUS Fusion 7. Complete testing of systems 8. Complete user trainings and go live	90 days (3rd month) 180 days (6th month) 240 days (8th month) 720 days (24th month) 180 days (6th month) 240 days (8th month) 420 days (16th month) 720 days (24th month)
Fuel Tabletop Exercise of the Regional Fuel Plan	1. Design a tabletop exercise to test the regional fuel plan 2. Conduct a tabletop exercise of the regional fuel plan 3. Develop a written After-Action Report and Improvement Plan of the regional fuel plan tabletop exercise	240 days (8 th month) 540 days (18 th month) 720 days (24 th month)
Citizen Corps	1. Complete delivery of trainings	660 days (22nd month)

Exhibit A – Scope of Work

Performance Reports

Grantee agrees to submit Performance Reports by April 15th, July 15th, October 15th, and January 15th each year during the term of the Agreement. Performance Reports shall include a narrative description of progress, barriers, milestones achieved or unfulfilled as well as fiscal information related to spending and projected costs or savings. Performance Reports shall be sent to the designated City Program and Fiscal Contact and provided in the format requested by City. Late Performance Reports could result in the suspension and/or termination of the grant.

Grant Total Budget – All Projects

Budget Line-Item	Budget by Project	Federal Funds by Project Area
UA20-012	Plan/Train/Exercise	\$111,333
UA20-014	CAD to CAD Enhancements	\$195,000
UA20-010	Fuel Tabletop Exercise	\$60,000
UA20-026	Citizen Corps Training	\$9,500
	Totals	\$375,833

Federal Awarding Agency grant funds to be dispersed to Grantee not to exceed \$375,833.

Exhibit B – Federal Requirements and Certifications

Grantee and its subrecipients, contractors or subcontractors shall comply with the OEM and City Agreement attached as **Exhibit F** and all applicable federal requirements, including, but not limited to, the following:

Non-Discrimination and Civil Rights Compliance. Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons. Grantee assures compliance with all applicable nondiscrimination laws, including but not limited to:

- a. **Title VI of the Civil Rights Act of 1964** (USC § 2000d et seq)
- b. **Age Discrimination Act of 1975** (42 USC § 6101 et seq)
- c. **Americans with Disabilities Act of 1990** (42 USC §§ 12101-12213; Title I, II, and III)
- d. **Civil Rights Act of 1968** (42 USC § 3601 et seq), which prohibits
- e. **Title IX, Education Amendments of 1972** (20 USC § 1681 et seq),
- f. **Section 504 of the Rehabilitation Act of 1973** (29 USC § 794),

Services to Limited English Proficient (LEP) Persons. Grantee agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency (LEP). To ensure compliance with Title VI, Grantee shall take reasonable steps to develop and implement a system to provide those services so LEP persons can have meaningful access to them. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. For additional information regarding LEP obligations, please see www.lep.gov.

Drug-Free Workplace Requirement. Grantee agrees to comply with the requirements of the Drug Free Workplace Act of 1988, 41 USC § 701 et seq., which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Grantee shall notify City within ten (10) days if an employee of Grantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

Whistleblower Protection. Grantee agrees to comply with the requirements under the Whistleblower Protection Act, 41 USC § 4712, as applicable.

Personally Identifiable Information (PII). Grantee, if it collects PII, is required to have a publicly available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

False Claims Act & Program Fraud Civil Remedies. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. Grantee certifies by accepting funds under this Agreement that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency.

Standard Assurances and Certifications Regarding Lobbying. Grantee is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352.

Procurement of Recovered Materials. Grantee agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

Exhibit B – Federal Requirements and Certifications

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

By signing and submitting this Agreement, Grantee certifies as follows:

Grantee has not been debarred, suspended, ineligible or voluntarily excluded from receiving federal funds or participating in programs supported by Federal funding.

The certification in this clause is a material representation of fact relied upon by **City of Portland**. If it is later determined that Grantee knowingly rendered an erroneous certification, in addition to remedies available to **City of Portland**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Grantee agrees to comply with the requirements of Executive Order [12549](#) and [2 CFR part 180](#), throughout the period of this Agreement. Grantee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature _____

Name _____

Title _____

Organization _____

Date _____

Exhibit B – Federal Requirements and Certifications

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned **Grantee** certifies, 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 Fed. Reg. 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.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (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 \$10,000.00 and not more than \$100,000.00 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 \$10,000.00 and not more than \$100,000.00 for each such expenditure or failure.

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

Signature of Grantee's Authorized Official

Name (Printed)

Title

Date

Exhibit C – Information Required by 2 CFR 200.331

1. Federal Award Identification:
 - (i) Subrecipient name (which must match registered name in DUNS):
Clackamas County
 - (ii) Subrecipient's DUNS number:
Clackamas County 096992656
 - (iii) Federal Award Identification Number (FAIN):
DHS-18-GPD-067-00-01
 - (iv) Federal Award Date:
August 15, 2020
 - (v) Sub-award Period of Performance:
Date of Agreement Execution through June 1, 2023
 - (vi) Amount of Federal Funds Obligated by the Agreement between the Oregon Military Department and the City:
\$3,208,025
 - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement:
\$375,833
 - (viii) Total Amount of Federal Award:
\$3,500,000
 - (ix) Federal award project description:
The Portland Urban Area Security Initiative funding is provided to the Portland regional area to prepare for, prevent, mitigate, respond to and recover from natural and human caused threats, including terrorism.
 - (x) Name of Federal Awarding Agency:
Department of Homeland Security, Federal Emergency Management Agency
 - (xi) Name of Pass-through Entity:
Oregon Military Department through Oregon Emergency Management to the City of Portland, Portland Bureau of Emergency Management, on behalf of the Regional Disaster Preparedness Organization
 - (xii) Contact information for Awarding Official:
Mike Meyers, Director Portland Bureau of Emergency Management 9911 SE Bush, Portland Oregon 97266
 - (xiii) CFDA Number and Program Name:
CFDA 97.067, Urban Area Security Initiative
 - (xiv) Is Award Research & Development?
No
 - (xv) Indirect cost rate for the Federal award:
Not specified

Exhibit C – Information Required by 2 CFR 200.331

(xvi) Match required:
No

2. Subrecipient's indirect cost rate:

Exhibit D – Subrecipient Insurance

Grantee and any subrecipients shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement.

1. Workers' Compensation Insurance: Grantee, its contractors and all employers working under this Agreement shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, Grantee, its contractors and any employers working under this Agreement shall maintain coverage for all subject workers.
2. Commercial General Liability Insurance: Grantee shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$ 1,000,000, and aggregate limit of not less than \$2,000,000.
3. Automobile Liability Insurance: Grantee shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned autos. This coverage may be combined with the commercial general liability insurance policy.
4. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name City and Oregon Emergency Management and their bureaus, officers, agents and employees as Additional Insureds, with respect to Grantee's or its contractor's activities to be performed or services to be provided. Grantee shall provide proof of additional insured coverage in the form of an additional insured endorsement form or a policy coverage document acceptable to City. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
5. Continuous Coverage: Notice of Cancellation: Grantee shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from Grantee to City. If the insurance is canceled or terminated prior to termination of the Agreement, Grantee shall immediately notify City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement.

Proof of Insurance: City acknowledges Grantee is self-insured in an amount sufficient to satisfy its obligations under this Agreement. Grantee will require its subrecipients, contractors, or subcontractors to comply with the insurance requirements set forth in this Agreement. Grantee shall furnish a declaration that Grantee is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.272 and 30.273.

EXHIBIT E Request for Reimbursement

INVOICE VOUCHER NO.			DATE:	
SUBMIT INVOICE TO			INSTRUCTIONS TO VENDOR: Submit this form to claim payments/reimbursement for equipment, materials or services. Show complete detail for each item and include all backup documentation (checklist definitions on page 2).	
PORTLAND BUREAU OF EMERGENCY MANAGEMENT ATTN: FINANCE & GRANTS 9911 SE BUSH ST PORTLAND, OR 97266				
SUB-RECIPIENT OR CLAIMANT NAME & ADDRESS (Check is to be payable to)				
SUB-RECIPIENT IGA NO.			GRANT NUMBER:	
DATE	DESCRIPTION	BUDGET LINE-ITEM	BUDGET AMOUNT	AMOUNT OF REIMBURSEMENT
PREPARED BY (PRINT NAME): SIGNATURE:		PREPARER'S EMAIL	PREPARER'S TELEPHONE NUMBER	

I certify that all payments requested are for appropriate purposes in accordance with the grant agreement and set forth in the application award documents and that all backup documentation submitted, as checked on page two (2) accurately represents items or services purchased.

Approver Name & Signature

Date Approved

Exhibit E Request for Reimbursement

1. **Regional Staffing Reimbursement** - Includes personnel cost, mileage and parking, telecom, space rental, office supplies.
 - Mileage reimbursement backup document includes google maps showing the total miles travel and the meeting agenda.
 - Receipts or invoices.
 - Payroll Reports/Approved timesheets.
2. **Travel Reimbursements** - Lodging and meals must meet the Federal per diem rate. Please visit www.gsa.gov/portal/content/104877 for allowable GSA rates
 - Registration form.
 - Travel authorization form.
 - Conference or training agenda.
 - Receipts and proof of payment for all expenses except meals.
 - SAM exclusion (www.sam.gov) (A printout must be submitted).
 - Training report, if applicable.

Please Note: Food and beverages provided during the event must be deducted from per diem allowance. Receipts should be itemized and cannot include tips for food or services and alcohol. The UASI Training Report form found at <https://www.portlandoregon.gov/pbem/53958> must be submitted within 30 days after the training occurred.

3. **Supplies and Equipment Purchase Reimbursements**
 - Quotes.
 - Solicitations (Request for proposals, invitation to bid and responses, proposals, bids).
 - Copy of procurement contract.
 - Purchase order.
 - Price quote summary, if applicable.
 - SAM exclusion (www.sam.gov) (A printout must be submitted).
 - Insurance & Worker compensation, if applicable.
 - Vendor invoices signed “ok to pay” by the individual authorized to do so.
 - Proof of payment to vendor.

ONLY City of Portland

 - EEO Certification <https://procure.portlandoregon.gov/> if applicable.
 - Business registration <http://www.portlandoregon.gov/revenue/lookup/index.cfm?accountID=758095>.

4. **Overtime or Backfill Reimbursement for Exercise or Training** - Only OT or backfill wages plus FICA, worker’s compensation, unemployment and retirement benefits are eligible for reimbursement.
 - Overtime & Backfill Rate Sheet found at <https://www.portlandoregon.gov/pbem/62178>
 - Payroll reports and approved time sheets.

5. **Personnel Services**-To reimburse for approved personnel services, request wages and benefits. TriMet taxes must be removed.
 - Payroll report.
 - TriMet taxes have been omitted.

6. **Training and Conference**
 - Sign-in roster.
 - Registration information.
 - Copies of invoice for expenses incurred for meeting space.
 - Facilitation costs.
 - Receipts or invoices for materials and supplies.
 - Copies of the contract, if applicable.

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HOMELAND SECURITY GRANT PROGRAM
URBAN AREA SECURITY INITIATIVE**

CFDA # 97.067

CITY OF PORTLAND

\$ 3,137,000

Grant No: 20-170

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as “OEM,” and **City of Portland**, hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

- 1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2020** and ending, unless otherwise terminated or extended, on **June 30, 2023** (the “Grant Award Period”). No Grant Funds are available for expenditures after the Grant Award Period. OEM’s obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.
- 2. Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

- 3. Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$3,137,000** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2020 Urban Area Security Initiative (UASI) grant.
- 4. Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
- 5. Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.
 - a. Performance Reports.**

1. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2020 UASI program.
- ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

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

6. Disbursement and Recovery of Grant Funds.

- a. **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the UASI program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at <http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx>.
- b. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 1. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit Band the requirements incorporated by reference in Exhibit B.

- iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

c. Recovery of Grant Funds. Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

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

a. Organization and Authority. Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Solicitation. Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. NIMS Compliance. By accepting FY 2020 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx.

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

8. Records Maintenance and Access; Audit.

a. Records, Access to Records and Facilities. Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its

contractors, subcontractors, sub-recipients (collectively hereafter "contractors") , successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives , access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

b. Retention of Records. Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

c. Audits.

1. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
11. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

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

a. Subagreements. Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate , and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

1. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request

by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.

11. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
111. 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, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
- 1v. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

b. Purchases and Management of Property and Equipment; Records. Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

1. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
11. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
- iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
- 1v. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- v1. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.

- vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- ix. Subrecipient shall, and shall require its contractors to, retain the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.

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

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

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

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:

1. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
- ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
- iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- iv. The Project would not produce results commensurate with the further expenditure of funds; or
- v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
- vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.

b. Termination by Subrecipient. Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:

1. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. Termination by Either Party. Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.

d. Settlement upon Termination. Immediately upon termination under Sections 10.a.i, v., or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11. GENERAL PROVISIONS

a. Contribution. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

b. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

- c. **Responsibility for Grant Funds.** Subrecipient, pursuant to this Agreement with OEM, shall assume sole liability for its breach of the conditions of this Agreement, and shall, upon its breach of conditions that causes or requires OEM to return funds to DHS or FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the Subrecipient's indemnification ability, the indemnification amount shall be the maximum amount of funds available to Subrecipient for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the

United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.
- j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

SIGNATURE PAGE TO FOLLOW

City of Portland

By 

Name Ted Wheeler
(printed)

Date 04/08/21

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By 
Subrecipient's Legal Counsel

Date 03/30/2021

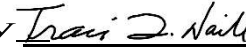
Subrecipient Program Contact:

Denise Barrett
RDPO Manager
Portland Bureau of Emergency Management
9911 SE Bush
Portland, OR 97266
503-823-5386
denise.barrett@portlandoregon.gov

Subrecipient Fiscal Contact:

Ginger Damron
Financial Analyst
Grants Management Division
City of Portland
1120 SW 5th Ave Rm 1040
Portland, OR 97204
503-823-6862
Ginger.damron@portlandoregon.gov

STATE OF OREGON, acting by and through its Oregon
Military Department, Office of Emergency Management

By 

Name Traci L. Naile
(printed)

Operations and Preparedness Section Manager, OEM

Date 4/20/21

APPROVED AS TO LEGAL SUFFICIENCY

By Samuel B. Zeigler via email
Senior Assistant Attorney General

Date October 14, 2020

OEM Program Contact:

Kevin Jeffries
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3661
kevin.jeffries@state.or.us

OEM Fiscal Contact:

Natalie Day
Senior Grants Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3931
natalie.day @state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Project Title: Fiscal Year 2020 Urban Area Security Initiative

This award supports the Regional Disaster Preparedness Organization in implementing region wide, planning, training, exercising and equipment purchases to enhance response and resiliency in the Portland metropolitan area.

II. Budget

Equipment		\$1,056,744
Radio Encryption	\$610,460	
CADtoCAD	\$195,000	
Soft Target Elections	\$ 25,000	
Election Cybersecurity	\$ 25,000	
Drone Detection Equipment	\$ 50,000	
Citizen Corps	\$151,284	
Planning		\$783,475
Regional Building Damage Assessment	\$278,475	
Emergency Water Planning	\$150,000	
Urban Wildfire Interface Planning	\$125,000	
How to Store Water Videos	\$ 90,000	
Regional Accessible Communications	\$140,000	
Training		\$ 58,400
Preparedness Advocates	\$ 58,400	
Exercise		\$ 310,000
Cascadia Exercise Support	\$250,000	
Regional Emergency Fuel Table Top Exercise	\$ 60,000	
Organization		\$ 771,531
Regional Disaster Preparedness Organization	\$437,531	
Plan/Train/Exercise Improvements	\$334,000	
PBEM Management and Administration		\$ 156,850
Total (Grant)		\$3,137,000

EXHIBIT B

Federal Requirements and Certifications

I. **General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement. Those federal requirements include, without limitation, financial management and procurement requirements; requirements for maintaining accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP); and all other financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DRS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

II. Specific Requirements and Certifications

- A. **Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. **Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. **Compliance with Applicable Federal Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including, without limitation:
 - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
 - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
 2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
 3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
 4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
 5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
 6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other

than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

- D. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all of its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including, but not limited to:
- a. Title VI of the Civil Rights Act of 1964, 42 USC§ 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, 42 USC§ 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC§§ 12101 - 12213.
 - d. Age Discrimination Act of 1975, 42 USC§ 6101 et seq.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC§ 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC§ 794, as amended.
- E. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.
- F. Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC§ 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC§ 7104, as amended and 2 CFR §175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC§ 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC§ 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit

overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

- R. Energy Policy and Conservation Act.** Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act
- S. Lobbying Prohibitions.** Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and 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 any Federal action concerning the award or renewal.
- T. Terrorist Financing.** Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws.
- U. Faith-Based Organizations.** Subrecipient must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
- V. National Environmental Policy Act.** Subrecipient must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires Subrecipient to use all practicable means within its authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.
- W. Federal Leadership on Reducing Text Messaging while Driving.** Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.
- X. Environmental Planning and Historic Preservation.** DHS/FEMA funded activities that may require an EHP review are subject to FEMA's Environmental Planning and Historic Preservation review process. If ground disturbing activities occur during construction, sub-recipient will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify Oregon Office of Emergency Management, and DHS/FEMA.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

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

TYPES AND AMOUNTS.

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

ii. COMMERCIAL GENERAL LIABILITY.

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

Bodily Injury, Death and Property Damage:

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

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

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

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

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

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

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. INSURANCE REQUIREMENT REVIEW. Recipient agrees to periodic review of insurance requirements by OEM under this Agreement and to provide updated requirements as mutually agreed upon by OEM and Recipient.

OEM ACCEPTANCE. All insurance providers are subject to OEM acceptance. If requested by OEM, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

Information required by 2 CFR 200.331(a)

1. Federal Award Identification:

- (i) Sub-recipient name (which must match registered name in DUNS): City of Portland
- (ii) Sub-recipient's DUNS number: 054971197
- (iii) Federal Award Identification Number (FAIN): EMW-2020-SS-00091-S01
- (iv) Federal Award Date: September 1, 2020
- (v) Sub-award Period of Performance Start and End Date: From October 1, 2020 to September 30, 2022
- (vi) Amount of Federal Funds Obligated by this Agreement: **\$3,137,000**
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement*: **\$3,186,957**
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: **\$3,186,957**
- (ix) Federal award project description: The Urban Area Security Initiative Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.
- (x) (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
(b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
(c) Contact information for awarding official: Andrew Phelps, Director - Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062
- (xi) CFDA Number and Name: 97.067 Homeland Security Grant Program
Amount: \$7,787,500
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 12%

2. Subrecipient's indirect cost rate: 0%

*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.

Exhibit G – Equipment Transfer and Disposition

UASI Equipment Transfer and Disposition Form

For all grant purchased assets that are sold, transferred or disposed of, equipment records must be maintained in accordance with 2 CFR 200: (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl). In addition to maintaining these records, this form must be completed and submitted to the Portland Bureau of Emergency Management: elizabeth.crane@portlandoregon.gov

Asset Property Tag ID/#:

Serial Number:

Federal Grant Identifier:

Percentage of Federal Funds

Used in Purchase: Equipment

Item Description:

Make/Model #:

Location where property is currently housed:

If transferred, Location where property

will be housed: If Transferring -

(receiving agency):

Acquisition Date:

Purchase Cost: \$

Last Inventory Date:

Condition:

Disposition Type:

Current Value:

Received by (Agency Name):

Name and Title of Receiver:

Signature of Receiver:

Date Received:

Reason why the item is being transferred:



Daniel Nibouar
Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #2 to FY19 Urban Area Security Initiative (UASI) grant agreement
between the City of Portland and Clackamas County

Purpose/Outcomes	The Subrecipient Agreement Amendment is the second amendment between the City of Portland and Clackamas County to extend the duration of the grant until May 15, 2022.
Dollar Amount and Fiscal Impact	No impact.
Funding Source	The funding source for the FY19 UASI grant is the United States Department of Homeland Security.
Duration	The agreement is effective from the date both parties have signed and shall end, unless otherwise terminated or extended, on May 15, 2022.
Previous Board Action	The Board of County Commissioners approved the FY19 UASI Intergovernmental Agreement with the City of Portland on May 13, 2020.
Strategic Plan Alignment	3. Ensure Safe, Healthy and Secure Communities
Counsel Review	7/21/2021 AN
Procurement Review	1. Was the item processed through Procurement? No. 2. This is a grant agreement, not a procurement contract.
Contact Person	Daniel Nibouar, Interim Director, 503-650-3381
Contract No.	N/A

BACKGROUND:

The Urban Area Security Initiative (UASI) is comprised of the City of Portland and the contiguous counties of Clackamas, Multnomah, Washington, Columbia and Clark County, Washington. Clackamas County was awarded \$337,700 in UASI Year 2019 for four projects, Cybersecurity (for CCOM) and Citizen Corps, Training, Equipment, and Exercise (for Fire District CERT programs). A first amendment will increase funding to the Cybersecurity project by \$50,000. This second amendment will extend the period to spend funds by three months.

RECOMMENDATION:

Staff respectfully recommends the Board approve this agreement.

Sincerely,

Daniel Nibouar, Interim Director
Clackamas County Disaster Management

Subrecipient AGREEMENT

Between

THE CITY OF PORTLAND, OREGON

and

Clackamas County

AMENDMENT #2

This is Amendment #2 to Contract #32002332 effective May 19, 2020, between the City of Portland (“City”) and Clackamas County, Oregon (“Agency”).

THE AGREEMENT IS AMENDED AS FOLLOWS:

B. Effective Date and Duration

This Agreement is effective from the date both parties have signed until, and including, May 15, 2022 unless terminated or extended as provided in this Agreement. Grantee may not spend grant funds after the Agreement terminates or expires.

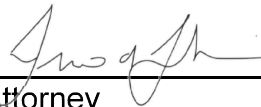
All other terms and conditions shall remain unchanged and in full force and effect.

This amendment may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same amendment. The parties agree the City and Agency may conduct this transaction by electronic means, including the use of electronic signatures.

City of Portland

Date _____

APPROVED AS TO FORM



Attorney

Date 07/02/2021

Clackamas County, Oregon

Date _____

APPROVED AS TO FORM

Andrew Naylor Digitally signed by Andrew Naylor
Date: 2021.07.21 13:23:16 -07'00'

Attorney

Date _____



Daniel Nibouar
Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

August 12, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY20 Urban Area Security Initiative (UASI) grant agreement
between the City of Portland and Clackamas County

Purpose/Outcomes	The Subrecipient Agreement Amendment between the City of Portland and Clackamas County is to allow Clackamas County and its sub-recipients to purchase and receive reimbursement for approved expenditures under the FY20 UASI grant program.
Dollar Amount and Fiscal Impact	\$375,833 of FY20 UASI funds will directly benefit Clackamas County and its partners in the form of funding equipment, an exercise, and planning.
Funding Source	The funding source for the FY20 UASI grant is the United States Department of Homeland Security.
Duration	The agreement is effective from the date both parties have signed and shall end, unless otherwise terminated or extended, on May 15, 2022.
Previous Board Action	The Board of County Commissioners approved the FY19 UASI Intergovernmental Agreement with the City of Portland on June 1, 2023.
Strategic Plan Alignment	3. Ensure Safe, Healthy and Secure Communities
Counsel Review	7/20/2021 AN
Procurement Review	1. Was the item processed through Procurement? No. 2. This is a grant agreement, not a procurement contract.
Contact Person	Daniel Nibouar, Interim Director, 503-650-3381
Contract No.	N/A

BACKGROUND:

The Urban Area Security Initiative (UASI) is comprised of the City of Portland and the contiguous counties of Clackamas, Multnomah, Washington, Columbia and Clark County, Washington. Clackamas County was awarded \$3,250,000 in FY19. The FY20 grant will bring \$3,137,000 to the Portland Urban Area. A minimum of \$375,833 of that total will directly benefit Clackamas County agencies, supporting four projects: Planning, Training and Exercise, Computer Aided Dispatch Enhancements for CAD to CAD, Fuel Plan Exercise, and Citizen Corps Preparedness Advocates Training. The County will benefit from UASI-funded regional projects related to training, exercise, and equipment, as well as the continued support of a regional Intelligence Fusion Center.

RECOMMENDATION:

Staff respectfully recommends the Board approve this agreement.

Sincerely,

Daniel Nibouar, Interim Director
Clackamas County Disaster Management

2020 Urban Area Security Initiative

THIS AGREEMENT is between **City of Portland** ("City"), a municipal corporation organized under the laws of the State of Oregon, and **Clackamas County** ("Grantee").

A. Background

1. City of Portland, through its Portland Bureau of Emergency Management (PBEM), is the subrecipient of United States Department of Homeland Security (DHS) Urban Area Security Initiative (UASI) grant funds passed through the Oregon Military Department Office of Emergency Management (OEM) and wishes to enter into this Agreement with Grantee as a subrecipient of the federal funds.

2. The following exhibits are attached and incorporated into this Agreement by reference.

Exhibit A: **Scope of Work**

Exhibit B: **Federal Requirements and Certifications (including Attachments A, B, and C)**

Exhibit C: **Information required by 2 CFR 200.331**

Exhibit D: **Subrecipient Insurance**

Exhibit E: **Request for Reimbursement (RFR)**

Exhibit F: **OEM and City UASI 2020 grant award (including Exhibits A, B, C, and D)**

Exhibit G: **Equipment Transfer and Disposition form**

Exhibit H: **Equipment Inventory Report**

3. City selected Grantee, through a process created by the Regional Disaster Preparedness Organization (RDPO) that serves in the capacity of Urban Area Work Group (UAWG) to coordinate program development and decision-making processes for allocating UASI sub-grants, to receive funding.

B. Effective Date and Duration

This Agreement is effective from the date both parties have signed until, and including, June 1, 2023 unless terminated or extended as provided in this Agreement. Grantee may not spend grant funds after the Agreement terminates or expires.

C. Scope of Work

Grantee shall provide all services and materials specified in **Exhibit A** ("Scope of Work") which is incorporated into this Agreement by this reference as if set forth in full as described in grant documents approved by OEM. Grantee shall provide all services and materials in a competent and professional manner in accordance with the Scope of Work.

D. Compensation

The total Agreement amount is \$375,833. Funds may only be used for the specific budget line items they were awarded. See Exhibit A for detail. City may only distribute funds under this Agreement to Grantee to perform the work specified in Exhibit A.

E. Reimbursement

1. City will reimburse Grantee its qualified costs incurred in carrying out the Scope of Work, as identified in this Agreement, not to exceed \$375,833. All invoice payments are conditional upon presentation of properly documented reimbursement requests. Reimbursements will be made upon approval by City of a Request for Reimbursement (RFR) as specified in **Exhibit E**. RFRs shall be submitted bimonthly on or before 30 days following the end of the billing period. Final RFR shall be submitted no later than 30 days following the end of the grant. Reimbursements for expenses will be withheld if Performance Reports are not submitted by the dates as listed in **Exhibit A**.

2. Qualified costs are direct project costs incurred by Grantee, its personal services contractor(s), and Grantee's subrecipients eligible to receive federal funds during the term of this Agreement. City will reimburse Grantee for qualified costs for work described in **Exhibit A** and eligible under the following:

- a. 2 CFR 200.420-475 (General Provisions for Selected Items of Cost);
- b. Department of Homeland Security, Notice of Funding Opportunity, viewable at: https://www.fema.gov/sites/default/files/2020-07/fy_2020_hsgp_nof.pdf
- c. Exhibit F, the OEM and City UASI 2020 grant award
- d. Personnel costs shall be reimbursed less TriMet taxes. Documentation is required.

3. Reimbursement requests shall display one hundred percent (100%) of the total project costs incurred during the period of the reimbursement. See **Exhibit E** for a detailed checklist for types and sources of acceptable documentation required before payment can be made. In addition, City may require a more detailed budget breakdown, and Grantee shall provide the supplementary budget information in a timely manner in the form and content reasonably prescribed by City. Any amendments to the budget must be approved in writing by the City. Amendments to the budget in excess of 10% of the total value of this agreement must be approved in writing by OEM.

F. Recovery of Grant Funds

Grantee shall return to City, within fifteen (15) days after the City's written request, any funds disbursed to Grantee under this Agreement that, in City's reasonable judgment, are spent in violation of the provisions of this Agreement or that remain unspent upon termination or expiration of this Agreement.

G. Representations and Warranties

Grantee represents and warrants to City as follows:

1. **Organization and Authority.** Grantee has full power, authority, and legal right to enter into this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

2. **NIMS Compliance.** By accepting FY 2020 funds, Grantee certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx

3. **Cybersecurity.** Grantee certifies that it has completed the [2020 Nationwide Cybersecurity Review](#) as required by the federal funder and can document compliance with this requirement.

Subrecipient Agreement

City of Portland

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

H. Universal Identifier and Contract Status

Grantee shall apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, Grantee shall maintain an active registration in the Central Contractor Registration database, located at www.sam.gov.

I. Program Income

Grantee shall report monthly on all program income (as defined by 2 CFR 200.1) generated by activities carried out with the grant funds made available under this Agreement. The use of program income by Grantee shall comply with the requirements set forth by 2 CFR 200.307.

J. Procurement

The parties shall comply with all applicable procurement procedures and regulations, including applicable federal and state laws. In addition, the parties shall comply with the applicable provisions of 2 CFR Part 200. This agreement also authorizes City to procure on Grantee's behalf for costs related to Scope of Work.

1. Subcontracts.

- a. Grantee may enter into subcontracts for the performance of this grant. Grantee must comply with all terms outlined in **Exhibit F** and contained in this Agreement.
- b. Any subcontract entered into by Grantee shall not relieve Grantee of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to Grantee, and subcontractors have no right to payment directly from City.
- c. Grantee is solely responsible for paying Grantee's subcontractors and nothing contained herein shall create, or be construed to create, any contractual relationship between any subcontractor and City.
- d. All subcontracts, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition and use small, minority, or women-owned or disadvantaged business to the extent practicable.
- e. Grantee agrees to include all relevant provisions of this Agreement in all subcontracts entered into as part of the activities undertaken in furtherance of this Agreement and will take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of regulations issued by any federal agency or the State of Oregon.

2. **Suspension and Debarment.** Grantee agrees not to subcontract with an entity where it has notice or knowledge that the latter has been found in violation of regulations under 2 CFR 200.213 "Suspension and Debarment." Grantee is responsible for further requiring this inclusion of a similar term or condition in any subsequent lower tier covered transactions. Grantee may access the Excluded Parties List System at www.sam.gov.

3. **Conflict of Interest.** Grantee must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to City within five (5) calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.

4. **City Procurement Delegation.** Grantee may, upon written request, authorize City to procure goods and services on behalf of Grantee and solely for purposes of performing the work described in Exhibit A. If City is procuring on Grantee's behalf, City's procurement policies will be followed. When City has purchased goods or services for Grantee or Grantee's subrecipient, arrangements for delivery will be made between the parties. Grantee or Grantee's subrecipient shall be the Owner of said goods or services and shall be responsible for complying with all applicable requirements as outlined in the Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) Circulars, the State grant agreement, and this Agreement. For equipment purchases where City takes initial receipt, an Asset Transfer Form will be completed to document transfer of ownership. See **Exhibit G**.

K. Records Maintenance – Access

1. Grantee shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, Grantee shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Grantee's performance.
2. Grantee acknowledges and agrees that City, the Federal Awarding Agency, the Comptroller General of the United States or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Grantee that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.
3. Grantee shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final expenditure report and termination of this Agreement or final disposition of asset, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Consistent with 2 CFR 200.333 through 200.337, Grantee is required to retain the records relating to this Agreement.

L. Audits

If Grantee spends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with provisions of 2 CFR 200 Subpart F.

A copy of the audit shall be submitted to City within thirty (30) days of completion.

M. Lobbying

Grantee certifies that none of the funds provided under this Agreement will be used to pay any person to influence or attempt to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress in connection with any Federal action concerning the award or renewal.

N. Mandatory Disclosures

Grantee must immediately notify City in writing of all violations of local, state and federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the funds under this Agreement as provided in 2 CFR 200.113.

O. Ownership

Grantee shall be the owner of all equipment and supplies purchased under this Agreement, unless otherwise outlined in a Grantee subcontract.

P. Equipment – Cooperative Use

All equipment purchased with funds under this Agreement will be made available to all eligible regional partners [per 2 CFR 200.313\(c\)\(2\)](#). All reasonable requests must be met when sufficient notice is given, and no reasonable conflict exists. Owners may not charge “rental” fees for equipment but may seek reimbursement for normal expenses (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, when appropriate.

Q. Equipment Tracking and Reporting Requirements

Grantee agrees to comply with all property and equipment tracking and monitoring processes required by the grant, this Agreement, City, and State policies and procedures, to treat all single items of equipment valued over \$5,000 as capital assets, to provide City with a list of such equipment on a biennial basis falling on even years, using PBEM's Equipment Inventory Report (see **Exhibit H**), and to complete and return the report to PBEM on or before June 30th of the reporting year. The list shall include, but is not limited to, status and condition, asset number, funding source (including the federal award identification number), who holds the title, date of purchase and cost, equipment description, serial number, location where the equipment is housed or stored, and disposition information (date of disposal and sale price of the property). All requirements for the tracking, monitoring, disposition, and transfer of fixed assets are set forth in 2 CFR 200.313, which can be found here:

http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d75f90044e30262070fe0bc233c337f&mc=true&n=pt2.1.200&r=PART&ty=HTML#_top

Grantee or Grantee's subrecipient shall maintain and store all equipment and supplies, provided or purchased, in the manner that will keep it safe, secure, and prolong its useful life and be maintained in good working condition throughout its useful life.

R. Amendment.

This Agreement may be modified or amended only by the written agreement of both parties but must remain consistent with the requirements of the UASI program and the Agreement between the State and City.

S. Termination

1. Termination by Failure to Receive Funding. Either party may terminate this Agreement if it fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that part, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement; or if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Scope of Work is no longer allowable or no longer eligible for funding under this Agreement.

2. Cause for Termination; Cure Period. It shall be a material breach and cause for termination of this Agreement if Grantee uses grant funds outside of the scope of this Agreement, or if either party fails to comply with any other term or condition or to perform any obligations under this Agreement within thirty (30) days after written notice and opportunity to cure from the other party. If the breach is of such nature that it cannot be completely remedied within the thirty (30) days cure period, the breaching party shall commence cure within the thirty (30) days, notify the non-breaching party of the steps for cure and estimated time table for full correction and compliance, proceed with due diligence and good faith to correct any failure or noncompliance, and obtain written consent from the non-breaching party for a reasonable extension of the cure period.

3 **No Payment Authorized During Cure Period.** During the cure period, City is under no obligation to continue providing additional grant funds notwithstanding any payment schedule indicated in this Agreement, and Grantee shall not perform services or take actions that would require City to pay additional grant funds to Grantee. Grantee shall not spend unused grant funds, and such unused funds shall be deemed held in trust for City. Grantee shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.

4. **Termination for Cause.** Termination for cause based on Grantee's misuse of grant funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the thirty (30) days period unless a written extension of cure period is granted by the non-breaching party. Grantee shall return all grant funds to City that had not been spent as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by Grantee under this Agreement shall, at the option of City, become the property of City; and Grantee may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination in City's reasonable discretion in a sum not to exceed the grant funds already expended.

5. **Penalty for Termination for Cause.** If this Agreement is terminated for cause, Grantee shall repay grant funds tendered under this Agreement to City that were spent in violation of this Agreement and City, in its sole discretion, may decline to approve or award future grant funding requests to Grantee.

6. **Termination by Agreement or for Convenience of City or Grantee.** City and Grantee may terminate this Agreement at any time by mutual written agreement. Alternatively, City or Grantee may, upon thirty (30) days written notice, terminate this agreement for any reason deemed appropriate in its sole discretion. If the Agreement is terminated as provided in this paragraph, Grantee shall return any unspent grant funds within thirty days after the effective date of termination. Unless the parties agree otherwise, Grantee shall finish any work and services covered by any grant funds already paid and shall not commence any new work or services which would require payment from any unused grant funds. City shall not be liable for indirect or consequential damages. Termination by either party for convenience shall not waive any claim or remedies the parties may have against each other.

T. Hold Harmless

1. Grantee shall hold harmless, defend, and indemnify the City and Oregon Emergency Management and their officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them and arising solely from the negligent actions or omissions of Grantee in the performance of this Agreement. Grantee shall require its subcontractors or subrecipients, if any, to hold harmless, defend, and indemnify the City and Oregon Emergency Management and their officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them.

2. The obligations of Oregon public bodies, as defined by ORS 30.260(4), under this section are limited by, and subject to, the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

U. Independent Contractor Status

1. Grantee shall be an independent Contractor for all purposes and shall be entitled only to the compensation provided in this Agreement. Under no circumstances shall Grantee be considered an employee of City.

2. Grantee shall provide all tools or equipment necessary to carry out this Agreement and shall exercise complete control in achieving the results specified in the Scope of Work.

3. Grantee is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise

Subrecipient Agreement

City of Portland

specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement.

V. Choice of Law

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the State of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

W. No Waiver of Claims

The failure to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.

X. Modification

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing, signed by both parties.

Y. Severability

If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

Z. Third Party Beneficiaries

There are no third-party beneficiaries to this Agreement, and it may only be enforced by the Parties.

Subrecipient Agreement

City of Portland

GRANTEE, BY EXECUTION OF THIS AGREEMENT, ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Clackamas County

By: _____

Printed: _____

Title: _____

Date: _____

City of Portland

By: _____

Printed: _____

Title: _____

Date: _____

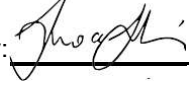
Approved as to Legal Sufficiency (if required for Grantee)

Legal Counsel: _____

Digitally signed by Andrew Naylor Date: 2021.07.20 06:02:32 -0700

Date: _____

City of Portland

City Attorney: 

Date: 7/13/2021

Grantee Program Contact

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

City of Portland Program & Fiscal Contact

Name: Beth Crane

Title: Grant Coordinator

Address: 9911 SE Bush, Portland, Oregon 97266

Phone: (503) 823-2027

Email:

PBEM-UASIGrants@portlandoregon.gov

Grantee Fiscal Contact

Name: _____

Title: _____

Phone: _____

Exhibit A – Scope of Work

This scope of work is comprised of the projects described below

1. Plan/Train/Exercise
2. Computer Aided Dispatch Enhancements
3. Fuel Plan Tabletop Exercise
4. Citizen Corps Equipment, Training and Exercises

Goals and Performance Measures

Project	Milestones	Completion Date (following execution of this agreement)
Plan/Train/Exercise Project	Establish a project plan 1. Establish a project plan and submit for approval	45 days
Computer Aided Dispatch Enhancements (CAD to CAD)	Bidirectional Component of CAD to CAD Project 1. Complete bidirectional CAD to CAD preliminary conceptual architecture 2. Complete initial systems testing of component CAD systems to TELLUS 3. Complete interim systems testing 4. Complete user training and go live Portal System Component of CAD to CAD Project 5. Complete portal system preliminary conceptual architecture 6. Complete installation and build out of TELLUS Fusion 7. Complete testing of systems 8. Complete user trainings and go live	90 days (3rd month) 180 days (6th month) 240 days (8th month) 720 days (24th month) 180 days (6th month) 240 days (8th month) 420 days (16th month) 720 days (24th month)
Fuel Tabletop Exercise of the Regional Fuel Plan	1. Design a tabletop exercise to test the regional fuel plan 2. Conduct a tabletop exercise of the regional fuel plan 3. Develop a written After-Action Report and Improvement Plan of the regional fuel plan tabletop exercise	240 days (8 th month) 540 days (18 th month) 720 days (24 th month)
Citizen Corps	1. Complete delivery of trainings	660 days (22nd month)

Exhibit A – Scope of Work

Performance Reports

Grantee agrees to submit Performance Reports by April 15th, July 15th, October 15th, and January 15th each year during the term of the Agreement. Performance Reports shall include a narrative description of progress, barriers, milestones achieved or unfulfilled as well as fiscal information related to spending and projected costs or savings. Performance Reports shall be sent to the designated City Program and Fiscal Contact and provided in the format requested by City. Late Performance Reports could result in the suspension and/or termination of the grant.

Grant Total Budget – All Projects

Budget Line-Item	Budget by Project	Federal Funds by Project Area
UA20-012	Plan/Train/Exercise	\$111,333
UA20-014	CAD to CAD Enhancements	\$195,000
UA20-010	Fuel Tabletop Exercise	\$60,000
UA20-026	Citizen Corps Training	\$9,500
	Totals	\$375,833

Federal Awarding Agency grant funds to be dispersed to Grantee not to exceed \$375,833.

Exhibit B – Federal Requirements and Certifications

Grantee and its subrecipients, contractors or subcontractors shall comply with the OEM and City Agreement attached as **Exhibit F** and all applicable federal requirements, including, but not limited to, the following:

Non-Discrimination and Civil Rights Compliance. Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons. Grantee assures compliance with all applicable nondiscrimination laws, including but not limited to:

- a. **Title VI of the Civil Rights Act of 1964** (USC § 2000d et seq)
- b. **Age Discrimination Act of 1975** (42 USC § 6101 et seq)
- c. **Americans with Disabilities Act of 1990** (42 USC §§ 12101-12213; Title I, II, and III)
- d. **Civil Rights Act of 1968** (42 USC § 3601 et seq), which prohibits
- e. **Title IX, Education Amendments of 1972** (20 USC § 1681 et seq),
- f. **Section 504 of the Rehabilitation Act of 1973** (29 USC § 794),

Services to Limited English Proficient (LEP) Persons. Grantee agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency (LEP). To ensure compliance with Title VI, Grantee shall take reasonable steps to develop and implement a system to provide those services so LEP persons can have meaningful access to them. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. For additional information regarding LEP obligations, please see www.lep.gov.

Drug-Free Workplace Requirement. Grantee agrees to comply with the requirements of the Drug Free Workplace Act of 1988, 41 USC § 701 et seq., which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Grantee shall notify City within ten (10) days if an employee of Grantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

Whistleblower Protection. Grantee agrees to comply with the requirements under the Whistleblower Protection Act, 41 USC § 4712, as applicable.

Personally Identifiable Information (PII). Grantee, if it collects PII, is required to have a publicly available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

False Claims Act & Program Fraud Civil Remedies. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. Grantee certifies by accepting funds under this Agreement that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency.

Standard Assurances and Certifications Regarding Lobbying. Grantee is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352.

Procurement of Recovered Materials. Grantee agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

Exhibit B – Federal Requirements and Certifications

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

By signing and submitting this Agreement, Grantee certifies as follows:

Grantee has not been debarred, suspended, ineligible or voluntarily excluded from receiving federal funds or participating in programs supported by Federal funding.

The certification in this clause is a material representation of fact relied upon by **City of Portland**. If it is later determined that Grantee knowingly rendered an erroneous certification, in addition to remedies available to **City of Portland**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Grantee agrees to comply with the requirements of Executive Order [12549](#) and [2 CFR part 180](#), throughout the period of this Agreement. Grantee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature _____

Name _____

Title _____

Organization _____

Date _____

Exhibit B – Federal Requirements and Certifications

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned **Grantee** certifies, 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 Fed. Reg. 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.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (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 \$10,000.00 and not more than \$100,000.00 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 \$10,000.00 and not more than \$100,000.00 for each such expenditure or failure.

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

Signature of Grantee's Authorized Official

Name (Printed)

Title

Date

Exhibit C – Information Required by 2 CFR 200.331

1. Federal Award Identification:
 - (i) Subrecipient name (which must match registered name in DUNS):
Clackamas County
 - (ii) Subrecipient's DUNS number:
Clackamas County 096992656
 - (iii) Federal Award Identification Number (FAIN):
DHS-18-GPD-067-00-01
 - (iv) Federal Award Date:
August 15, 2020
 - (v) Sub-award Period of Performance:
Date of Agreement Execution through June 1, 2023
 - (vi) Amount of Federal Funds Obligated by the Agreement between the Oregon Military Department and the City:
\$3,208,025
 - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement:
\$375,833
 - (viii) Total Amount of Federal Award:
\$3,500,000
 - (ix) Federal award project description:
The Portland Urban Area Security Initiative funding is provided to the Portland regional area to prepare for, prevent, mitigate, respond to and recover from natural and human caused threats, including terrorism.
 - (x) Name of Federal Awarding Agency:
Department of Homeland Security, Federal Emergency Management Agency
 - (xi) Name of Pass-through Entity:
Oregon Military Department through Oregon Emergency Management to the City of Portland, Portland Bureau of Emergency Management, on behalf of the Regional Disaster Preparedness Organization
 - (xii) Contact information for Awarding Official:
Mike Meyers, Director Portland Bureau of Emergency Management 9911 SE Bush, Portland Oregon 97266
 - (xiii) CFDA Number and Program Name:
CFDA 97.067, Urban Area Security Initiative
 - (xiv) Is Award Research & Development?
No
 - (xv) Indirect cost rate for the Federal award:
Not specified

Exhibit C – Information Required by 2 CFR 200.331

(xvi) Match required:
No

2. Subrecipient's indirect cost rate:

Exhibit D – Subrecipient Insurance

Grantee and any subrecipients shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement.

1. Workers' Compensation Insurance: Grantee, its contractors and all employers working under this Agreement shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, Grantee, its contractors and any employers working under this Agreement shall maintain coverage for all subject workers.
2. Commercial General Liability Insurance: Grantee shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$ 1,000,000, and aggregate limit of not less than \$2,000,000.
3. Automobile Liability Insurance: Grantee shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned autos. This coverage may be combined with the commercial general liability insurance policy.
4. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name City and Oregon Emergency Management and their bureaus, officers, agents and employees as Additional Insureds, with respect to Grantee's or its contractor's activities to be performed or services to be provided. Grantee shall provide proof of additional insured coverage in the form of an additional insured endorsement form or a policy coverage document acceptable to City. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
5. Continuous Coverage: Notice of Cancellation: Grantee shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from Grantee to City. If the insurance is canceled or terminated prior to termination of the Agreement, Grantee shall immediately notify City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement.

Proof of Insurance: City acknowledges Grantee is self-insured in an amount sufficient to satisfy its obligations under this Agreement. Grantee will require its subrecipients, contractors, or subcontractors to comply with the insurance requirements set forth in this Agreement. Grantee shall furnish a declaration that Grantee is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.272 and 30.273.

EXHIBIT E Request for Reimbursement

INVOICE VOUCHER NO.			DATE:	
SUBMIT INVOICE TO			INSTRUCTIONS TO VENDOR: Submit this form to claim payments/reimbursement for equipment, materials or services. Show complete detail for each item and include all backup documentation (checklist definitions on page 2).	
PORTLAND BUREAU OF EMERGENCY MANAGEMENT ATTN: FINANCE & GRANTS 9911 SE BUSH ST PORTLAND, OR 97266				
SUB-RECIPIENT OR CLAIMANT NAME & ADDRESS (Check is to be payable to)				
SUB-RECIPIENT IGA NO.			GRANT NUMBER:	
DATE	DESCRIPTION	BUDGET LINE-ITEM	BUDGET AMOUNT	AMOUNT OF REIMBURSEMENT
PREPARED BY (PRINT NAME): SIGNATURE:		PREPARER'S EMAIL	PREPARER'S TELEPHONE NUMBER	

I certify that all payments requested are for appropriate purposes in accordance with the grant agreement and set forth in the application award documents and that all backup documentation submitted, as checked on page two (2) accurately represents items or services purchased.

Approver Name & Signature

Date Approved

Exhibit E Request for Reimbursement

1. **Regional Staffing Reimbursement** - Includes personnel cost, mileage and parking, telecom, space rental, office supplies.
 - Mileage reimbursement backup document includes google maps showing the total miles travel and the meeting agenda.
 - Receipts or invoices.
 - Payroll Reports/Approved timesheets.
2. **Travel Reimbursements** - Lodging and meals must meet the Federal per diem rate. Please visit www.gsa.gov/portal/content/104877 for allowable GSA rates
 - Registration form.
 - Travel authorization form.
 - Conference or training agenda.
 - Receipts and proof of payment for all expenses except meals.
 - SAM exclusion (www.sam.gov) (A printout must be submitted).
 - Training report, if applicable.

Please Note: Food and beverages provided during the event must be deducted from per diem allowance. Receipts should be itemized and cannot include tips for food or services and alcohol. The UASI Training Report form found at <https://www.portlandoregon.gov/pbem/53958> must be submitted within 30 days after the training occurred.

3. **Supplies and Equipment Purchase Reimbursements**
 - Quotes.
 - Solicitations (Request for proposals, invitation to bid and responses, proposals, bids).
 - Copy of procurement contract.
 - Purchase order.
 - Price quote summary, if applicable.
 - SAM exclusion (www.sam.gov) (A printout must be submitted).
 - Insurance & Worker compensation, if applicable.
 - Vendor invoices signed “ok to pay” by the individual authorized to do so.
 - Proof of payment to vendor.

ONLY City of Portland

 - EEO Certification <https://procure.portlandoregon.gov/> if applicable.
 - Business registration <http://www.portlandoregon.gov/revenue/lookup/index.cfm?accountID=758095>.

4. **Overtime or Backfill Reimbursement for Exercise or Training** - Only OT or backfill wages plus FICA, worker’s compensation, unemployment and retirement benefits are eligible for reimbursement.
 - Overtime & Backfill Rate Sheet found at <https://www.portlandoregon.gov/pbem/62178>
 - Payroll reports and approved time sheets.

5. **Personnel Services**-To reimburse for approved personnel services, request wages and benefits. TriMet taxes must be removed.
 - Payroll report.
 - TriMet taxes have been omitted.

6. **Training and Conference**
 - Sign-in roster.
 - Registration information.
 - Copies of invoice for expenses incurred for meeting space.
 - Facilitation costs.
 - Receipts or invoices for materials and supplies.
 - Copies of the contract, if applicable.

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HOMELAND SECURITY GRANT PROGRAM
URBAN AREA SECURITY INITIATIVE**

CFDA # 97.067

CITY OF PORTLAND

\$ 3,137,000

Grant No: 20-170

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as “OEM,” and **City of Portland**, hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

- 1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2020** and ending, unless otherwise terminated or extended, on **June 30, 2023** (the “Grant Award Period”). No Grant Funds are available for expenditures after the Grant Award Period. OEM’s obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.
- 2. Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

- 3. Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$3,137,000** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2020 Urban Area Security Initiative (UASI) grant.
- 4. Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
- 5. Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.
 - a. Performance Reports.**

1. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2020 UASI program.
- ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

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

6. Disbursement and Recovery of Grant Funds.

- a. **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the UASI program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at <http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx>.
- b. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 1. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit Band the requirements incorporated by reference in Exhibit B.

- iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

c. Recovery of Grant Funds. Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

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

a. Organization and Authority. Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Solicitation. Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. NIMS Compliance. By accepting FY 2020 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx.

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

8. Records Maintenance and Access; Audit.

a. Records, Access to Records and Facilities. Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its

contractors, subcontractors, sub-recipients (collectively hereafter "contractors") , successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives , access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

b. Retention of Records. Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

c. Audits.

1. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
11. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

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

a. Subagreements. Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate , and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

1. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request

by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.

11. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
111. 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, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
- 1v. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

b. Purchases and Management of Property and Equipment; Records. Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

1. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
11. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
- iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
- 1v. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- v1. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.

- vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- ix. Subrecipient shall, and shall require its contractors to, retain the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.

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

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

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

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:

1. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
- ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
- iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- iv. The Project would not produce results commensurate with the further expenditure of funds; or
- v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
- vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.

b. Termination by Subrecipient. Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:

1. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. Termination by Either Party. Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.

d. Settlement upon Termination. Immediately upon termination under Sections 10.a.i, v., or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11. GENERAL PROVISIONS

a. Contribution. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

b. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

- c. **Responsibility for Grant Funds.** Subrecipient, pursuant to this Agreement with OEM, shall assume sole liability for its breach of the conditions of this Agreement, and shall, upon its breach of conditions that causes or requires OEM to return funds to DHS or FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the Subrecipient's indemnification ability, the indemnification amount shall be the maximum amount of funds available to Subrecipient for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the

United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.
- j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

SIGNATURE PAGE TO FOLLOW

City of Portland

By 

Name Ted Wheeler
(printed)

Date 04/08/21

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By 
Subrecipient's Legal Counsel

Date 03/30/2021

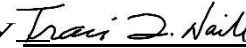
Subrecipient Program Contact:

Denise Barrett
RDPO Manager
Portland Bureau of Emergency Management
9911 SE Bush
Portland, OR 97266
503-823-5386
denise.barrett@portlandoregon.gov

Subrecipient Fiscal Contact:

Ginger Damron
Financial Analyst
Grants Management Division
City of Portland
1120 SW 5th Ave Rm 1040
Portland, OR 97204
503-823-6862
Ginger.damron@portlandoregon.gov

STATE OF OREGON, acting by and through its Oregon
Military Department, Office of Emergency Management

By 

Name Traci L. Naile
(printed)

Operations and Preparedness Section Manager, OEM

Date 4/20/21

APPROVED AS TO LEGAL SUFFICIENCY

By Samuel B. Zeigler via email
Senior Assistant Attorney General

Date October 14, 2020

OEM Program Contact:

Kevin Jeffries
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3661
kevin.jeffries@state.or.us

OEM Fiscal Contact:

Natalie Day
Senior Grants Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3931
natalie.day @state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Project Title: Fiscal Year 2020 Urban Area Security Initiative

This award supports the Regional Disaster Preparedness Organization in implementing region wide, planning, training, exercising and equipment purchases to enhance response and resiliency in the Portland metropolitan area.

II. Budget

Equipment		\$1,056,744
Radio Encryption	\$610,460	
CADtoCAD	\$195,000	
Soft Target Elections	\$ 25,000	
Election Cybersecurity	\$ 25,000	
Drone Detection Equipment	\$ 50,000	
Citizen Corps	\$151,284	
Planning		\$783,475
Regional Building Damage Assessment	\$278,475	
Emergency Water Planning	\$150,000	
Urban Wildfire Interface Planning	\$125,000	
How to Store Water Videos	\$ 90,000	
Regional Accessible Communications	\$140,000	
Training		\$ 58,400
Preparedness Advocates	\$ 58,400	
Exercise		\$ 310,000
Cascadia Exercise Support	\$250,000	
Regional Emergency Fuel Table Top Exercise	\$ 60,000	
Organization		\$ 771,531
Regional Disaster Preparedness Organization	\$437,531	
Plan/Train/Exercise Improvements	\$334,000	
PBEM Management and Administration		\$ 156,850
Total (Grant)		\$3,137,000

EXHIBIT B

Federal Requirements and Certifications

I. **General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement. Those federal requirements include, without limitation, financial management and procurement requirements; requirements for maintaining accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP); and all other financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DRS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

II. Specific Requirements and Certifications

- A. **Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. **Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. **Compliance with Applicable Federal Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including, without limitation:
 - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
 - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
 2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
 3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
 4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
 5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
 6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other

than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

- D. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all of its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including, but not limited to:
- a. Title VI of the Civil Rights Act of 1964, 42 USC§ 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, 42 USC§ 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC§§ 12101 - 12213.
 - d. Age Discrimination Act of 1975, 42 USC§ 6101 et seq.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC§ 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC§ 794, as amended.
- E. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.
- F. Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC§ 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC§ 7104, as amended and 2 CFR §175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC§ 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC§ 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit

overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

- R. Energy Policy and Conservation Act.** Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act
- S. Lobbying Prohibitions.** Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and 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 any Federal action concerning the award or renewal.
- T. Terrorist Financing.** Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws.
- U. Faith-Based Organizations.** Subrecipient must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
- V. National Environmental Policy Act.** Subrecipient must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires Subrecipient to use all practicable means within its authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.
- W. Federal Leadership on Reducing Text Messaging while Driving.** Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.
- X. Environmental Planning and Historic Preservation.** DHS/FEMA funded activities that may require an EHP review are subject to FEMA's Environmental Planning and Historic Preservation review process. If ground disturbing activities occur during construction, sub-recipient will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify Oregon Office of Emergency Management, and DHS/FEMA.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

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

TYPES AND AMOUNTS.

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

ii. COMMERCIAL GENERAL LIABILITY.

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

Bodily Injury, Death and Property Damage:

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

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

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

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

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

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

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. INSURANCE REQUIREMENT REVIEW. Recipient agrees to periodic review of insurance requirements by OEM under this Agreement and to provide updated requirements as mutually agreed upon by OEM and Recipient.

OEM ACCEPTANCE. All insurance providers are subject to OEM acceptance. If requested by OEM, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

Information required by 2 CFR 200.331(a)

1. Federal Award Identification:

- (i) Sub-recipient name (which must match registered name in DUNS): City of Portland
- (ii) Sub-recipient's DUNS number: 054971197
- (iii) Federal Award Identification Number (FAIN): EMW-2020-SS-00091-S01
- (iv) Federal Award Date: September 1, 2020
- (v) Sub-award Period of Performance Start and End Date: From October 1, 2020 to September 30, 2022
- (vi) Amount of Federal Funds Obligated by this Agreement: **\$3,137,000**
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement*: **\$3,186,957**
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: **\$3,186,957**
- (ix) Federal award project description: The Urban Area Security Initiative Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.
- (x) (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
(b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
(c) Contact information for awarding official: Andrew Phelps, Director - Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062
- (xi) CFDA Number and Name: 97.067 Homeland Security Grant Program
Amount: \$7,787,500
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 12%

2. Subrecipient's indirect cost rate: 0%

*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.

Exhibit G – Equipment Transfer and Disposition

UASI Equipment Transfer and Disposition Form

For all grant purchased assets that are sold, transferred or disposed of, equipment records must be maintained in accordance with 2 CFR 200: (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl). In addition to maintaining these records, this form must be completed and submitted to the Portland Bureau of Emergency Management: elizabeth.crane@portlandoregon.gov

Asset Property Tag ID/#:

Serial Number:

Federal Grant Identifier:

Percentage of Federal Funds

Used in Purchase: Equipment

Item Description:

Make/Model #:

Location where property is currently housed:

If transferred, Location where property

will be housed: If Transferring -

(receiving agency):

Acquisition Date:

Purchase Cost: \$

Last Inventory Date:

Condition:

Disposition Type:

Current Value:

Received by (Agency Name):

Name and Title of Receiver:

Signature of Receiver:

Date Received:

Reason why the item is being transferred:

Financial Assistance Application Lifecycle Form

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

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

** CONCEPTION **

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

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

Lead Department & Fund: _____

Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No

**If renewal, complete sections 1, 2, & 4 only
If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC**

Name of Funding Opportunity: _____

Funding Source: Federal State Local

Requestor Information (Name of staff person initiating form): _____

Requestor Contact Information: _____

Department Fiscal Representative: _____

Program Name or Number (please specify): _____

Brief Description of Project: _____

Name of Funding Agency: _____

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

OR

Application Packet Attached: Yes No

Completed By: _____ Date: _____

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

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

Competitive Application	Non-Competing Application	Other
CFDA(s), if applicable: _____	_____	Funding Agency Award Notification Date: _____
Announcement Date: _____	_____	Announcement/Opportunity #: _____
Grant Category/Title: _____	_____	Max Award Value: _____
Allows Indirect/Rate: _____	_____	Match Requirement: _____
Application Deadline: _____	_____	Other Deadlines: _____
Award Start Date: _____	_____	Other Deadline Description: _____
Award End Date: _____	_____	_____
Completed By: _____	_____	Program Income Requirement: _____
Pre-Application Meeting Schedule: _____	_____	_____

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

Mission/Purpose:

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

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

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

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

Organizational Capacity:

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

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

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

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

Collaboration

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

Reporting Requirements

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

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

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

Fiscal

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

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

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

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

Program Approval:

Name (Typed/Printed)	Date	Signature
** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR **		
ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.		

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

FINANCE ADMINISTRATION		
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

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

For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved:	Denied:
Name (Typed/Printed)	Date	Signature

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

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

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



Sue Hildick

Director

Public & Government Affairs
2051 Kaen Road
Oregon City, OR 97045

503-655-8751

clackamas.us

August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

A Board Order Approving the Renewal of the Cable Television
Franchise Agreement for use of the County Rights-of-Way
By Comcast of Tualatin Valley, Inc.; Comcast of
Comcast of Illinois/Ohio/Oregon, LLC; and Comcast of Oregon II, Inc.

Purpose/Outcome	Approve the renewal of the cable television franchise agreement for a ten (10)-year term.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Effective August 5, 2021 through August 5, 2031.
Previous Board Action/Review	The original franchise was approved for a five (5)-year agreement by the BCC in February 2010. Franchise negotiations began in February 2015 and have been extended for six months to one-year intervals to continue negotiations. The final franchise extension was submitted to the BCC in March 2020, with an expiration date of March 31, 2021.
Strategic Plan Alignment	Building public trust through good government.
Counsel Review	This Franchise Agreement has been reviewed and approved by County Counsel on 7-20-21. JM
Procurement Review	No, because this is item is a franchise agreement.
Contact Person	Sue Hildick, Public and Government Affairs, 503-742-5900
Contract No.	N/A

BACKGROUND:

The County has concluded negotiations with Comcast of Oregon II, Inc., Comcast of Tualatin Valley, Inc.; Comcast of Illinois/Ohio/Oregon, LLC; and Comcast of Oregon II, Inc. (collectively Comcast), with terms and conditions for use of the County's rights-of-way to provide a cable communications system to residents in unincorporated Clackamas County. A map of the area to be served is represented in Exhibit A in the Franchise Agreement. Comcast will pay franchise fees, the same as other cable providers in unincorporated Clackamas County of 5% of gross revenues.

Page 2

Staff Report – Renewal Franchise Agreements Comcast
August 5, 2021

Provisions of the Franchise Agreements include broadcast of the following four (4) Public, Educational and Government (PEG) Access Channels: Clackamas County Government Channel, Clackamas Community College Channel, North Clackamas School District-Sabin Schellenberg Center Channel, and the Willamette Falls Studios Channel in the Comcast service area. The cable company has agreed to support the four Access Channels with a monthly contribution of \$.80 per cable subscriber. Customer service standards and interconnection requirements with all other continuous cable systems in Clackamas County are included.

The Franchise Agreements include two High Definition (HD) channel upgrades during the term of the agreements. The Clackamas County Government Channel is currently broadcast in Standard Definition (SD). Within six months from the effective date of the Franchise Agreements, Comcast will upgrade the government channel from SD to HD. The Willamette Falls Studios will receive the second HD upgrade as soon as the County finalizes its repayment contribution to the County's PEG capital costs or at the end of the Franchise Agreement, whichever comes first.

The Franchise Agreement is current with the recent FCC standards. Comcast has agreed to all terms and conditions of the franchise grant with the County.

RECOMMENDATION:

Staff respectfully recommends the Board approve the Cable Television Franchise Renewal Agreement with Comcast for a term of ten (10) years from the effective date of August 5, 2021. County Counsel has reviewed and approved the attached Board Order.

Respectfully submitted,



Sue Hildick, Director
Public and Government Affairs

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

In the Matter of Approving an
Extension of the Cable Television
Franchise with Comcast of Tualatin
Valley, Inc., Comcast of
Illinois/Ohio/Oregon, LLC, and
Comcast of Oregon II, Inc.



Order No. _____

This matter coming on at this time, and it appearing that Comcast of Tualatin Valley, Inc.; Comcast of Illinois/Ohio/Oregon, LLC; and Comcast of Oregon II, Inc. (collectively Comcast) has been providing cable television service utilizing the County rights-of-way pursuant to a Franchise Agreement Extension, approved by the BCC, that expired on March 31, 2021 and;

It further appearing that the County and Comcast have conducted extensive negotiations as provided by federal law concerning the franchise renewal; and

It further appearing that the issuance of a renewal subject to the terms and conditions of the attached Franchise Agreement would be in the best interests of the citizens of the County;

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Franchise Agreement be approved and executed, and be subject to the terms and conditions as specified in the Agreement for a term of ten (10) years as specified in Section 3.3.

DATED this _____ day of August, 2021.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

CABLE TELEVISION FRANCHISE AGREEMENT

Between

CLACKAMAS COUNTY, OREGON

And

**Comcast of “Tualatin Valley, Inc.; Comcast of
Illinois/Ohio/Oregon, LLC; Comcast of Oregon II, Inc.”**

_____ 2021

TABLE OF CONTENTS

1.	PURPOSE AND INTENT	1
2.	DEFINITIONS.....	1
3.	GRANT OF FRANCHISE.....	6
3.1	Grant.....	6
3.2	Use of Public Streets and Rights of Way.....	7
3.3	Duration and Effective Date of Franchise/Franchise Review	7
3.4	Franchise Area.....	7
3.5	Franchise Not Exclusive	8
3.6	Franchise Non-Transferable	8
3.7	Franchise Acceptance	9
3.8	Competitive Equity	9
4.	CONSTRUCTION AND SERVICE REQUIREMENTS	10
4.1	General	10
4.2	Right of Inspection of Construction	11
4.3	Availability of Residential Service	11
4.3.1	Density for Normal Extension of Service	11
4.3.2	Isolated Areas.....	11
4.3.3	New Subdivisions.....	12
4.3.4	Annexation.....	12
4.4	Erection of Poles	12
4.5	Trimming of Trees or other Vegetation	13
4.6	Repair and Restoration of Streets, Public Ways and Grounds	13
4.7	Construction Codes	13
4.8	Reservations of Street Rights	13
4.9	Street Vacation and Abandonment	14
4.10	Movement of Facilities	14
4.11	Easements.....	15
4.12	Undergrounding	15
4.13	As Builts	15
4.14	Emergency	15
5.	SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.....	16
5.1	Equal and Uniform Service	16
5.2	System Configuration	16
5.3	Channel Capacity	16
5.4	Satellite Earth Stations	16
5.5	Interconnection.....	16
5.6	Emergency Alert Capability.....	18
5.7	Standby Power.....	18
5.8	Status Monitoring	18
5.9	Parental Control Lock	19
5.10	Technical Standards	19
5.11	Performance Testing.....	19
6.	SERVICES AND PROGRAMMING.....	20
6.1	Programming Categories.....	20
6.2	Changes in Video Programming Services.....	20

6.3	Leased Channel Service.	20
6.4	Obscenity.	20
6.5	Public, Educational and Government Use of System.	21
6.6.1	Channels.	21
6.6.2	Support for Access Costs.	22
6.6.3	Access Support Not Franchise Fees.	22
6.6.4	Cable Service to Public Facilities	23
6.6.5	Change in Technology.....	24
6.6.6	Technical Quality.....	24
7.	FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS.....	24
7.1	Intent.....	24
7.2	Areas of Regulation and Administration	24
7.3	Rate regulation	25
7.4	Remedies for Franchise Violations.....	26
7.5	Remedies Not Exclusive	28
7.6	Consumer Protection Standards.....	28
7.6.1	Customer Service and Telephone Responsiveness	28
7.6.2	Service and Repair Calls.....	29
7.6.3	Disconnection.....	30
7.6.4	Credits Upon Outage.....	31
7.6.5	Downgrade Charges.....	31
7.6.6	Billing Information Required	31
7.6.7	Information to Subscribers.....	32
7.6.8	Complaint Resolution	33
7.6.9	Failure to Resolve Complaints.....	33
8.	GENERAL FINANCIAL AND INSURANCE PROVISIONS	34
8.1	Compensation.....	34
8.2	Faithful Performance Bond.....	35
8.3	Damages and Defense	36
8.4	Liability Insurance and Indemnification	36
9.	RIGHTS RESERVED TO GRANTOR	38
9.1	Grantor Acquisition of the Cable System.....	38
9.2	Right to Perform Franchise Fee Audit	38
9.3	Right of Inspection of Construction	38
9.4	Intervention.....	38
9.5	Right to Require Removal of Property.....	39
9.6	Inspection of Facilities	39
10.	RIGHTS OF INDIVIDUALS PROTECTED	39
10.1	Discriminatory Practices Prohibited.....	39
10.2	Unauthorized Monitoring or Cable Tapping Prohibited	40
10.3	Privacy and Other Rights.....	40
10.4	Permission of Property Owner Required.....	40
10.5	Sale of Subscriber Lists and Personalized Data Prohibited.....	40
11.	TERMINATION AND EXPIRATION	41
11.1	Revocation	41
11.2	Renewal.....	41
11.3	Continuity of Service Mandatory.....	42

12.	OPERATION AND MAINTENANCE	42
12.1	Open Books and Records.....	42
12.2	Communications with Regulatory Agencies.....	43
12.3	Reports.....	43
12.4	Safety.....	44
13.	MISCELLANEOUS PROVISIONS	45
13.1	Compliance with Laws	45
13.2	Severability and Preemption	45
13.3	Captions	45
13.4	No Recourse Against the Grantor.....	46
13.5	Nonenforcement by Grantor.....	46
13.6	Force Majeure	46
13.7	Entire Agreement.....	46
13.8	Consent	46
13.9	Notices and Time Limit for Grantee Communications	47
13.10	Consistency of Franchise with Cable Act	47
13.11	Future Changes in Law	47
13.12	Notice	47
13.13	Public Disclosure	48
13.14	Time is of the Essence.....	48
13.15	Reservation of Rights	48
Exhibit A:	Franchise Area.....	49
Exhibit B:	Complimentary Service List.....	50
Exhibit C:	Complimentary Service List (Schools).....	51
Exhibit D:	Acceptance.....	52

1. PURPOSE AND INTENT

- 1.1 Clackamas County, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement does grant to Comcast of Tualatin Valley, Inc.; Comcast of Illinois/Ohio/Oregon, LLC; Comcast of Oregon II, Inc. (hereafter Grantee) a non-exclusive franchise, through _____, 2031, revocable as provided herein, to construct, operate and maintain a cable communications system in the franchise area comprised of a portion of the area within the unincorporated territory of the Grantor.
- 1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.

2. DEFINITIONS

For the purposes of this Franchise Agreement and all attachments included hereto, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used in this franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (Cable Act) shall have the meaning specified in the Cable Act definition.

- a. "Access" or "Community Access" or Public, Educational and Government (PEG) Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the County and its designees, of designated channels on the Cable System to acquire, create, and distribute non-commercial programming not under the Grantee's editorial control.
- b. "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a programmer, without charge by the Grantee, on a non-discriminatory basis.
 - i. "Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.
 - ii. "Government Access Channel" means any channel or portion of a channel available for programming by government agencies.
 - iii. "Public Access Channel" means any channel or portion of a channel where any member of the general public or any non-commercial organization may be a programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules shall not be designed to control the content of public access programming.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds consistent with applicable federal law and regulations, and such fundraising activity shall not in itself constitute a commercial use of access channels.

- c. "Affiliate" When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- d. "Basic Cable Service" means any service tier that includes the retransmission of local television broadcast signals.
- e. "Broadcast Signal" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.
- f. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- g. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operations of such a Cable System.
- h. "Cable Service" means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service covered by the Cable Act.
- i. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the Cable system constructed and operated by the Grantee in the County under this Franchise.
- j. "Channel" shall have the meaning specified in the definition of "Channel" in Section 602 of the Cable Act, 47 U.S.C. Section 522.4.
- k. "County" means Clackamas County, an Oregon statutory County, and all the territory within its boundaries.
- l. "County Commission" means the governing body of the Grantor.
- m. "Converter" means an electronic device for changing the frequency of a television signal.
- n. "FCC" means the Federal Communications Commission.

- o. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.
- p. "Franchise Area" means those portions of the unincorporated area of Clackamas County served by Grantee as of the effective date of this franchise, which are generally shown in Exhibit A.
- q. "Grantee" or "Franchisee" means Comcast of Tualatin Valley, Inc., Comcast of Illinois/Ohio/Oregon, LLC, and Comcast of Oregon II, Inc., and their lawful successors, transferees, or assignees thereof.
- r. "Grantor" means Clackamas County, a statutory County in the State of Oregon.
- s. "Gross Revenues" means and shall be construed broadly to include all revenues derived by Grantee or an Affiliated Entity that is the cable operator of the Cable System from the operation of Grantee's Cable System to provide Cable Services within the County. Gross revenues include, by way of illustration and not limitation:
- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
 - installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
 - fees paid to Grantee for channels designated for commercial leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the County;
 - converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - Advertising Revenues as defined herein;
 - late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the County;
 - revenues from program guides;
 - franchise fees;

- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the County.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the County and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the County allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the County;
- any taxes or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that franchise fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- other fees imposed by any municipality, state or other governmental unit, including Public, Education, and Government (PEG) fees;
- launch fees and marketing co-op fees; and
- unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the County. The County reserves its right to review and to challenge Grantee’s calculations. Late fees will be treated like bundled services as described in this Section.

(D) Grantee reserves the right to change the allocation methodologies set forth in this definition in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the County upon request or as part of any audit or review of franchise fee payments, and any such changes shall be subject to subsection (E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the County reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

- t. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- u. "Monitoring" means observing a one way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- v. "Premium Channel" means a channel on which television signals are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.
- w. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity authorized to do business in the State of Oregon, or any natural person.
- x. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the cable communications system.
- y. "Programming" means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.
- z. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs, to the extent related to the enforcement or administration of this Franchise.

- aa. "Resident" means any natural person residing within the Franchise Area.
- bb. "Residential Service" means services delivered on the residential subscriber network.
- cc. "Residential Subscriber" means a resident who receives services on the residential subscriber network.
- dd. "Residential Network" means a cable communications system or Cable System.
- ee. "School" means any public or private primary or secondary school, college, or university, but excluding home schools and private primary and secondary institutions that are not registered by the State of Oregon pursuant to ORS 354.505-.525.
- ff. "Section" means any Section, Subsection or provision of this Franchise Agreement.
- gg. "Streets and Public Ways" means the surface of and the space above and below any public street, roads, sidewalk, alley, public lands and waterways used as public rights-of-way or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.
- hh. "Subscriber" means a Person who lawfully receives Cable Service over the Cable System with Grantee's express permission.
- ii. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- jj. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year."

3. GRANT OF FRANCHISE

3.1 Grant

Grantor hereby grants to the Grantee a non-exclusive and revocable franchise from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a cable communications system within the Franchise area. This franchise constitutes the authority, right, privilege and obligation to provide Cable Services and other lawful communications services over the facilities of the Cable Communications System as required and conditioned by the provisions of this Franchise Agreement.

This franchise is subject to the laws of the United States and the State of Oregon, and to the general codes of Clackamas County enacted pursuant thereto affecting matters of general county concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. In particular this Franchise supersedes the Grantor's Cable Code and ordinances in any matter in which the Franchise and the Code and ordinances are in conflict. The Grantor shall make a good faith effort to notify the Grantee of any County proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any County laws or regulations affecting Grantee's operations.

Grantee promises and guarantees a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

3.2 Use of Public Streets and Rights of Way

For the purpose of constructing, operating and maintaining a cable communications system in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the cable communications system. Prior to construction or alteration within County road rights-of-way, the Grantee shall in each case request permits as required in Chapter 7.03 of the County Code and file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this section shall relieve the Grantee of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

3.3 Duration and Effective Date of Franchise/Franchise Review

Except as otherwise provided herein for revocation, the term of this franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be ten (10) years from the effective date of this agreement, at which time the franchise shall expire and be of no force and effect. The effective date of the franchise shall be the date of acceptance by Grantee, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

3.4 Franchise Area

The franchise area shall be that area designated on the attached map, Exhibit A. Any future expansions of franchise area as shown on Exhibit A must be approved by the Board of Commissioners, as an amendment to this franchise.

3.5 Franchise Not Exclusive

The franchise granted herein is not exclusive. This franchise shall not be construed as any limitation, subject to the provisions of Section 13, upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways or public places by franchise, permit or otherwise subject to the provisions of Section 13.11 herein.

3.6 Franchise Non-Transferable

Subject to Section 617 of the Cable Act (47 U.S.C. Section 537), no transfer of the Franchise or change in control of Grantee shall occur without the prior written consent of Grantor, provided that such consent shall not be unreasonably withheld, delayed or conditioned. A presumption that a transfer of control has occurred shall arise on the acquisition of accumulation by any person or group of persons of fifty and one-tenth percent (50.1%) or more of the shares or of comparable ownership interest in the Grantee.

No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness, and no such consent shall be required for change in control or transfer of an ownership interest or other interest in Grantee or interest in the Franchise to the parent of Grantee or another Affiliate of Grantee, and any action which is the result of a merger of the parent of Grantee or any action which is the result of a merger of another Affiliate of Grantee. Grantee shall provide written notice to Grantor of any transaction as described in this paragraph within sixty (60) days of such transaction.

If the Grantee wishes to transfer this franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. Grantee shall furnish all information required by law and/or reasonably requested by Grantor with respect to the consideration of the transfer. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial, and technical qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, the Grantor may offer its consent upon such terms and conditions as it deems reasonably appropriate, provided however, any such terms and conditions so attached shall be related to the legal, financial and technical qualifications of the proposed transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with the terms and conditions of this Franchise. Any transfer of ownership effected without the written consent of the Grantor shall render this franchise subject to revocation, provided that any such consent shall not be unreasonably withheld. The Grantor shall have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision

on the request within said one hundred twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within thirty (30) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

3.7 Franchise Acceptance

The Grantee, within sixty (60) days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor, shall file in the office of the Grantor's cable franchise manager a written acceptance executed by the Grantee, in the form attached hereto as Exhibit B. In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

3.8 Competitive Equity

(A) The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises or other authority to provide Cable Service or other multichannel video programming service (as such as provided by a multichannel video program distributor) within the Franchise Area. If any additional competitive franchise is granted by the Grantor to provide Cable Service or other multichannel video programming service in the Grantee's Franchise Area pursuant to the Cable Act, which franchise contains material terms and conditions that are more favorable or less burdensome terms or conditions than this Franchise Agreement, then, except to the extent that state or federal laws or regulations permit or require more favorable or less burdensome terms or conditions, the Grantor agrees that it shall amend this Franchise to ensure that, considering all the circumstances including any limitations on its regulatory authority, the material provisions of such other franchises and this Franchise are, taken together, materially equivalent to the extent required by law. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity. The parties agree that, notwithstanding any provision of this subsection 3.9, the Grantor shall not be obligated to comply with the provisions of this subsection to the extent doing so would cause the Grantor to violate applicable laws or FCC rules. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) In the event that a competitive franchise is granted by Grantor as described in Section 2.6(A) above which contains material terms and conditions that are more favorable or less burdensome than the terms of this Franchise, and notice thereof is duly provided to Grantee, the Grantee shall submit to Grantor in writing (1) the basis for Grantee's belief that certain provisions of its Franchise place Grantee at a competitive disadvantage; (2) the provisions of this Franchise to be amended; and (3) specific language modifying any such Franchise provisions. Grantor and Grantee shall negotiate in good faith such amendments to the Franchise within ninety (90) days, unless otherwise agreed to by the parties. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation and the other agrees to participate in mediation in good faith. Each party shall bear its own cost for mediation. In the event the parties are not able to reach agreement in informal negotiations or mediation, Grantee may exercise its rights under Subsection (C) below.

(C) Grantee's notice to Grantor under this Subsection (C) shall be deemed to be Grantee's renewal notification pursuant to Section 626 of the Cable Act. Grantee may elect at any time prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by 47 USC §546 to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Grantee's Franchise shall, ninety (90) days from the Grantee's written notice, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date of Grantee's notice. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the Grantor required. The Grantor and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The Grantor and Grantee shall have all rights and obligations provided under said Section 626 (47 U.S.C. Section 546).

4. CONSTRUCTION AND SERVICE REQUIREMENTS

4.1 General

As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.

Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor ordinances and codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible

and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of Street cuts.

4.2 Right of Inspection of Construction

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with construction or installation standards of this Franchise Agreement and other pertinent provisions of law.

4.3 Availability of Residential Service

4.3.1 Density for Normal Extension of Service

The Grantee shall make service available to every potential subscriber:

- 1) Whose dwelling is one of a minimum of twenty (20) dwelling units per cable mile, or six (6) dwelling units per 1/4 mile, from the nearest existing cable plant; or
- 2) existing cable plant would pass an average of twenty (20) homes per cable plant mile.

No charge shall be made by the Grantee to subscribers for: the extension of the cable system under this subsection; nor the provision of a cable drop to the premises of any subscriber requesting service, so long as the drop does not exceed 125 (one-hundred twenty-five) feet in length. However, nothing in this section shall prevent the Grantee from imposing the normal, published installation charge to any subscriber.

4.3.2 Isolated Areas

Potential subscribers requesting service but not entitled to availability of service under Section 4.3.1 shall be provided service under the following circumstances, through contractual agreement between the Grantee and the person requesting service for payment of line extension construction costs:

- 1) Grantee shall provide service at its normal, published installation charge for the initial 125 (one-hundred twenty-five) feet of extension.
- 2) The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over 125 (one-hundred twenty-five) feet but less than five hundred (500) feet.
- 3) The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.
- 4) The amount of cable extension as measured in feet, which is the basis for the cost sharing, will be computed as follows:

The starting point shall be a point at the nearest reasonably usable existing cable plant using public right-of-way, exclusive of a street crossing; provided that the Grantee shall make a reasonable effort to secure and use private rights of way if the use of such rights of way reduces the cost of the line extension to the subscriber. The actual length of cable needed from the starting point to the subscriber's home shall be the total number of feet. The cost of the project from the starting point to the home shall be divided by the total number of feet. The resultant cost per foot shall be used to compute each party's share. Street bores or crossings needed to bring the existing cable plant to the requesting subscriber's side of the street shall be included as part of any line extension greater than 125 (one-hundred twenty-five) feet, otherwise these costs shall not be charged to the subscriber.

4.3.3 New Subdivisions

- 1) Subject to Sections 4.3.1 and 4.3.2 and reasonable access provided to Grantee by developer or owner of the subdivision, Grantee will be required to build, activate, proof and sell cable in new subdivisions within sixty (60) days of the time when fifty percent (50%) of the subdivision's potential dwelling units have been issued building permits, or twenty-five percent (25%) of the subdivision's potential dwelling units have contracted for cable television service, whichever is less.
- 2) Grantee shall be responsible for ascertaining building permit activity in new subdivisions.
- 3) Where jurisdictional approval of a subdivision includes provision for the construction of separate phases of the subdivision, each phase will be considered a separate subdivision for the purpose of this section.

4.3.4 Annexation

In the event any portion of the Franchise Area is annexed by a city, resulting in that portion having two or more cable communications franchises, then to the extent permitted by law, the Grantee's rights hereunder shall continue in effect but the Grantee shall not be required to construct a cable system passing the same homes as are passed by an existing cable system operating under the authority of an existing city franchise.

4.4 Erection of Poles

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions,

and shall comply with all applicable ordinances, resolutions, rules and regulations of the Grantor.

4.5 Trimming of Trees or other Vegetation

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming shall be done only in accordance with the codes and other rules and regulations of Grantor and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in this Franchise Agreement shall be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

4.6 Repair and Restoration of Streets, Public Ways and Grounds

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, other public way or ground for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. When any opening is made by the Grantee in any hard surface pavement, in any street alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor may refill and/or repave in case of neglect of the Grantee; provided that Grantor first notifies and provides Grantee fifteen (15) days to cure, unless additional time is granted in writing by the Grantor. The cost incurred by Grantor including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and codes of Grantor as now or hereafter in effect.

4.7 Construction Codes

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question.

4.8 Reservations of Street Rights

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable

notice from the Grantor all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee, to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Street Vacation and Abandonment

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done provided that Grantor first notifies and provides Grantee fifteen (15) days to cure, unless additional time is granted in writing by the Grantor. The cost incurred by Grantor including the cost of inspection, supervision and administration shall be paid by the Grantee.

4.10 Movement of Facilities

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation provided that Grantor first notifies and provides Grantee fifteen (15) days to cure, unless additional time is granted in writing by the Grantor. The cost incurred by Grantor including the cost of inspection, supervision and administration shall be paid by the Grantee.

If public or private funds, other than the funds of Grantor, including passed-through funds, are made available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the relocation of facilities as provided under Sections 4.9, 4.10 and 4.12 hereof, Grantee shall be afforded equal treatment subject to applicable law and regulations and Grantor shall, upon written request of the Grantee, use its best efforts to make application for such funds on behalf of the Grantee.

4.11 Easements

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

4.12 Undergrounding

- a) Cable must be installed underground where (1) all existing utilities are placed underground, (2) statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground, (3) overhead utility lines are placed underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise), (4) Grantee is unable to get or maintain proper clearances, (5) underground easements are obtained from developers of new residential areas, or (6) utilities are overhead but residents prefer underground (service to be provided at cost to resident).
- b) Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with utility companies or providers, common trenches for underground construction wherever available.

4.13 As Builts

Grantee shall maintain strand map drawings of the system or the functional equivalent of the Cable System, and make them available to the Grantor for inspection upon request. Strand drawings or their functional equivalent shall be updated as changes occur in the Cable System. The Grantee shall make available to the Grantor, on request, a copy of strand maps showing the location of the Grantee's facilities in the streets and public ways within the Franchise Area. Material marked "Confidential" may be viewed at Grantee's local offices and may be released pursuant to a Non-Disclosure Agreement with an agent of the Grantor.

4.14 Emergency

In the event of a situation or circumstance which creates or is contributing to an imminent danger to health, safety or property, the Grantor, may remove or relocate Grantee's cable system without prior notice. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.14.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 Equal and Uniform Service

Reasonable efforts shall be made to provide equal and uniform access, Cable Service and rates to residential and business customers within the Franchise Area to the extent required by this Franchise, Applicable Law and Regulation. Nothing in this Section shall preclude Grantee from negotiating reduced or bulk rates with business customers.

5.2 System Configuration

The communications system shall consist, at a minimum, of a residential network with bidirectional communications capacity for subscriber interaction if any, required for selection or use of Cable Service, including but not limited to pay-per-view, VOD and other interactive cable services as determined by Grantee.

5.3 Channel Capacity

The residential cable system shall maintain a minimum channel capacity of the equivalent of one hundred and twenty (120) activated Channels. The system shall throughout the franchise term carry reverse signals in the upstream direction. The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the Portland Metropolitan area.

5.4 Satellite Earth Stations

Grantee shall maintain adequate facilities throughout the life of the franchise to enable Grantee to carry out its obligations under this Franchise.

5.5 Interconnection

- a) Grantee shall continue without limitation all interconnections in effect on the effective date of this Franchise.
- b) Grantee shall interconnect the Cable System with any cable system in a geographically adjacent system (meaning a cable system that adjoins or overlaps with the Franchise Area), not owned or operated by Grantee or an affiliate of Grantee, upon the directive of the Grantor, for the purpose of permitting the transmission of PEG Access programming signals between the systems, and the carriage of such signals on the PEG Access Channels. The Grantor shall not direct interconnection in this case except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. Grantee shall not be required to interconnect with the other cable system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect up to the demarcation point, which shall be at a meet point located at or near the border of the neighboring jurisdictions, except as may otherwise be agreed by the parties. Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost-effective and technically viable interconnection of the PEG

Access Channel signals. Grantee agrees to not object to or impede any connection established by a Grantor designated access provider, whether on the property of the Grantor, a designated access provider, or another cable operator, by means of which another cable operator obtains access to the PEG Access Channels, and not to object or impede the transmission of such signals by any other cable operator. The Grantee shall not charge the other party a fee for PEG programming in connection with transporting PEG signals or programming on Grantee's Cable System to the meet point or other location agreed upon between Grantee and the other cable operator.

- c) Grantee shall interconnect the Cable System with any cable system that is geographically adjacent to the Franchise Area that is owned or operated by Grantee or an affiliate of Grantee, for the purpose of permitting the transmission of PEG Access programming signals between the systems, and the carriage of such signals on the PEG Access Channels throughout the Franchise Area. The interconnection shall be done at Grantee's sole expense. If the Grantor after the effective date of this Franchise Agreement requests that its Government Access programming be carried on Grantee's other cable systems that are not geographically adjacent to the Franchise Area or that are outside the Franchise Area, Grantor shall be responsible for all costs associated with its request, provided that such request is technically viable and does not require additional channel space or obligation in Grantee's other cable systems not geographically adjacent to or outside the Franchise Area.
- d) In the event the Grantor designated cable operator with authority to construct a cable system to the PEG origination points within the Franchise Area opts not to connect at the origination points and instead requests access to PEG Access Channels through an interconnection with Grantee's facilities within the Franchise Area, including within Grantee's headend or facilities, Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost-effective and technically viable interconnection at the PEG Access Channel signals.
- e) Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may after consultation with Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- f) Nothing in this Section alters Grantee's Channel obligations for Access programming or the number of designated Access Channels delivered to Residential Subscribers on Grantee's Cable System. Unless the Grantor directs otherwise, or an affected jurisdiction objects, any interconnection shall allow Access Channels to operate without disruption or delay across and within the Franchise Area.
- g) It is Grantee's responsibility to ensure that the signals it transmits by means of any interconnection suffer no material degradation when compared to the quality of the signals as received from the designated access providers. It is not the Grantee's responsibility to ensure that the

signals provided to the interconnect by another interconnecting system meet industry standards.

- h) Any equipment and construction costs borne by Grantee in connection with the obligation to provide for PEG Access Channel interconnection shall be considered "external cost" as such term is used in 47 C.F.R. § 76.922 on the date of this Franchise, and as such, the cost is permitted under federal law and regulation to be passed through to Subscribers, to the extent and in a manner provided for in federal regulations governing the same. The costs of interconnection shall be in addition to any PEG capital contribution made by Grantee pursuant to 6.6.2 hereof, and shall not be deducted from the amount of such contribution.

5.6 Emergency Alert Capability

- a) Grantee shall provide Emergency Alert capability in full compliance with applicable FCC requirements. Grantee and the County shall establish procedures to override video and audio on all Channels of the Cable System to provide emergency messages consistent with the FCC's directives.
- b) The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the cable system or the EAS including, but not limited to, reasonable attorneys' fees. Additionally, subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 5.6(b).

5.7 Standby Power

Grantee shall provide standby power generating capacity at the cable communications system control center and all hubs and any fiber optic nodes. Grantee shall maintain standby power system supplies, rated at least at four (4) hours duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place and shall have filed with the Grantor throughout the Franchise term, a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours.

5.8 Status Monitoring

Grantee shall continue to utilize status monitoring of the cable system which can continually monitor the system for signal quality on the forward and return spectrums of the system. In addition, the Grantee shall maintain status monitoring for all power supplies in its headend(s) and hub(s) as well as the distribution system.

Status monitoring shall be capable of notifying the Grantee, 24/7 of system problems including utility power outages that will negatively affect its customers.

5.9 Parental Control Lock

Grantee shall provide subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any channel.

5.10 Technical Standards

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply, and may be enforced by the Grantor. The Grantor may establish and enforce higher or additional reasonable technical standards, following consultation with the Grantee, to the extent that applicable law allows the Grantor to do so without the consent of the Grantee.

- a) Residential Network, Forward Signals. The residential network shall be capable of carrying a minimum of one hundred and twenty (120) video Channels. The combined forward trunk and distribution system shall deliver signals to each subscriber's television receiver that meet or exceed applicable FCC specifications on each and every video channel.
- b) Reverse Signals. The reverse system of the residential network shall have the capability of providing return signals from any subscriber terminal to the head end of the system which is intended to receive the return signals. The system capability includes transmission of digital or data signals.

5.11 Performance Testing.

Grantee shall perform all system tests required by the FCC and the County, and all other tests reasonably necessary to determine compliance with technical standards required by this franchise. These tests shall include, at a minimum:

- Initial proof of performance for any construction
- Semi-annual compliance tests, regarding FCC digital performance and other applicable standards
- Tests in response to subscriber complaints
- Tests requested by the Grantor to demonstrate franchise compliance.

Written records of all system test results performed by or for the Grantee shall be maintained, and shall be available for Grantor inspection, or a copy provided to Grantor, upon request.

All testing required in Section 5.11 may be observed by representatives of the Grantor. Grantee will provide reasonable notice to the Grantor in advance of the scheduled testing date(s), and the Grantor will then notify Grantee before such testing is scheduled to occur if it desires to observe such test(s).

Grantee shall promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested following correction.

The Grantor may conduct independent tests of the system for which the Grantee shall give its fullest cooperation.

6. SERVICES AND PROGRAMMING.

6.1 Programming Categories.

To the extent Grantor has regulatory authority under federal law, Grantee shall provide video programming services in at least the following broad categories:

1. News & Information
2. Sports
3. General Entertainment
4. Arts, Culture, Performing Arts
5. Children / Family
6. Science
7. Travel Information
8. Weather Information
9. Governmental and Educational Programming
10. Movies
11. Religious Programming
12. Foreign language / Ethnic Programming

The identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable Communications System, except for PEG Access programming, as further described herein.

6.2 Changes in Video Programming Services.

Grantee shall provide written notice to the County and to subscribers for any proposed deletions, additions, or rearrangements of individual programming service at least thirty (30) days in advance. The County reserves the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level and quality of service.

6.3 Leased Channel Service.

The Grantee shall offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

6.4 Obscenity.

The Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, or the State of Oregon, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

6.6 Public, Educational and Government Use of System.

6.6.1 Channels.

- 1) Grantee shall provide to the Grantor, for independent administration by the Grantor or its designee throughout the term of the Franchise, one (1) Government channel, one (1) Public Access channel (WFMC or other Designated Access Provider DAP), and two Educational channels, for a total of four (4) Access Channels to be cablecast throughout the Franchise Area. The Government channel may be used for Government programming based on policy or need. The Public channel may be used for general public programming. The Educational channels may be used for general educational programming, such as Community College programming and/or K-12 programming. All PEG Channels will be included at a minimum, on Grantee's Basic Cable Service, and be available to all subscribers, regardless of their service level and whether service is provided in SD format or HD format.
- 2) Upon one hundred twenty (120) days' days written notification by Grantor, Grantee shall convert one (1) of the four (4) PEG channels provided under this franchise agreement to high definition (HD), which shall also be simulcast in standard definition (SD). Two (2) years after the effective date of this agreement, or upon the Grantor's complete contribution of PEG capital access funds as set forth in Section 6.6.2, whichever occurs first, and upon one hundred twenty (120) days' notice, Grantee shall convert one (1) additional PEG channels to high definition (HD), which shall also be simulcast in standard definition (SD) format as long as the channel to be converted has averaged twenty (20) hours of original locally produced programming per month, for three consecutive months prior to the written notification.
 - (a) For purposes of this subsection 6.6.1.2, "Original Local Programming" means Programming in its initial cablecast on the Cable System and in its first, second or third repeat. Original Local Programming shown on one HD access channel, as Original Local Programming, cannot be used to meet the hourly requirement for Original Local Programming for the second HD channel provided for in 6.6.1.2 above.
- (3) At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all SD Access Channel Signals will also be carried by Grantee in HD, at which time the SD Channels will be discontinued and the maximum number of PEG Access Channels shall be four (4) HD Channels.

- (4) The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 6.6.1.

6.6.2 Support for Access Costs.

Grantee shall provide the Grantor \$.80 cents per month, per Residential Subscriber in the Franchise Area currently collected and paid to Grantor,, , for capital costs related to public, educational, and governmental access including but not limited to equipment acquisition or replacement, or such lesser amount if authorized by Grantor. The Grantee shall make such payments quarterly, following the effective date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.

If Grantor enters into a franchise agreement or amends an existing franchise agreement with another cable operator after the effective date of this Franchise to provide Cable Service in all or any portion of the Grantee's Franchise Area that includes PEG financial support calculated based on a per month, per residential subscriber basis that is less than \$.80 cents per month, per residential subscriber, then Grantee shall be entitled to reduce the PEG contribution to match that of the other cable operator or operators.

In addition to Grantee's contribution to capital costs related to public, educational, and governmental access (PEG), including and not limited to equipment acquisition and replacement, Grantor shall, during and before the end of this contract, contribute five hundred and twelve thousand and nine hundred and ninety dollars (\$512,990) to be used for PEG capital costs.

The Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under this Section 6.6.2. The annual report shall be submitted to Grantee within 120 days of the close of the Grantor's fiscal year, which fiscal year runs for 12 consecutive months from July 1 to and including June 30, and shall include details of amounts contributed by Grantor during said fiscal year to the PEG capital fund. Grantee may review records of the Grantor regarding the use of funds described in such report. The Grantor agrees that the report shall document the amounts spent or encumbered for operating support for PEG access.

6.6.3 Access Support Not Franchise Fees.

- 1) The Grantee agrees that financial support for Access arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect the Grantee's obligations to pay franchise fees to the Grantor. The Grantee agrees that although the sum of Franchise Fees and the payments set forth in this Section may total

more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Franchise Agreement.

- 2) The Grantor recognizes franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Franchise Agreement and the Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

6.6.4 Limitation on Free Service

1) The parties acknowledge that as of the Effective Date of this Franchise Agreement, Grantee continues to provide Complimentary Services to certain schools, libraries, and public institutions within the Franchise Area, as set forth in Exhibits "B" and "C". In the event Grantee elects, to the extent permitted by Applicable Laws, to invoice the Grantor for Complimentary Services, Grantee agrees that it will do so only after providing County, and other entities receiving complimentary connections, with one hundred twenty (120) days' prior written notice.

The Grantor shall have the right to discontinue the receipt of all or a portion of the Complimentary Services provided by the Grantee in the event Grantee elects to impose a charge against the Grantor for the Complimentary Services as set forth in the preceding paragraph.

Grantor does not waive any rights it may have now or in the future regarding complimentary service, PEG transport maintenance costs, or other services or infrastructure that the FCC has concluded are in-kind requirements subject to franchise fee offset as of the Effective Date of this Agreement or any other requirements provided for in this Franchise Agreement. If, as the result of future action by the FCC, federal law or through judicial review, such services are no longer considered to be "franchise fees" under 47 USC §542, then the Grantor may require Grantee to provide such services without charge to the complimentary service locations set forth in Exhibits "B" and "C".

2) **PEG Monitoring** – Notwithstanding 1) above, Grantee shall continue to provide the capability, without charge, for the Access Channel Provider locations listed in Exhibits B and C, designated by "PM", to monitor and verify the audio and visual quality of PEG Channels received by Subscribers. This will include equipment consistent with that deployed to residential cable Subscribers that will allow the Access Channel Providers to verify the accuracy of EPG listings for the PEG Channels and that such Channels have the full functionality on the Cable System as other Channels.

6.6.5 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment at its facilities to ensure that the capabilities of Access Providers or Access Programmers are not diminished or adversely affected by such change. Designated Access Providers shall be responsible for acquisition of necessary equipment at their respective facilities.

6.6.6 Technical Quality.

- 1) Grantee shall maintain all Upstream and Downstream Access Channels and interconnections of Access Channels at the same or better level of technical quality and reliability provided for its Residential Network and required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels.
- 2) Grantee shall have no responsibility for the technical production quality of the Access programming distributed on the Access Channels.
- 3) The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS

7.1 Intent

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. Grantor may delegate all or a part of its administrative and regulatory authority under this franchise to an agency designated by the Grantor.

7.2 Areas of Regulation and Administration

The Grantor (or its designee) has authority for regulation in the following areas:

- a) Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- b) Coordination of the operation of public, government and educational access channels.

- c) Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as County departments, schools and health care institutions.
- d) Formulating and recommending long-range cable communications policy for the franchise area.
- e) Disbursing and utilizing franchise revenues paid to the Grantor.
- f) Regulating rates, to the extent permitted by law.
- g) Customer service, to the extent permitted by law.
- h) Planning and facilitating development of public uses of the cable system on the residential networks, both within the County and through interconnection with adjacent systems.

7.3 Rate regulation

- a) Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all subscribers within the Franchise Area at least thirty (30) day notice of proposed rate changes, as required by FCC. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns.
- c) Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all subscribers purchasing similar services regardless of race, color, creed, sex, marital or economic status, age, national origin, or sexual preference, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income subscribers or elderly subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- d) The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Act of 1984), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantee and Grantor in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

7.4 Remedies for Franchise Violations

- a) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

The date of the violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case penalties shall accrue from the date Grantee knew or should have known of the violation. Without limiting the foregoing, Grantee is presumed to know whether it violated a customer service standard that is measured based upon aggregate performance.

Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:

- 1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;
 - 2) Cure the violation, or;
 - 3) Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (c) below.
- b) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (g) of this section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.
- c) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (b), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.
- d) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (a)(1) the Grantor shall set a hearing within sixty (60) days of

the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what penalties shall be applied.

- e) In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- f) If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
 - 1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - 2) Establish the amount of liquidated damages, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
 - 3) In the case of a substantial material default of a material provision of this Franchise, revoke this Agreement, and/or
 - 4) Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

The determination as to whether a violation of this Franchise Agreement has occurred shall be within the sole discretion of the Grantor, and shall be in writing. Grantee may appeal the decision of Grantor to a court of competent jurisdiction as provided by Oregon law.

- g) Subject to Grantee's right to cure as provided in this Section, in the event that Grantor determines that Grantee has violated any material provision of this Franchise as provided herein, Grantor may assess as liquidated damages up to \$500.00 per incident for a non-continuing violation and up to \$1,000.00 per incident for a continuing violation, not to exceed \$65,000.00 per year. For the purpose of this Section, the term "per incident" means a single occurrence of a violation without regard to number of customers.

If within 30 days after written receipt of notice of any asserted violation from the Grantor the Grantee corrects the asserted violation, or if correction is not reasonably possible with the 30 day period, the Grantee initiates good faith efforts satisfactory to the Grantor within the 30 day period to cure the asserted violation and the efforts continue in good faith, then no liquidated damages or other remedy shall be imposed.

The liquidated damages set forth in this section of this Franchise may be reduced or waived at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- 1) Whether the violation was unintentional;
- 2) The nature of any harm which resulted;
- 3) Whether there is a history of overall compliance, and/or;
- 4) Whether the violation was voluntarily disclosed, admitted or cured.

Grantor shall provide Grantee with written notice that it intends to elect liquidated damage remedies set forth herein. If Grantor elects to recover liquidated damages for any item set forth in this Section, Grantor agrees that such recovery shall be its exclusive remedy except for Grantor's right to seek specific performance for the time period in which liquidated damages are assessed, provided, however, once Grantor has ceased to assess liquidated damages as set forth in this Section, Grantor may pursue any other available remedies.

Grantee shall pay any liquidated damages assessed by Grantor within 30 days after they are assessed. If penalties are not paid within that time period, Grantor may pursue enforcement proceedings pursuant to this Section 7.4.

7.5 Remedies Not Exclusive

Except as provided in Section 7.4 of this Franchise Agreement, Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 7, and may without limitation pursue any rights, remedies or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

7.6 Consumer Protection Standards

The Grantee shall meet minimum Federal Consumer Protection Standards and the customer service standards set forth herein shall be binding unless amended by written consent by the parties. The term "normal operating conditions" shall mean those service conditions within the control of Grantee as defined under 47 C.F.R. Section 76.309 (c)(4)(ii).

7.6.1. Customer Service and Telephone Responsiveness

- 1) The Grantee shall maintain an office within Clackamas County. The office must be adequately staffed and able to respond to subscribers and the public not less than fifty (50) hours per week, with a minimum of nine (9) hours per day on weekdays and five (5) hours on Saturdays. Grantee shall have the option to substitute the office requirement by providing for pick up or drop off of equipment free of charge in any one of the following manners: (a) by having Grantee representative going to the customer's residence, (b) by using a mailer, or (c) by establishing or using a local business office in Clackamas County.

- 2) As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
- 3) Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational twenty-four (24) hours a day, including weekends and holidays.
- 4) The Grantee shall maintain, on average as verifiable by statistical data, sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers measured as follows:
 - a) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time during any quarter.
 - b) Under normal operating conditions, telephone answer time by a trained customer representative, including wait time, shall not exceed thirty (30) seconds. Grantee may use an Automated Response Unit ("ARU") or Voice Response Unit ("VRU") in answering and distributing calls from customers. If a foreign language option is provided, and the subscriber does not enter an option, the menu may default to the first tier menu of English options. After the first tier menu (not including a foreign language rollout) has run through three (3) times, if customers do not select any option, the ARU or VRU may forward the call to a queue for a live representative. Grantee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Measurement of this standard shall include all calls received by Grantee from subscribers whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If a call needs to be transferred, transfer time shall not exceed an additional 30 seconds.

7.6.2 Service and Repair Calls.

- 1) Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be responded to, and repairs must commence within twenty-four (24) hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises

work must be completed within twenty-four (24) hours under normal circumstances. All other repairs should be completed within seventy-two (72) hours under normal circumstances.

- 2) Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request the Grantee shall offer either a specific appointment time or a pre-designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, and after 5:00 p.m.

The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

- 3) As a normal operating procedure, and with particular regard to the needs of working or mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).
- 4) Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this Section, shall mean those that are located up to one-hundred twenty-five (125) feet from the existing distribution system.

7.6.3 Disconnection

- 1) The Grantee may disconnect a subscriber if:
 - a) at least thirty (30) days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and
 - b) the Grantee has provided at least ten (10) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.

- 2) Regardless of Subsection 1 hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, is abusive or threatening to employees or representatives, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.

Nothing in these standards shall limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior towards Grantee's employees and representatives, or, unless prohibited by law, refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.

- 3) The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, within thirty (30) days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any disputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

7.6.4 Credits Upon Outage

Except for planned outages where subscribers are provided reasonable notification in advance, upon a subscriber's request the Grantee shall provide a pro-rated twenty-four (24) hour credit to the subscriber's account for any period of four (4) hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the system.

7.6.5 Downgrade Charges

Grantee may impose Downgrade Charges in a manner consistent with applicable law.

7.6.6 Billing Information Required

The Grantee's bill to subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefore. The Grantee shall make its best effort to inform subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

7.6.7 Information to Subscribers

- 1) Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:
 - a) the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
 - b) the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;
 - c) the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
 - d) the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
 - e) The company's practices and procedures for protecting against invasions of subscriber privacy;
 - f) service termination policy;
 - g) billing procedures shall be clearly explained in the manual and in addition, the company's phone number for information and requesting the manual shall be placed on the part of the bill retained by customers;
 - h) the notice and referral information, as set forth in Subsection 2 hereof;
 - i) liability specifications;
 - j) converter/subscriber terminal policy; and
 - k) breach of agreement policy.
- 2) Notice to Subscribers.
 - a) The Grantee shall inform the Grantor and subscribers within thirty (30) days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.
 - b) All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee prepared promotional materials must clearly and

accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.

- c) Grantee must provide the name, address and phone number of the Grantor on subscriber's monthly bills unless Grantor, in writing, requests that such information be omitted.

3) **Written Complaint Acknowledgment.**

Within ten (10) days following receipt of a written complaint, received at the Grantee's principal business from a subscriber or the Grantor, the Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the County, such as the FCC.

7.6.8 Complaint Resolution

- 1) The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not settled the complaint of the person initiating the complaint.
- 2) For purposes of this section, a "complaint" is a grievance received by Grantee pursuant to Section 7.6.7(3) of this Franchise related to Cable Service provided within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

7.6.9 Failure to Resolve Complaints

If Grantee fails to resolve a complaint within thirty (30) days following the date on which a complaint was made to the Grantor and communicated to Grantee, then Grantee shall be deemed in violation of the Franchise, and Grantor may assert any of the remedies set out in Section 7.4 and Section 11.

8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Compensation

a) Franchise Fee.

As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a cable communications system within the Franchise Area and to defray the costs of franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of the Gross Revenues through the operation of the cable system under this Franchise. In the event any law or valid rule or regulation applicable to this franchise limits franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

Within 30 days of a request from Grantor, Grantee will make available an up-to-date list of all affiliated entities receiving Gross Revenues as such revenues are defined in this Franchise.

In the event the obligation of Grantee to compensate Grantor through franchise fees is lawfully suspended or eliminated, in whole or in part, then the Grantee shall pay to Grantor compensation equivalent to the compensation paid to Grantor by other similarly situated users of the streets for Grantee's use of the Streets, to the extent Grantor has the legal right to require such compensation.

b) Bundling

If Cable Services subject to the Franchise fee required under this Franchise are sold to Subscribers in conjunction with non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Grantee, in accordance with applicable FCC or state rules, regulations, standards or orders. Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise fee obligations to Grantor.

c) Payment of Franchise Fees.

1) Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. At the time of quarterly payment, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all Gross Revenues related to operation of the cable system

franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.

- 2) No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and re-computation by Grantor.
- 3) In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.
- 4) Payment of the franchise fees under this Franchise Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

8.2 Faithful Performance Bond

- a) Within 60 days of the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor in the total sum of one hundred fifty thousand dollars (\$150,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.
- b) Grantee shall pay all premiums charged for any bond required under Section 8.2 (a), and unless the County Commission specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
 - 1) The remaining term of this Franchise; or
 - 2) If required by the Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- c) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. The bond shall be subject to the approval of the Grantor's Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor.

- d) In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the Grantor substantially the same rights and guarantees provided by a faithful performance bond.

8.3 Damages and Defense

- a) The Grantee shall defend, indemnify and hold harmless Grantor and its officers, agents, and employees, from and against all claims and damages including but not limited to attorney fees, arising as a result of construction, operation and maintenance of the Cable System, the provision of Cable Services or otherwise under this franchise, except for the negligent or grossly negligent acts of the Grantor, its officers, agents and employees, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise. Grantor shall give Grantee prompt written notice of any claim subject to this Section 8.3. Grantor may retain its own separate counsel at its sole cost and expense.
- b) If the Grantee fails to defend as required in Section 8.3 (a), above, then the Grantee agrees to and shall pay all expenses incurred by Clackamas County, and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in Section 8.3 (a), above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the value of any services rendered by any employees of the Grantor.

8.4 Liability Insurance and Indemnification

- a) The Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:
- b) The insurance shall provide coverage at all times for not less than \$1,000,000 for personal injury to each person, \$1,000,000 aggregate for each occurrence, and \$500,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. The insurance shall be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in Subsection b) of this Section shall be increased from time to time to the extent necessary to provide coverage at least as great as the limits on the County's liability under the Oregon Tort Claims Act.

The evidence of coverage for Workers' Compensation shall show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least \$1,000,000

Any insurance carrier shall have an A.M. Best rating of A or better, and be authorized to do business in the State of Oregon.

- c) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the County and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- d) The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 without thirty (30) days written notice first being given to the Grantor. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- e) Grantee shall file within sixty (60) days of the effective date of this Franchise and shall maintain on file with the Grantor a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the County Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 8.4. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.

The certificate shall show that the general liability portion of the insurance includes:

- 1) Broad form property damage;
 - 2) Products and completed operations;
 - 3) Explosion, collapse, and underground exposures;
 - 4) Contractual liability; and
 - 5) Owners and contractors protective coverage.
- f) Failure to maintain adequate insurance as required under this Section 8.4 shall be cause for immediate termination of this Franchise by the County.

- g) The Grantee shall also indemnify, defend and hold harmless the County and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

9. RIGHTS RESERVED TO GRANTOR

9.1 Grantor Acquisition of the Cable System

The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Franchise Agreement diminish the rights of either the Grantor or the Grantee under Section 627 of the Act, and any provision of this Franchise Agreement that purports to diminish such rights shall be deemed superseded by the Act.

9.2 Right to Perform Franchise Fee Audit

The Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's and any of its Affiliates' books and records for the sole purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of three percent (3%) or more in franchise fees than required by this Franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the cost of the audit up to \$15,000.00.

The Grantor agrees to require a third party auditor to execute a nondisclosure agreement with Grantee in connection with any such audit if the auditor will have access to Grantee's confidential or proprietary information.

9.3 Right of Inspection of Construction

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law.

9.4 Intervention

The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is a party which may have a direct adverse effect upon the construction, upgrade, maintenance or operation of the Cable System.

9.5 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its revocation, as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the cable system from all streets and public ways within the Franchise Area. If the Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this Section, the Grantee, by written notice to the Grantor, may elect to abandon underground cable in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned cable; except that the Grantor may nevertheless, by written notice, require the Grantee to remove cable as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

9.6 Inspection of Facilities

Grantor may inspect upon request any of the Grantee's facilities and equipment to confirm compliance with this Franchise Agreement at any time upon at least twenty-four (24) hour notice, during regular business hours, or, in case of an emergency, upon demand without prior notice.

10. RIGHTS OF INDIVIDUALS PROTECTED

10.1 Discriminatory Practices Prohibited

- a) The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, programmers, or persons on the basis of race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- b) The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all subscribers, regardless of disability, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.
- c) For hearing impaired customers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- d) Upon request by a subscriber or potential subscriber, the Grantee shall make a reasonable effort as determined by Grantor and as required by the Federal Government to provide information required under Section 7.6.7 or

otherwise provided in the normal course of business, in both English and the primary language of the requestor.

- e) Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

10.2 Unauthorized Monitoring or Cable Tapping Prohibited

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, without the subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the tapping.

10.3 Privacy and Other Rights

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any subscriber, programmer, or person resulting from any device or signal associated with the cable communications system. The Grantee shall not place in the building, structure or any facility of any subscriber any equipment capable of two-way communications, without the written consent of the subscriber, revocable at the discretion of the subscriber, and shall not utilize the two-way communications capability of the system for unauthorized or illegal subscriber surveillance of any kind. For purposes of this subsection, tenants who occupy premises shall be deemed to be subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any subscriber by Grantee as a condition of receiving any other cable service.

10.4 Permission of Property Owner Required

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

10.5 Sale of Subscriber Lists and Personalized Data Prohibited

The Grantee shall be subject to 47 U.S.C Section 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of subscriber privacy.

11. TERMINATION AND EXPIRATION

11.1 Revocation

Should the Grantor seek to revoke this Franchise after following the due process procedures set forth Section 7.4 of this Franchise, including the public hearing described therein, the Grantor shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek revocation of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing at Grantee's request and expense.

Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to affect any cure. If the Grantor determines that the Franchise shall be revoked, the Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the Grantor to an appropriate court, which shall have the power to review the decision of the Grantor in accordance with Oregon law. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.

The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a is applicable to this Franchise Agreement.

11.2 Renewal

Upon expiration of the Franchise, Grantor and Grantee agree that any proceedings undertaken by Grantor that relate to the renewal of this Franchise shall be governed by and comply with the renewal provisions of Section 626 of the Cable Communications Policy Act of 1984, as amended from time to time (47 U.S.C. Section 546). It is not intended that this Franchise diminish the rights of either the Grantor or the Grantee under the Act, and any provisions of this Franchise that purports to diminish such rights shall be deemed superseded by the Act.

Grantor shall notify Grantee of all of its assessments regarding the identity of future cable related community needs and interests taking into consideration the costs thereof, as well as the past performance of Grantee under the then current Franchise term, to the extent such assessments are conducted pursuant to Section 626 of the Cable Act. Grantor further agrees that such assessments shall be provided to Grantee promptly so that Grantee has adequate time to submit a proposal under said Section 626 and complete renewal of the Franchise prior to expiration of the its term.

Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Grantor and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof

Grantee and Grantor consider the terms set forth in this Section 11.3 to be consistent with the express provisions of 47 U.S.C. Section 546.

11.3 Continuity of Service Mandatory

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to upgrade, rebuild, modify, or sell the system, the Grantee shall make its best effort to ensure that all subscribers receive continuous uninterrupted service.

12. OPERATION AND MAINTENANCE

12.1 Open Books and Records

The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time upon reasonable notice, all records of the Grantee relating to the provision of Cable Service under this Franchise, which relate to the operation of the cable system within the Franchise Area. Access to such records shall be maintained or made available at no cost to the Grantor within Clackamas County or at Grantee's local business office during normal business hours (if maintained locally) or provided within ten (10) days of notice from the County for such records (if not available locally). Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information", nor on the basis that they contain trade secrets unless the Grantor

cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure. Upon written request by Grantor, records associated with franchise fee audits shall be provided by Grantee within thirty (30) days of such request.

The Grantee shall also provide, in the manner set forth in this Section and as provided in Section 13.14, the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and the character and extent of the Cable Service rendered therefore to them.

The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years, the applicable Oregon statute of limitations for breach of contract claims.

12.2 Communications with Regulatory Agencies.

A list and copies of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Services authorized pursuant to this Franchise Agreement, shall be submitted to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting operations of the Cable System within the Franchise Area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an Affiliate.

12.3 Reports

- a) Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, at a minimum, the name, address, and telephone number of the complaining party, the specific nature of the complaint, remedial action taken if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee.

b) Annual Report.

No later than three-and-one-half (3 ½) months following the end of the Grantee's fiscal year each year, Grantee shall present a written report upon request to the Grantor which shall include:

- 1) Financial reports that are normally prepared for the Grantee for the previous fiscal year, including gross revenues from all sources, gross subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet.

All financial reports required under this section shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues in order to arrive at the calculation of franchise fees to be paid to the Grantor.

- 2) A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.

c) Monitoring and Compliance Reports.

Upon request, the Grantee shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall upon request provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty (30) days after the completion of each series of tests.

d) Additional Reports.

The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to determine whether Grantee is in compliance with applicable terms of this Franchise. Grantee will provide Grantor with such information in such format as Grantee customarily prepares reports.

- e) All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. Grantee shall not be required to develop or create reports that are not part of its normal business procedures and reporting or that have not been defined specifically within this Franchise in order to meet the requirements of this Franchise.

12.4 Safety

- a) The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.

- b) The Grantee shall install and maintain its wires, cable, fixtures, and other equipment, including the drop to the subscriber's premise, in accordance with the requirements of the National Electrical Safety Code (NESC) and National Electrical Code (NEC), and in such manner that they shall not interfere with the installations of any public utility.
- c) All lines, equipment and connections in, over, under, and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

13. MISCELLANEOUS PROVISIONS

13.1 Compliance with Laws

The Grantee shall comply with all federal and state laws and regulations, including regulations, rules and orders of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

13.2 Severability and Preemption

Subject to the provisions of Section 13.7 below, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Franchise Agreement is for any reason held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, the parties shall discuss the regulatory changes and mutually agree to modify the Franchise consistent with such regulatory change.

13.3 Captions

The captions to sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.4 No Recourse Against the Grantor

Except as provided under applicable law, the Grantee shall have no recourse whatsoever against the Grantor 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 Franchise Agreement or any part thereof is determined to be invalid.

13.5 Non-Enforcement by Grantor

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

13.6 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

13.7 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. Any ordinances or parts or ordinances that conflict with the provisions of this Franchise are superseded by this Franchise.

13.8 Consent

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

13.9 Notices and Time Limit for Grantee Communications

All communications with the County by the Grantee referred to in this Franchise shall be made through the Office of Cable Communications Franchise Manager, unless otherwise specified in this Franchise. Grantee shall provide any written communication required by this franchise within sixty (60) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the Franchise.

13.10 Consistency of Franchise with Cable Act

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Communications Policy Act of 1984, the Cable Act of 1992 and the Telecommunications Act of 1996, as amended.

13.11 Future Changes in Law

If future changes to binding federal or state law affect any material provision of the Franchise, including but not limited to the scope of Grantor's authority to regulate Grantee and its activities within the Franchise Area and the streets and public ways, the parties agree that they will take any action necessary, or revise this Franchise Agreement where applicable, to be consistent with the scope of such change in law. In the event the parties are unable to agree to a modification of this Franchise within sixty (60) days, either party may: 1) seek appropriate legal remedies to amend the Franchise, or 2) shorten the franchise to thirty-six (36) months from the date following conclusion of the sixty (60) day period, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

13.12 Notice

Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the County: Administrative Services Manager
 Public and Government Affairs
 Clackamas County
 2051 Kaen Road
 Oregon City, OR 97045

If to the Grantee: Comcast Cable.
Attention: Government Affairs
11308 SW 68th Parkway
Tigard, OR 97223

13.13 Public Disclosure

Subject to the Oregon Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's written consent provided Grantee noted such information as confidential and/or proprietary in writing at the time of submission.

13.14 Time is of the Essence

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence.

13.15 Reservation of Rights

Notwithstanding any provision to the contrary, the parties reserve any and all rights at law or in equity regarding any enforcement proceeding or other matters hereunder.

IN WITNESS WHEREOF, the COUNTY has caused these presents to be executed by its Board of County Commissioners and Comcast of Tualatin Valley, Inc., Comcast of Illinois/Ohio/Oregon, LLC; and Comcast of Oregon II, Inc. (collectively Comcast), has caused these presents to be signed by its Owner.

BOARD OF COUNTY
COMMISSIONERS

COMCAST OF TUALATIN
VALLEY, INC.; COMCAST OF
ILLINOIS/OHIO/OREGON,
LLC; AND COMCAST OF
OREGON II, INC.
(COLLECTIVELY COMCAST)

Tootie Smith, Chair

Recording Secretary

Title

Date

Date

EXHIBIT A: FRANCHISE AREA

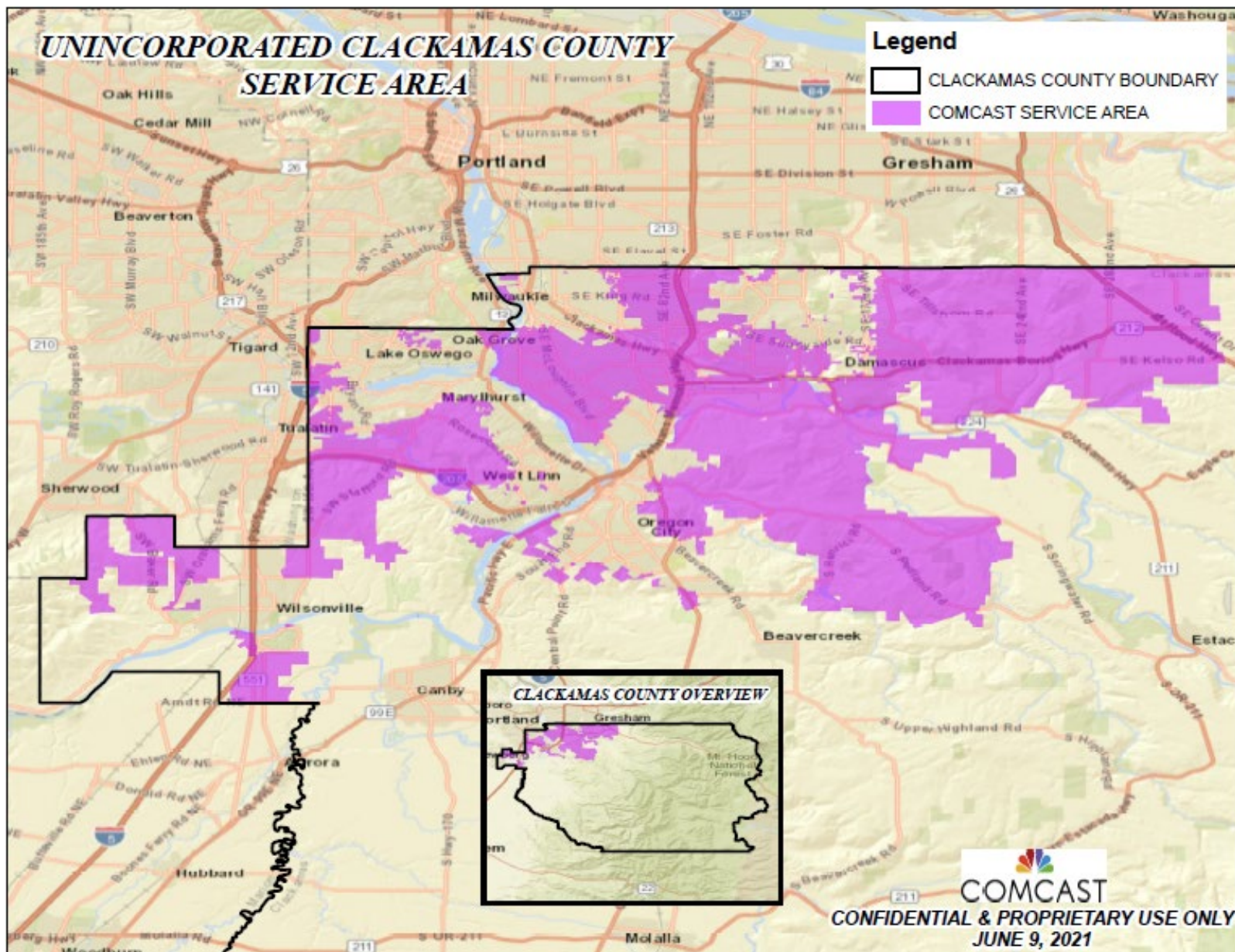


EXHIBIT B
to the
Cable Franchise Agreement
Between
Clackamas County, OR and Comcast of "Tualatin Valley, Inc.;
Comcast of Illinois/Ohio/Oregon, LLC; Comcast of Oregon II, Inc."

Clackamas County, OR Complimentary Service List

Location Description	ACCOUNT_NAME	ADDRESS	CITY	STATE	ZIP
Clackamas County (East)	BORING FIRE DISTRICT	28655A SE HIGHWAY 212	BORING	OR	97009
Clackamas County (East)	CLACKAMAS FIRE #11	18265 S REDLAND RD	OREGON CITY	OR	97045
Clackamas County (East)	CLACKAMAS FIRE #14	28655 SE HIGHWAY 212	BORING	OR	97009
Clackamas County (East)	CLACKAMAS FIRE #19	19750 SE DAMASCUS LN	DAMASCUS	OR	97089
Clackamas County (East)	DAMASCUS FIRE	20100 SE HIGHWAY 212	DAMASCUS	OR	97089
Clackamas County (Oregon City)	CLACKAMAS CO	821 MAIN ST	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS COUNTY FACILITY	1710 RED SOILS CT	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS COUNTY FACILITY	1710 RED SOILS CT	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS COUNTY TCA	807 MAIN ST	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS CTY CABLE COMM (PEG Monitoring)	2051 KAEN RD	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS CTY C-COM	2200 KAEN RD	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS CTY C-COM	2200 KAEN RD	OREGON CITY	OR	97045
Clackamas County (Oregon City)	CLACKAMAS CTY PUBLIC SVCS	2051 KAEN RD	OREGON CITY	OR	97045
Clackamas County (Oregon City)	COUNTY COMMUNITY SOLUT	112 11TH ST	OREGON CITY	OR	97045
Clackamas County (Oregon City)	SHERIFFS DEPT	807 MAIN ST	OREGON CITY	OR	97045
Clackamas County (West)	CLACKAMAS COUNTY JUST CRT	11750 SE 82ND AVE	HAPPY VALLEY	OR	97086
Clackamas County (West)	CLACKAMAS COUNTY JUST CRT	11750 SE 82ND AVE	HAPPY VALLEY	OR	97086
Clackamas County (West)	CLACKAMAS FIRE #1	11300 SE FULLER RD	MILWAUKIE	OR	97222
Clackamas County (West)	CLACKAMAS FIRE #3	2930 SE OAK GROVE BLVD	PORTLAND	OR	97267
Clackamas County (West)	CLACKAMAS FIRE #4	6600 SE LAKE RD	MILWAUKIE	OR	97222
Happy Valley	CLACKAMAS FIRE #5	9339 SE CAUSEY AVE	HAPPY VALLEY	OR	97086
Happy Valley	CLACKAMAS FIRE #8	16100 SE 130TH AVE	CLACKAMAS	OR	97015
Happy Valley	CLACKAMAS FIRE #6	12901 SE KING RD	HAPPY VALLEY	OR	97086
Happy Valley	CLACKAMAS FIRE #7	10921 SE 172ND AVE	HAPPY VALLEY	OR	97086
Milwaukie	CLACKAMAS FIRE #2	3200 SE HARRISON ST	MILWAUKIE	OR	97222
Oregon City	CENTRAL UTILITY BUILDING	1710 RED SOILS CT	OREGON CITY	OR	97045
Oregon City	CLACKAMAS DEVELOPMENT SVC	150 BEAVERCREEK RD	OREGON CITY	OR	97045
Oregon City	CLACKAMAS FIRE #15	624 7TH ST	OREGON CITY	OR	97045
Oregon City	CLACKAMAS FIRE #16	19340 MOLALLA AVE	OREGON CITY	OR	97045
Oregon City	CLACKAMAS FIRE #9	300 S LONGVIEW WAY	OREGON CITY	OR	97045
Oregon City	CLACKAMAS FIRE #17	19001 S END RD	OREGON CITY	OR	97045
Oregon City	COMMUNITY CORRECTIONS CC	1024 MAIN ST	OREGON CITY	OR	97045
Oregon City	DEPT OF TRANSPORT	902 ABERNETHY RD	OREGON CITY	OR	97045
Oregon City	PUBLIC WORKS	122 S CENTER ST	OREGON CITY	OR	97045
Oregon City	TELMATE	2200 KAEN RD	OREGON CITY	OR	97045

EXHIBIT C
to the
Cable Franchise Agreement
Between
Clackamas County, OR and Comcast of "Tualatin Valley, Inc.;
Comcast of Illinois/Ohio/Oregon, LLC; Comcast of Oregon II, Inc."

Clackamas County, OR Complimentary Service List (Schools)

ACCOUNT_NAME	ADDRESS	CITY	STATE	ZIP
ALDER CREEK JR HIGH	13801 SE WEBSTER RD	PORTLAND	OR	97267
BILQUIST SCHOOL	15708 SE WEBSTER RD	PORTLAND	OR	97267
BORING MIDDLE SCHOOL	27801 SE DEE ST	BORING	OR	97009
CLACKAMAS COMMUNITY COLLEGE (PEG Monitoring)	19600 MOLALLA AVE	OREGON CITY	OR	97045
CLACKAMAS HIGH SCHOOL	14486 SE 122ND AVE	CLACKAMAS	OR	97015
CLACKAMAS SCHOOL	15301 SE 92ND AVE	CLACKAMAS	OR	97015
DAMASCUS MIDDLE SCHOOL	14151 SE 242ND AVE	DAMASCUS	OR	97089
DEEP CREEK ELEMENTARY	15600 SE 232ND DR	DAMASCUS	OR	97089
LANDLAB NORTH CLACKAMAS	13021 SE HUBBARD RD	CLACKAMAS	OR	97015
MT SCOTT ELEMENTARY	11201 SE STEVENS RD	HAPPY VALLEY	OR	97086
NAAS SCHOOL	12240 SE SCHOOL AVE	BORING	OR	97009
NORTH CLACKAMAS SCHOOL	12451 SE FULLER RD	MILWAUKIE	OR	97222
NORTH OAK SCHOOL	2150 SE TORBANK RD	MILWAUKIE	OR	97222
OAK GROVE SCHOOL	1901 SE OAK GROVE BLVD	PORTLAND	OR	97267
OGDEN JR HIGH SCHOOL	14133 DONOVAN RD	OREGON CITY	OR	97045
OREGON TRAIL ELEMENTARY	13895 SE 152ND AVE	CLACKAMAS	OR	97015
REDLAND ELEMENTARY	18131 S REDLAND RD	OREGON CITY	OR	97045
RIVERSIDE SCHOOL	16303 SE RIVER RD	PORTLAND	OR	97267
SABIN CENTER	14211 SE JOHNSON RD	PORTLAND	OR	97267
SHELLENBERG TECH CENTER (PEG Monitoring)	14450 SE JOHNSON RD	PORTLAND	OR	97267
SPECIAL ELEMENTARY	19875 SW STAFFORD RD	WEST LINN	OR	97068
SUNNYSIDE SCHOOL	13401 SE 132ND AVE	CLACKAMAS	OR	97015
SUNRISE JUNIOR HIGH	14331 SE 132ND AVE	CLACKAMAS	OR	97015
VIEW ACRES S SCHOOL	4828 SE VIEW ACRES RD	PORTLAND	OR	97267
WEST LINN-WILSONVILLE PUBLIC SCHOOLS	22210 SW STAFFORD RD	TUALATIN	OR	97062
WHITCOMB S SCHOOL	7400 SE THOMPSON RD	MILWAUKIE	OR	97222
WICHITA SCHOOL	6031 SE KING RD	MILWAUKIE	OR	97222

EXHIBIT D: ACCEPTANCE

ACCEPTANCE

Comcast Cable
11608 SW 68th Parkway
Tigard, OR 97223

The undersigned, _____, does hereby accept the Franchise granted pursuant to Board Order No. _____, passed and approved on _____, 2021, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law.

BY: _____

TITLE: _____

DATE: _____



August 12, 2020

Water Environment Services Board
 Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Purchase and Sale Agreement Between Clackamas Water Environment Services and Certain Individuals Pertaining to the Purchase of Vacant Parcel for Hoodland Sandy Lane Pump Station Relocation Project

Purpose/Outcome	Authorizing entering into transaction described in Purchase and Sale Agreement and related documents to purchase
Dollar Amount and Fiscal Impact	\$95,000 + share of closing costs
Funding Source	WES Wastewater Capital Fund – no general fund dollars
Duration	In perpetuity
Previous Board Action/Review	Discussions in executive session regarding real property negotiations. Reviewed in Issues meeting on August 10, 2021
Strategic Plan Alignment	1. Build public trust through good government 2. Build a strong infrastructure 3. Ensure safe, healthy and secure communities
Counsel Review	This purchase was reviewed and approved by County Counsel on August 2, 2021
Contact Person	Chris Storey, Clackamas Water Environment Services – Assistant Director. Phone: 503-742-4543

BACKGROUND:

Clackamas Water Environment Services (“WES”) operates several pump stations in the Hoodland area that convey wastewater to the Hoodland wastewater treatment facility. Channel migration of the Sandy River is putting the Sandy River pump station at risk. WES conducted a study in 2017 to identify potential options, and the most cost effective approach was to relocate the pump stations further away from the river. The study also identified possible locations and the recommended relocation up into the subdivisions that the pump stations served onto vacant parcels. The BCC was briefed on the project in 2018 and authorized staff to move forward.

After extensive negotiations, the parties have reached tentative agreement on the terms of sale and purchase for the vacant lot to which the Sandy River Pump Station is proposed to relocate for the price of \$95,000 and associated closing costs. WES would like to move forward to acquire the parcel and begin further planning regarding the project with that variable fixed.

County Counsel has reviewed and approved this purchase and sale agreement and related documents.

RECOMMENDATION

Staff recommends the Board of County Commissioners, acting in their capacity as the governing body of Water Environment Services, approve the Purchase and Sale Agreement Between Clackamas Water Environment Services and Certain Individuals Pertaining to the Purchase of Vacant Parcel for Hoodland Sandy Lane Pump Station Relocation Project.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Geist', written over a horizontal blue line.

[Greg Geist \(Aug 5, 2021 10:22 PDT\)](#)

Greg Geist
Director

Attachments: Resolution
Purchase and Sale Agreement (exhibit to Resolution)

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

In the Matter of Approving a Purchase
and Sale Agreement for Water
Environment Services



Resolution No. _____
Page 1 of 1

WHEREAS, Water Environment Services (“WES”) operates two pump stations in the Hoodland area that convey wastewater to the Hoodland wastewater treatment facility and are at risk within the channel migration zone of the Sandy River; and

WHEREAS, WES staff identified a parcel (“Property”), further described in the Purchase and Sale Agreement attached hereto as Exhibit A (“PSA”), further removed from the main path of the channel migration zone as a potential new site for one pump station; and

WHEREAS, WES staff negotiated terms of purchase with the Property owner in accordance with previous Board direction, and now seeks approval from the Board and authorization to proceed with the Property conveyance;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, ACTING AS THE GOVERNING BODY OF WATER ENVIRONMENT SERVICES, THAT:

1. The sale of the Property as contemplated by the PSA, exhibits, certificates or other documents, the payment of costs relating to the transaction, and all other elements of the PSA are hereby authorized and approved; and
2. The Director and/or the Assistant Director of WES are authorized to execute the PSA and all related agreements, deeds, exhibits, certificates or other documents necessary to effectuate the foregoing, and are directed to take all actions necessary to complete the transaction as contemplated now and in the future.

ADOPTED this 12th day of August, 2021.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this “Agreement”) is made and entered into as of the last date of signature indicated below (the “Effective Date”), by and between **Stephanie Makarounis, John Makarounis, and Christin Rouches**, all individuals (collectively the “Seller”), and **Water Environment Services**, an intergovernmental entity formed pursuant to ORS Chapter 190 (“Buyer”) whose address is 150 Beaver Creek Road, Suite 430, Oregon City, Oregon 97045.

RECITALS

The Seller is the sole owner of real property located in the County of Clackamas, State of Oregon, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Property”).

Buyer desires to purchase from the Seller, and the Seller desires to sell and convey to Buyer, all right, title and interest in the Property for the price and on the terms and conditions set forth below:

TERMS

1. **Purchase and Sale.** The Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from the Seller, the Property upon the terms and conditions set forth in this Agreement.
2. **Purchase Price.** The Buyer shall pay Seller the sum of **Ninety-Five Thousand and 00/100 Dollars (\$95,000.00)** as the total purchase price for the Property (“Purchase Price”).
3. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:
 - a) **Deposit.** Within twenty (20) days after execution of this Agreement, Buyer shall deposit into escrow the sum of Nine Thousand Five Hundred and 00/100 Dollars (\$9,500.00) (the “Escrow Deposit”) with **Lawyers Title of Oregon, LLC** (“Escrow Holder” or “Title Company”). At Closing, the Escrow Deposit, together with interest on it, if any, shall be credited toward payment of the Purchase Price and all related closing expenses.
 - b) **Balance.** On or before Closing (defined below), Buyer shall deposit the balance of the Purchase Price into escrow. Any interest income in excess of that necessary for Closing shall be the property of Buyer.

4. **Closing Date.** This transaction must be closed by September 15th, 2021 (“Closing Date”). On the Closing Date, the deed conveying the Property will be recorded and the Escrow Holder will be prepared to disburse funds (“Closing”).
5. **Conditions Precedent to Closing.**
 - a) Conditions Precedent to Buyer's Obligations. In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied before Buyer will become obligated to acquire the Property under this Agreement. These conditions are intended solely for Buyer’s benefit and Buyer shall have the sole right and discretion to waive or not waive, by written notice, any of the conditions. In the event any such condition precedent is not satisfied or waived on or before Closing, or other date as set forth herein, Buyer shall have the right to terminate this Agreement and be refunded its Escrow Deposit, including interest, and to exercise any other remedy available. The conditions precedent are:
 - i) Title Report. Within fifteen (15) days following the Effective Date of this Agreement, Buyer shall order at its own expense a preliminary Title Report covering the Property.
 - A. Within fifteen (15) days of receiving the Title Report and the Exceptions documents, Buyer shall reasonably determine and provide written notice to Seller of any special exceptions that Buyer shall require Seller to remove of record at or before the Closing Date (“Unacceptable Exceptions”). Special exceptions not objected to are referred to as “Permitted Exceptions.”
 - B. Within fifteen (15) days of receipt of the list Unacceptable Exceptions, Seller shall inform Buyer in writing that Seller shall remove such exceptions at or before the Closing Date or inform Buyer in writing that Seller is unable to remove any such exception.
 - C. In the event that there are any Unacceptable Exceptions that Seller does not agree to remove at or before the Closing Date, the Parties will work together in good faith to reach a resolution. If no resolution can be reached, then Buyer shall have the option to either accept title to the Property subject to such Unacceptable Exceptions, which would thereafter be considered a Permitted Exception, or Buyer may terminate this Agreement and the Escrow Deposit shall be refunded to Buyer.
 - ii) Title. At Closing, the Seller shall convey fee simple title to the Property by statutory warranty deed. Title shall be good and marketable and shall be insurable for the Purchase Price at ordinary rates pursuant to an ALTA standard owner’s title insurance policy issued at Closing by the Title Company insuring fee simple title vested in Buyer or its nominees and free

and clear of all liens and encumbrances except for the Permitted Exceptions as defined below (the “Title Policy”).

- iii) Environmental Review. Before Closing, Buyer may, at its expense, engage consultants, surveyors or engineers of Buyer's choosing to conduct environmental studies, soil analyses, surveys, and appraisals of the Property as Buyer in its sole discretion deems necessary. Within (10) days after the Effective Date, Seller shall deliver to Buyer a copy of all environmental studies or analyses relating to the Property within its possession or control. Buyer or its agents shall have the right to enter the Property at reasonable times before Closing to make such tests, inspections, soil analyses, studies, surveys, appraisals and other investigations as Buyer may require, at Buyer's sole discretion. Seller shall cooperate with Buyer in making such tests and studies. Any area disturbed by such tests and studies shall be restored by Buyer, at Buyer's expense, to its pre-inspection condition.
 - A. It shall be a condition to Closing that the results of such environmental studies, surveys or analyses be acceptable to Buyer in its sole discretion. Within twenty (20) days of the Effective Date, Buyer shall notify the Seller if Buyer cannot accept the Property due to the results of its investigation under this section.
 - B. If Buyer and Seller have not reached an agreement regarding the items disclosed in the investigation within twenty-seven (27) days of the Effective Date, then Buyer may, at its option and upon written notice to Seller, terminate this Agreement, in which case the Escrow Deposit and accrued interest shall be refunded to Buyer.
 - C. Within the limits of the Oregon Tort Claims Act and the Oregon Constitution, the Buyer agrees to indemnify and hold harmless the Seller from any third party claims, costs, expenses, or actions arising from the actions of Buyer or its agents during the environmental review process authorized by this Section 5, except to the extent that the claims or actions arise from the Seller's negligence or willful misconduct.
- iv) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed every act to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.
- v) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.

- vi) Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement. In the event that Buyer does not object to the timeliness of delivery of any document(s) within five (5) days of their receipt by Buyer, this condition shall be deemed waived with regards to any such documents.
 - vii) Title Insurance. At or prior to Closing, the Escrow Holder shall have issued or committed to issue the Title Policy to Buyer.
 - viii) Taxes. Seller agrees that all taxes, assessments and encumbrances that will be a lien against the Property at the Closing Date, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied of record by Seller. If Seller shall fail to do so, Buyer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date.
- b) Conditions Precedent to Seller's Obligations. Closing and the Seller's obligations with respect to the transactions contemplated by this Agreement are subject to Buyer's delivery of the Purchase Price and the documents and materials described in Paragraph 6(b) to the Escrow Holder on or before the Closing Date, for disbursement as provided herein.
 - c) Failure of Conditions to Closing. In the event any of the conditions set forth in Section 5(a) or (b) are not timely satisfied or waived, for a reason other than the default of Buyer or the Seller under this Agreement:
 - i) This Agreement, the escrow, and the rights and obligations of Buyer and the Seller shall terminate, except as otherwise provided herein; and
 - ii) The Escrow Holder is hereby instructed to promptly return to the Seller and Buyer all funds and documents deposited by them, respectively, in escrow that are held by the Escrow Holder on the date of the termination.
 - d) Cancellation Fees and Expenses. In the event the escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of the Seller under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by Buyer. In the event this escrow terminates because of the Seller's default, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Seller.

6. **Deliveries to Escrow Holder.**

- a) By Seller. On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:
- i) Deed. A statutory warranty deed, in a form substantially similar to the one contained in Exhibit B attached, duly executed and acknowledged in recordable form by the Seller, conveying the Property to Buyer, subject only to the Permitted Exceptions, to Buyer as established under Section 5 of this Agreement, and any other matters that may be approved in writing by Buyer prior to Closing.
 - ii) Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to Buyer to this effect in the form required by that statute and related regulations, which form may be provided by the Escrow Holder.
 - iii) Proof of Authority. Such proof of the Seller's authority and authorization to enter into this Agreement, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for and bind the Seller, as may be reasonably required by the Escrow Holder and/or Buyer.
 - iv) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the Title Policy.
 - v) Other Documents. Such other fully executed documents and funds, including without limitation, escrow instructions, as are required of Seller to complete the sale in accordance with this Agreement or as may be required by Escrow Holder.
- b) By Buyer. On or before the Closing Date, Buyer shall deliver the following in escrow to the Escrow Holder.
- i) Cash Portion of Purchase Price. Any remaining portion of the Purchase Price to be paid in cash in accordance with Section 2 above, plus Buyer's share of any closing costs as set forth herein, if necessary.
 - ii) Proof of Authority. Such proof of Buyer's authority and authorization to enter into this Agreement, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of Buyer to act for and bind Buyer, as may be reasonably required by the Escrow Holder and/or the Seller.

7. **Deliveries to Buyer at Closing.** Except as otherwise provided herein, the Seller shall deliver exclusive possession of the Property to Buyer at Closing.
8. **Title Insurance.** At Closing, Buyer shall provide, at its expense, the Title Policy.
9. **Costs.** The Buyer shall pay for the cost of recording the statutory warranty deed, and all other recording charges, if any. Buyer shall pay for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer shall pay all escrow fees and costs. Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by Buyer, respectively. All other costs and expenses shall be allocated between Buyer and the Seller in accordance with the customary practice in Clackamas County, Oregon.
10. **Seller's Representations and Warranties.** Seller hereby warrants and represents to Buyer the following matters, and acknowledges that they are material inducements to Buyer to enter into this Agreement. Seller agrees to indemnify, defend, and hold Buyer harmless from all expense, loss, liability, damages and claims arising out of the breach or falsity of any of Seller's representations, warranties, and covenants. These representations, warranties, and covenants shall survive Closing. Seller warrants and represents to Buyer that the following matters are true and correct, and shall remain true and correct through and as of Closing:
 - a) Authority. Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement.
 - b) Hazardous Substances. For purposes of this Agreement, the phrase "Hazardous Substances" shall include, but not be limited to, the substances defined in ORS 465.200. Seller warrants, represents, and covenants as follows:
 - i) To the knowledge of Seller, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;
 - ii) To the knowledge of the Seller, no Hazardous Substances have been brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on the Property, in violation of any environmental laws of the federal or state government;
 - iii) To the knowledge of Seller, no previously undisclosed underground storage tanks are located on the Property, including (without limitation)

any storage tanks that contain, or previously contained, any Hazardous Substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before Closing;

- iv) To the knowledge of Seller, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;
 - v) The Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property;
 - vi) The Seller has not transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and
 - vii) There are no proceedings, administrative actions, or judicial proceedings pending or, to the best of Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.
- c) Contracts, Leases, Rights Affecting Property. Seller has not entered into, and will not enter into, any other contracts for the sale of the Property, nor do there exist nor will there be any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion thereof. The Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions, relating to the Property, and to Seller's knowledge no such rights encumber the Property, and will not through the Closing Date.
- d) No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's right or title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.
- e) Mechanics and Other Liens. No work on the Property has been done or will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property or any portion thereof.

- f) Public Improvements or Governmental Notices. To the best of Seller's knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property or any portion thereof, nor have any notices or other information been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.
- g) Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound or to which the Property is subject.
- h) Possession. Except as specifically provided for herein, Seller will be able to deliver immediate and exclusive possession of the entire Property to Buyer at Closing, and no one other than Seller will be in possession of any portion of the Property immediately prior to Closing.
- i) Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by Seller.
- j) Recitals. The statements and information set forth in the Recitals are true and correct.
- k) Changed Conditions. If Seller discovers any information or facts that would materially change the foregoing warranties and representations or the transactions contemplated by this Agreement, Seller shall immediately give written notice to Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before Closing, Seller shall be obligated to use its best efforts to remedy the problem, at its sole expense, before Closing. If the problem is not remedied before Closing, Buyer may elect to either: (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Property and all escrow payments shall be refunded to Buyer, or (b) defer the Closing Date for a period not to exceed ninety (90) days or until such problem has been remedied, whichever occurs first. If the problem is not remedied within that time frame, Buyer may elect to terminate this Agreement and receive a refund of the Escrow Deposit and accrued interest. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

11. **Seller's Representations, Warranties and Covenants Regarding the Property Through the Closing.** The Seller further represents, warrants, and covenants that, until this transaction is completed through Closing or escrow is terminated, whichever occurs first, it shall:

- a) Maintain the Property in its present state, with no tree cutting or alteration of the Property in any way;
 - b) Keep all existing insurance policies affecting the Property in full force and effect;
 - c) Make all regular payments of interest and principal on any existing financing, if applicable; and
 - d) Comply with all government regulations.
12. **Deferred Taxes.** If the Property is subject to farm or forest deferred taxes, Seller shall have no obligation or responsibility for said deferred taxes, unless the Property becomes disqualified for or loses its deferred tax status as a result of Seller's actions prior to Closing in which case such taxes shall be Seller's responsibility. Buyer is an exempt public entity and is not obligated to pay such taxes. Seller shall not be responsible for any taxes arising from Buyer's acquisition of the Property.
13. **Buyer's Representations and Warranties.** In addition to any express agreements of Buyer contained here, the following constitute representations and warranties of Buyer to the Seller:
- a) Subject to the approval of the Buyer's governing body and the conditions stated herein, Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated here;
 - b) Subject to the approval of the Buyer's governing body and the conditions stated herein, all requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and
 - c) Subject to the approval of the Buyer's governing body and the conditions stated herein, the persons executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement.
14. **Seller's Promise to Remove Personal Property and Debris.** Prior to vacating the Property, Seller covenants and promises to remove or cause to be removed from the Property, at Seller's expense, any and all personal property and/or trash, rubbish, debris, or any other unsightly or offensive materials unless otherwise previously agreed to in writing by Buyer. Satisfaction of the promises contained herein shall be subject to Buyer's inspection and approval of the physical condition of the Property by Buyer prior to vacating the Property.

15. **Risk of Loss, Condemnation.** Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Buyer of written notice from Seller of such casualty or condemnation and Escrow Holder will return to Buyer the Escrow Deposit and accrued interest.
16. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: Stephanie Makarounis
John Makarounis
Christin Rouches
3645 NE 142nd
Portland, OR 97230
Phone: (503) 998-5307

To Buyer: Water Environment Services
Attn: Chris Storey
150 Beaver Creek Rd., Suite 430
Oregon City, Oregon 97045
Phone: 503-742-4543
Email: chrissto@clackamas.us

With a copy to:
Amanda Keller
Assistant County Counsel
2051 Kaen Rd.
Oregon City, Oregon 97045
Phone: (503) 742-4589
Email: akeller@clackamas.us

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended. Telephone numbers are for information only.

17. **No Broker or Commission.** Each party represents and warrants to the other that it has not used or engaged a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement.

18. **Further Actions of Buyer and Seller.** Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement necessary to complete the purchase and sale of the Property and shall use their best efforts to accomplish the close of the transaction in accordance with the provisions of this Agreement.
19. **Legal and Equitable Enforcement of This Agreement.**
- a) Default by the Seller. In the event Closing and the completion of the transaction herein contemplated do not occur by reason of any default by the Seller, Buyer shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including the Escrow Deposit and all accrued interest, and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.
- b) Default by the Buyer. In the event Closing and the completion of the transaction herein contemplated do not occur by reason of any default by Buyer, Buyer and the Seller agree that it would be impractical and extremely difficult to estimate the damages that the Seller may suffer. Therefore, Buyer and the Seller agree that a reasonable estimate of the total net detriment that the Seller would suffer in the event that Buyer defaults and fails to complete the purchase of the Property is and shall be, and the Seller's sole and exclusive remedy (whether at law or in equity) is and shall be, an amount equal to the Escrow Deposit plus any accrued interest. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by Buyer, and all other claims to damage or other remedies are and shall be expressly waived by the Seller. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to the Seller. Upon default by Buyer, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, each to the other, except for the right of the Seller to collect such liquidated damages from Buyer and the Escrow Holder.
20. **Miscellaneous.**
- a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- b) Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for

performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

- c) Survival of Representations. The covenants, agreements, representations, and warranties made herein shall survive Closing and shall not merge into the deed and the recordation of it in the official records.
- d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties to it.
- e) Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.
- f) Time of Essence. The Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision of this Agreement.
- g) Governing Law. The parties expressly agree that this Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- h) No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- i) Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

21. **Statutory Disclaimers:**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON

ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, ORS 195.301 AND ORS 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR ORS 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, ORS 195.301 AND ORS 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[Signature Page Attached]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

Water Environment Services

Stephanie Makarounis

Signature

Signature

Date: _____

Date: _____

Approved as to Form for Buyer:

John Makarounis

Amanda Keller
Assistant County Counsel

Signature

Date: _____

Christin Rouches

Signature

Date: _____

Attachments:
Exhibit A – Legal Description
Exhibit B – Form of Statutory Warranty Deed

Exhibit A

Property Legal Description

The Property is more specifically described as that real property identified in the warranty deed recorded as document no. 2010-079901 in the Clackamas County Real Property Records.

Exhibit B

Form of Statutory Warranty Deed

STATUTORY WARRANTY DEED

GRANTOR:

Stephanie Makarounis, John Makarounis, Christin Rouches
3645 NE 142nd
Portland, OR 97230

GRANTEE:

Water Environment Services
Development Services Building
150 Beaver Creek Road, Suite 430
Oregon City, OR 97045

After Recording Return To:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045

Until a change is requested, tax statements shall be sent to the following address:

Water Environment Services
150 Beaver Creek Road, Suite 430
Oregon City, OR 97045

STATUTORY WARRANTY DEED

Stephanie Makarounis, John Makarounis, and Christin Rouches, all individuals (collectively the “Grantor”), convey and warrant to **Water Environment Services**, an intergovernmental entity formed pursuant to ORS Chapter 190 (“Grantee”), and to its successors and assigns, the following described real property free of any encumbrances except as specifically set forth in herein (the “Property”) situated in the County of Clackamas, State of Oregon:

See Exhibits A and B, attached hereto and incorporated herein.

Exhibit A: Legal description of the Property.

Exhibit B: Map illustrating the Property.

Subject to the following:

See the “Exhibit C” for a list of exceptions, attached hereto and incorporated by reference.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of a Purchase and Sale Agreement, dated _____, 2021 between the Grantor and Grantee, which terms are intended to continue after the delivery of this Deed.

The true and actual consideration for this conveyance is \$95,000.00.

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

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

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on this ____ day of _____, 2021.

GRANTOR: Stephanie Makarounis

Signature: _____

Date: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2021 before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by _____.

Notary Public for Oregon

My Commission Expires: _____

GRANTOR: John Makarounis

Signature: _____

Title: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2021 before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by _____.

Notary Public for Oregon

My Commission Expires: _____

GRANTOR: Christin Rouches

Signature: _____

Title: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2021 before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by _____.

Notary Public for Oregon

My Commission Expires: _____

Exhibit A

Property Legal Description

The Property is more specifically described as that real property identified in the warranty deed recorded as document no. 2010-079901 in the Clackamas County Real Property Records.

Exhibit B

Property Map

Exhibit C

Exceptions

AS OF THE DATE OF THIS REPORT, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN THE POLICY FORM WOULD BE AS FOLLOWS:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims, which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, which are not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the Land onto adjoining land or of existing improvements located on adjoining land onto the subject Land), encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien or right to a lien for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

SPECIFIC ITEMS AND EXCEPTIONS:

6. [Intentionally Deleted]
7. The Land is within Clackamas County Service District No. 1 and is subject to its levies and assessments.

NOTE: We find no liens of record as of January 19, 2021.

8. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: Timberline Rim Div. 3

9. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Utility
Affects: 5 feet in width and parallel with and adjacent to all lot lines

10. [Intentionally Deleted]
11. Liens and assessments, if any, by the Timberline Rim Recreation Club Homeowner's Association.

12. Restated By-laws of Timberline Rim Recreation Club, Inc.

Recording Date: December 7, 1978
Recording No.: 78-052525

Amendment(s)/Modification(s) of said covenants, conditions and restrictions

Recording Date: February 22, 1971
Recording No.: 71-003332

Amendment(s)/Modification(s) of said covenants, conditions and restrictions

Recording Date: November 22, 2000
Recording No.: 2000-075685

13. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Hoodland Service District
Purpose: Sewage Collection and disposal system
Recording Date: July 9, 1982
Recording No: 82-018954
Affects: Exact location not disclosed

14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Hoodland Service District
Purpose: Sewage Collection and disposal system
Recording Date: July 9, 1982
Recording No: 82-018957
Affects: Exact location not disclosed

15. [Intentionally Deleted]

16. The search did not disclose any open mortgages or deeds of trust of record, therefore the Company reserves the right to require further evidence to confirm that the property is unencumbered, and further reserves the right to make additional requirements or add additional items or exceptions upon receipt of the requested evidence.

17. [Intentionally Deleted]

18. [Intentionally Deleted]

19. [Intentionally Deleted]

20. Due probate and administration of the Estate of James Makarounis, deceased, and any interests disclosed thereby. We are unable to find any evidence of a probate in the records of this county.

21. Note: We find no Notice of Completion recorded on said Land.

22. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.

To remove this item, the Company will require an affidavit and indemnity on a form supplied by the Company.

23. Any lien or right to a lien for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

To remove this item, the Company will require an affidavit and indemnity on a form supplied by the Company.

24. Any encroachment (of existing improvements located on the subject Land onto adjoining land or of existing improvements located on adjoining land onto the subject Land), encumbrance, violation, variation or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject Land.

The Company will require a survey of the Land by a professional surveyor, and this exception may be eliminated or limited as a result thereof.

25. Property taxes in an undetermined amount, which are a lien but not yet payable, including any assessments collected with taxes to be levied for the fiscal year 2021-2022.

ADDITIONAL REQUIREMENTS/NOTES:

- A. In addition to the standard policy exceptions, the exceptions enumerated above shall appear on the final 2006 ALTA Policy unless removed prior to issuance.
- B. Note: The name(s) of the proposed insured(s) furnished with this application for title insurance is/are:

No names were furnished with the application. Please provide the name(s) of the buyers as soon as possible.
- C. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
- D. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.
- E. Note: Effective January 1, 2008, Oregon law (ORS 314.258) mandates withholding of Oregon income taxes from sellers who do not continue to be Oregon residents or qualify for an exemption. Please contact your Escrow Closer for further information.
- F. Note: No utility search has been made or will be made for water, sewer or storm drainage charges unless the City/Service District claims them as liens (i.e. foreclosable) and reflects them on its lien docket as of the date of closing. Buyers should check with the appropriate city bureau or water service district and obtain a billing cutoff. Such charges must be adjusted outside of escrow.






Makarounis PSA_20210810_12

Final Audit Report

2021-08-05

Created:	2021-08-05
By:	Lauren Haney (LHaney@clackamas.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIfNEYxLQ94vFs7Eoh-2Wot8UfCFA2zDd

"Makarounis PSA_20210810_12" History

-  Document created by Lauren Haney (LHaney@clackamas.us)
2021-08-05 - 5:19:20 PM GMT- IP address: 174.204.214.40
-  Document emailed to Greg Geist (ggeist@clackamas.us) for signature
2021-08-05 - 5:20:22 PM GMT
-  Email viewed by Greg Geist (ggeist@clackamas.us)
2021-08-05 - 5:21:29 PM GMT- IP address: 45.41.142.126
-  Document e-signed by Greg Geist (ggeist@clackamas.us)
Signature Date: 2021-08-05 - 5:22:00 PM GMT - Time Source: server- IP address: 198.245.132.3
-  Agreement completed.
2021-08-05 - 5:22:00 PM GMT



DAN JOHNSON
DIRECTOR

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

MEMORANDUM

TO: Board of County Commissioners
Gary Schmidt, County Administrator

FROM: Dan Johnson, Director

DATE: August 10, 2021

RE: Fourth Amendment to Disposition Agreement between Clackamas County and
Beavercreek Structures, LLC.

The County and Seller, also known as Beavercreek Structures, are parties to a certain Disposition Agreement dated effective as of April 8, 2019, the First Amendment to the Disposition Agreement dated effective as of May 29, 2019, the Second Amendment to the Disposition Agreement dated effective as of July 30, 2020, and the Third Amendment to the Disposition Agreement dated effective as of December 16, 2020 (collectively, known as the “Disposition Agreement”), concerning approximately 11.76 acres of land located at 19314 S. Beavercreek Road, Oregon City, Oregon, and the delivery of a turnkey facility to house Clackamas County Transportation Maintenance.

Since the date of the original Disposition Agreement, the COVID-19 pandemic has prompted emergency declarations at the state and local levels, and has fundamentally had an impact on virtually all aspects of our lives. Beyond the COVID-19 pandemic, both the County and the State of Oregon have been faced with other significant public emergencies from wildfires and ice storms.

The circumstances described above, in concert with the responses thereto, have had impacts on labor and commodity markets. Additionally, economic inflation is currently at a level not seen since 2008. These conditions have resulted in a situation whereby Beavercreek Structures has asserted the Maintenance Facility cannot be constructed for the agreed upon Purchase Price. In recognition of the aforementioned circumstances staff has reviewed all available data, including actual bids, and affirmed the market impacts noted above.

While a variety of options exist, based on available data, it appears the option to increase the Purchase Price, from \$29,831,863.00 to \$33,912,241, has the least financial impact while achieving the objective of relocating the Clackamas County Transportation Maintenance facility out of the floodplain of Abernethy Creek to ensure they can provide necessary services to the citizens of Clackamas County during times of emergency operations.

Attached is the fourth amendment for consideration of the board.

Should the attached amendment be approved, staff would request the Board direct the County Administrator and Director of the Department of Transportation of Development to assess the most reasonable method to address these increases in cost and provide a future recommendation to the Board.

FOURTH AMENDMENT TO DISPOSITION AGREEMENT

THIS FOURTH AMENDMENT TO DISPOSITION AGREEMENT (“**Amendment**”) is entered into effective as of _____, 2021, between **CLACKAMAS COUNTY**, a corporate body politic (“**County**”), and **BEAVERCREEK STRUCTURES, LLC**, an Oregon limited liability company (“**Seller**”).

RECITALS

- A. County and Seller are parties to that certain Disposition Agreement dated effective as of April 8, 2019, the First Amendment to the Disposition Agreement dated effective as of May 29, 2019, the Second Amendment to the Disposition Agreement dated effective as of July 30, 2020, and the Third Amendment to the Disposition Agreement dated effective as of December 16, 2021 (collectively, the “**Disposition Agreement**”), concerning approximately 11.76 acres of land located at 19314 S. Beavercreek Road, Oregon City, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).
- B. The County has deemed it to be vital and in the best interest of the County and the health and safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws to amend the Disposition Agreement. The parties desire to modify the Disposition Agreement on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Disposition Agreement.
- C. Since the date of the original Disposition Agreement, the COVID-19 pandemic has prompted emergency declarations at the state and local levels, and has fundamentally had an impact on virtually all aspects of our lives. Beyond the COVID-19 pandemic, both the County and the State of Oregon have been faced with other significant public emergencies from wildfires and ice storms.
- D. The circumstances described above, in concert with the responses thereto, have had profound impacts on labor and commodity markets. Additionally, economic inflation is currently at a level not seen since 2008. These conditions have resulted in a situation whereby the Maintenance Facility cannot be constructed for the agreed upon Purchase Price. In recognition of the aforementioned circumstances, the Parties wish to modify the design and corresponding Purchase Price of the Maintenance Facility.
- E. Seller has prepared and the County has approved changes to the contemplated realty improvements, the net effect of which increases the Purchase Price. These changes are outlined in the attached document entitled “Purchase Price – Change Log”. This Amendment shall serve to reconcile the purchase price in accordance with the changes summarized in the “Purchase Price – Change Log” attachment.
- F. As a result of the circumstances described above and the resulting changes to the contemplated realty improvements, the Parties agree that an increase to the Purchase Price, from \$29,831,863.00 to \$33,912,241, is warranted.
- G. The County is eligible to receive funds under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and American Recovery Plan Act (ARPA), which authorizes funding to local governments for, among other things, replacement of lost revenues to strengthen support for vital public services and to make necessary investments in public infrastructure. The County finds that the use of CARES Act and/or ARPA funds to contribute to some or all of the increase in Purchase Price

of the Maintenance Facility as a result of the impacts of the COVID-19 pandemic and other declared emergencies is an appropriate and beneficial use of those federal relief funds.

AGREEMENT

1. Amendment to Section 3.1, Section 3.1 of the Disposition Agreement which, after the Third Amendment to Disposition Agreement, reads:

In accordance with, and subject to all the terms, covenants, and conditions of this Disposition Agreement and any amendments thereto, the Seller agrees to sell to the County, and County agrees to purchase from the Seller, the Maintenance Facility, for Twenty-Nine Million Eight Hundred Thirty-One Thousand Eight Hundred Sixty-Three and 00/100 Dollars (\$29,831,863.00) (the "Purchase Price"), subject to any abatement as set forth in Section 2.9. The Purchase Price may be changed by the Parties from time to time by written amendment. All changes to the Purchase Price shall be finalized upon expiration of the Design and Entitlement Due Diligence Period. The Purchase Price may be changed by the Parties from time to time by written amendment as the costs associated with the allowance items identified in the Scope of Development are finalized. In the event the Parties agree to amend the purchase price to an amount that is less than the Purchase Price set forth above, the County authorizes the Director of the Department of Transportation and Development to amend this Agreement for purposes of adjusting the Purchase Price. The Board of County Commissioners shall retain authority to authorize all other amendments to this Agreement, including but not limited to any increase to the Purchase Price.

Section 3.1 of the Disposition Agreement, as amended, is hereby deleted in its entirety and is replaced with the following:

In accordance with, and subject to all the terms, covenants, and conditions of this Disposition Agreement and any amendments thereto, the Seller agrees to sell to the County, and County agrees to purchase from the Seller, the Maintenance Facility, for Thirty-Three Million Nine Hundred Twelve Thousand Two Hundred Forty-One and 00/100 Dollars (\$33,912,241) (the "Purchase Price"), subject to any abatement as set forth in Section 2.9 and the paragraph below. The Purchase Price may be changed by the Parties from time to time by written amendment. All changes to the Purchase Price shall be finalized upon expiration of the Design and Entitlement Due Diligence Period. The Purchase Price may be changed by the Parties from time to time by written amendment as the costs associated with the allowance items identified in the Scope of Development are finalized. In the event the Parties agree to amend the purchase price to an amount that is less than the Purchase Price set forth above, the County authorizes the Director of the Department of Transportation and Development to amend this Agreement for purposes of adjusting the Purchase Price. The Board of County Commissioners shall retain authority to authorize all other amendments to this Agreement, including but not limited to any increase to the Purchase Price.

Included in the Purchase Price above is a sum of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000) (subject to increase as further described in this Section 3.1), which the Parties hereby designate as construction contingency (the "Construction Contingency"). Seller

shall be entitled to allocate from and apply against the Construction Contingency reasonable costs associated with the improvements to the Subject Property (the “Work”) for the following purposes: (a) winterization/weatherization (e.g. cement treatment; supply and installation of geotextile fabric; subgrade and final grade soft spot removal and rock replacement, as directed by the geotechnical engineer; and the importation and placement of weather resistant fill); (b) boulder (greater than 2’ in diameter) and rock excavation; (c) if conditions warrant, installation of haul roads and maneuvering areas to and around each building and the maintenance thereof to support construction traffic while completing the Work; (d) if conditions warrant, installation of construction yard(s) and maintenance thereof; (e) concealed conditions abatement; (f) dewatering of trenches, ponds, embankments and footings and/or special watering to reach necessary subgrade compaction; (g) Work completed to meet the intent of the Construction Plans, but which was not indicated either specifically or clearly on the Construction Plans; (h) discrepancies with the Construction Plans pertaining to applicable jurisdictional code requirements; (i) overtime and premium time; (j) incentive compensation or bonuses paid to subcontractors for achieving Work milestones set by Seller; (k) Work associated with controlling the Beaver Creek Road signal at Clairmont from Building 1; (l) material and wage escalation; (m) adding skylights/smoke vents in Buildings 1 or 3; (n) adding vapor barrier and protection board under the TPO roof pursuant to the Construction Plans; (o) adding the specified generator and work associated thereto; (p) adding air and water industrial piping as indicated on the Construction Plans; (q) wheel wash and the maintenance thereof; (r) adding for the 8” concrete slabs at Buildings 1, 2, 3 and associated additional rebar reinforcement and/or (s) delays and impacts resulting from force majeure. The Construction Contingency represents a designated amount to apply to unknown costs and unbudgeted upgrades as set forth above in items (a) through (s). Accordingly, the Construction Contingency shall be limited to only the Work that is specifically set forth in this Section 3.1.

In addition, the Parties acknowledge the opportunity to utilize value engineering or reduce scope to realize additional cost savings. The Parties shall maintain a list, also known as the Value Engineering Log, of any changes to the approved Construction Plans, and shall mutually assign a value to those changes. The total value of those changes shall be added to the amount representing the \$1,600,000 Construction Contingency, and shall be subject to the same restrictions and distribution formula set forth above. Any portion of the Construction Contingency amount, either the \$1,600,000 sum specifically held as contingency or any value realized through cost savings from value engineering, that is not applied to the construction of the Maintenance Facility shall be considered Contingency Savings.

In the event any portion of the Construction Contingency is not applied to the cost of Work as aforementioned in this Section 3.1, the Parties shall account for the unused Construction Contingency (the “Contingency Savings”) as follows: 80% of the Contingency Savings amount shall be credited to the County and shall be used to reduce the Purchase Price, and 20% of the Contingency Savings shall be credited to the Seller, all to be reconciled at Closing.

2. **Amendment to Section 3.2. Section 3.2 of the Disposition Agreement which, after the Third Amendment to Disposition Agreement, reads:**

County shall, within three (3) business days after the Effective Date, deliver to the Title Company (defined below) the sum of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) as the initial earnest money in cash or by wire transfer of immediately available funds (the "Initial Earnest Money") to be held and applied in accordance with the terms of this Disposition Agreement. If County fails to timely deposit the Initial Earnest Money as provided above, this Disposition Agreement shall terminate and neither Seller nor County shall have any further obligations to one another. The Initial Earnest Money is fully refundable during the Title Commitment Due Diligence Period. In the event County elects to exercise its right to terminate this Disposition Agreement during the Title Commitment Due Diligence Period pursuant to Sections 2.1, 2.2 or 2.4 herein, except as otherwise provided herein, the Initial Earnest Money Deposit shall be immediately returned to County and neither party shall have any further rights, duties or obligations hereunder. If County elects to proceed beyond the Title Commitment Due Diligence Period, except as provided below, the Initial Earnest Money shall be released to the Seller and shall be credited to the Purchase Price due by County at Closing.

County at its option may provide notice to Seller of its election to terminate this Disposition Agreement prior to the expiration of the Design and Entitlement Due Diligence Period. In the event of termination during the Design and Entitlement Due Diligence Period (or deemed termination), neither party shall have any further rights, duties or obligations hereunder and County and Seller hereby agree that the Initial Earnest Money (defined below) shall be forfeited by Seller and returned to the County, except that the Seller shall be entitled to retain such sums that represent the percentage of work complete by Seller plus any applicable fees paid to the City of Oregon City in connection with the Maintenance Facility that are nonrefundable to the Seller. For purposes of calculating the Initial Earnest Money that Seller may retain relating to the percentage of work complete, if any, the Parties acknowledge that upon termination of the Disposition Agreement during the Design and Entitlement Due Diligence Period, Owner's Representative shall promptly and reasonably determine the percent complete of the Design Drawings and the Construction Plans. The percent complete values determined by the Owner's Representative shall be multiplied by Design Drawing cost of \$1,021,189.00 and Construction Plan cost of \$473,215.00, respectively. The resulting amounts shall be retained by Seller. Notwithstanding the foregoing, in no event may the Seller retain more than Six Hundred Thousand and 00/100 Dollars (\$600,000.00) where the County elects to terminate this Disposition Agreement during the Design and Entitlement Due Diligence Period within fourteen (14) days of the County receiving a determination from the Bonneville Power Administration to reduce the size of the existing easement, recorded at Book 626, Page 406, on the Subject Property by approximately 125 feet.

The County shall be deemed to be the owner of any Design Drawings and Construction Plans produced and owned by Seller as of the date of termination. Seller shall execute any documents reasonably necessary to transfer to the County the rights it possesses to the Design Drawings and Construction Plans and any permits obtained in connection with the Maintenance Facility.

Within thirteen (13) days of County electing to move forward with the Disposition Agreement beyond the expiration of the Design and Entitlement Due Diligence Period, County shall deposit with the Title Company the final earnest money deposit of Seven Million Five

Hundred Thousand and 00/100 dollars (\$7,500,000.00) (the "Second Earnest Money Deposit"). Upon receipt, the Title Company shall immediately release the Second Earnest Money Deposit to Seller. The Second Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Within ten (10) days of receiving written notice from the Seller that all of the footings supporting the concrete tilt walls of the main Maintenance Facility building has been completed, as set forth on the Design Drawings, and has passed inspection by the City of Oregon City's Building Department, County shall deposit with the Title Company the third earnest money deposit of Nine Million Seven Hundred Thousand and 00/100 dollars (\$9,700,000.00) (the "Third Earnest Money Deposit"). The footings shall be deemed complete, in writing, by the Architect of Record. Within five (5) business days of receipt of the Architect of Record's notice of completion, the County shall provide either a signed acknowledgement accepting the Architect of Record's determination, or an objection to the Architect of Record's determination that is signed by an architect licensed in the State of Oregon and that sets forth the basis for any such objection. In the event the County provides a written objection, as set forth above, the Parties agree to proceed in good faith to address the basis of any such objection and neither the Architect of Record nor the architect acting on behalf of the County shall unreasonably withhold their written approval. Upon receipt of the written confirmation of completion by the Architect of Record and the signed acknowledgement on behalf of the County accepting the Architect of Record's determination, the Title Company shall immediately release the Third Earnest Money Deposit to Seller. The Third Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Within ten (10) days of receiving written notice from the Seller that the main building roof structure has been completed, as set forth on the Design Drawings, and has passed inspection by the City of Oregon City's Building Department, County shall deposit with the Title Company the final earnest money deposit of Eight Million Eight Hundred Fifty Thousand and 00/100 dollars (\$8,850,000.00) (the "Final Earnest Money Deposit"). The main building roof structure shall be deemed complete when readied to receive roofing as deemed, in writing, by the Architect of Record. Within five (5) business days of receipt of the Architect of Record's notice of completion, the County shall provide either a signed acknowledgement accepting the Architect of Record's determination, or an objection to the Architect of Record's determination that is signed by an architect licensed in the State of Oregon and that sets forth the basis for any such objection. In the event the County provides a written objection, as set forth above, the Parties agree to proceed in good faith to address the basis of any such objection and neither the Architect of Record nor the architect acting on behalf of the County shall unreasonably withhold their written approval. Upon receipt of the written confirmation of completion by the Architect of Record and the signed acknowledgement on behalf of the County accepting the Architect of Record's determination, the Title Company shall immediately release the Final Earnest Money Deposit to Seller. The Final Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

In the event the Final Earnest Money Deposit becomes due before July 1, 2021, the County shall have the right to defer payment of the Final Earnest Money Deposit until such date. The County's exercise of its right under this paragraph to defer payment of the Final Earnest Money

Deposit until July 1, 2021 shall cause interest to accrue on the amount owing¹ at a rate that represents the actual cost to the Seller to borrow an equivalent amount of funds using commercially reasonable effort, which shall be calculated from the date the Final Earnest Money Deposit is due, as set forth in the preceding paragraph, until the deferred payment is made by the County. In the event the County elects to defer payment of the Final Earnest Money Deposit under this paragraph, both the Final Earnest Money Deposit, together with any accrued interest, shall be due on July 1, 2021.

Section 3.2 of the Disposition Agreement, as amended, is hereby deleted in its entirety and is replaced with the following:

County shall, within three (3) business days after the Effective Date, deliver to the Title Company (defined below) the sum of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) as the initial earnest money in cash or by wire transfer of immediately available funds (the "Initial Earnest Money") to be held and applied in accordance with the terms of this Disposition Agreement. If County fails to timely deposit the Initial Earnest Money as provided above, this Disposition Agreement shall terminate and neither Seller nor County shall have any further obligations to one another. The Initial Earnest Money is fully refundable during the Title Commitment Due Diligence Period. In the event County elects to exercise its right to terminate this Disposition Agreement during the Title Commitment Due Diligence Period pursuant to Sections 2.1, 2.2 or 2.4 herein, except as otherwise provided herein, the Initial Earnest Money Deposit shall be immediately returned to County and neither party shall have any further rights, duties or obligations hereunder. If County elects to proceed beyond the Title Commitment Due Diligence Period, except as provided below, the Initial Earnest Money shall be released to the Seller and shall be credited to the Purchase Price due by County at Closing.

County at its option may provide notice to Seller of its election to terminate this Disposition Agreement prior to the expiration of the Design and Entitlement Due Diligence Period. In the event of termination during the Design and Entitlement Due Diligence Period (or deemed termination), neither party shall have any further rights, duties or obligations hereunder and County and Seller hereby agree that the Initial Earnest Money (defined below) shall be forfeited by Seller and returned to the County, except that the Seller shall be entitled to retain such sums that represent the percentage of work complete by Seller plus any applicable fees paid to the City of Oregon City in connection with the Maintenance Facility that are nonrefundable to the Seller. For purposes of calculating the Initial Earnest Money that Seller may retain relating to the percentage of work complete, if any, the Parties acknowledge that upon termination of the Disposition Agreement during the Design and Entitlement Due Diligence Period, Owner's Representative shall promptly and reasonably determine the percent complete of the Design Drawings and the Construction Plans. The percent complete values determined by the Owner's Representative shall be multiplied by Design Drawing cost of \$1,021,189.00 and Construction Plan cost of \$473,215.00, respectively. The resulting amounts shall be retained by Seller. Notwithstanding the foregoing, in no event may the Seller retain more than Six Hundred Thousand and 00/100 Dollars (\$600,000.00) where the County elects to terminate this Disposition Agreement during the Design and Entitlement Due

¹ Eight Million Eight Hundred Fifty Thousand and 00/100 dollars (\$8,850,000.00).

Diligence Period within fourteen (14) days of the County receiving a determination from the Bonneville Power Administration to reduce the size of the existing easement, recorded at Book 626, Page 406, on the Subject Property by approximately 125 feet.

The County shall be deemed to be the owner of any Design Drawings and Construction Plans produced and owned by Seller as of the date of termination. Seller shall execute any documents reasonably necessary to transfer to the County the rights it possesses to the Design Drawings and Construction Plans and any permits obtained in connection with the Maintenance Facility.

Within thirteen (13) days of County electing to move forward with the Disposition Agreement beyond the expiration of the Design and Entitlement Due Diligence Period, County shall deposit with the Title Company the final earnest money deposit of Seven Million Five Hundred Thousand and 00/100 dollars (\$7,500,000.00) (the "Second Earnest Money Deposit"). Upon receipt, the Title Company shall immediately release the Second Earnest Money Deposit to Seller. The Second Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Within ten (10) days of receiving written notice from the Seller that all of the footings supporting the concrete tilt walls of Building 1 (the main Maintenance Facility building) has been completed, as set forth on the Construction Plans, and has passed inspection by the City of Oregon City's Building Department for pour, County shall deposit with the Title Company the third earnest money deposit of Twelve Million Two Hundred Thousand and 00/100 dollars (\$12,200,000.00) (the "Third Earnest Money Deposit"). The footings shall be deemed complete, in writing, by the Architect of Record. Within five (5) business days of receipt of the Architect of Record's notice of completion, the County shall provide either a signed acknowledgement accepting the Architect of Record's determination, or an objection to the Architect of Record's determination that is signed by an architect licensed in the State of Oregon and that sets forth the basis for any such objection. In the event the County provides a written objection, as set forth above, the Parties agree to proceed in good faith to address the basis of any such objection and neither the Architect of Record nor the architect acting on behalf of the County shall unreasonably withhold their written approval. Upon receipt of the written confirmation of completion by the Architect of Record and the signed acknowledgement on behalf of the County accepting the Architect of Record's determination, the Title Company shall immediately release the Third Earnest Money Deposit to Seller. The Third Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Within ten (10) days of receiving written notice from the Seller that the main building roof structure has been completed, as set forth on the Design Drawings, and has passed inspection by the City of Oregon City's Building Department, County shall deposit with the Title Company the final earnest money deposit of Ten Million Four Hundred Thirty Thousand Three Hundred Seventy-Eight and 00/100 dollars (\$10,430,378.00) (the "Final Earnest Money Deposit"). The main building roof structure shall be deemed complete when readied to receive roofing as deemed, in writing, by the Architect of Record. Within five (5) business days of receipt of the Architect of Record's notice of completion, the County shall provide either a signed acknowledgement accepting the Architect of Record's determination, or an objection to the Architect of Record's

determination that is signed by an architect licensed in the State of Oregon and that sets forth the basis for any such objection. In the event the County provides a written objection, as set forth above, the Parties agree to proceed in good faith to address the basis of any such objection and neither the Architect of Record nor the architect acting on behalf of the County shall unreasonably withhold their written approval. Upon receipt of the written confirmation of completion by the Architect of Record and the signed acknowledgement on behalf of the County accepting the Architect of Record's determination, the Title Company shall immediately release the Final Earnest Money Deposit to Seller. The Final Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

3. **Amendment to Section 3.3. Section 3.3 of the Disposition Agreement which, after the Second Amendment to Disposition Agreement, reads:**

This transaction shall close (the "**Closing**") on or before the earlier occurrence of the following: 1) May 20, 2022; or 2) fifteen (15) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City (the "**Closing Date**"). If temporary occupancy has not been obtained from the City of Oregon City by the Seller on or before May 20, 2022, Seller may extend Closing until temporary occupancy for the Maintenance Facility is obtained. Seller's right to extend the Closing is limited to an additional one hundred eighty (180) days, and may be exercised by giving notice thereof to the County prior to May 1, 2022. In the event Seller exercises its right to extend, the Closing Date shall be set on a date and time within the one hundred eighty (180) day extension timeline that is mutually agreeable to both parties. Seller's exercise of its extension right under this paragraph shall cause a corresponding reduction of the Purchase Price of One Hundred Thousand Dollars (\$100,000).

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the "**Escrow Officer**") of First American Title, 9200 SE Sunnyside Rd. #400, Clackamas, OR 97015 (the "**Title Company**"), in accordance with the terms and conditions of this Disposition Agreement. County agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to Seller at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Twenty Seven Million Five Hundred Fifty Thousand Dollars (\$27,550,000.00). The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Disposition Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Disposition Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Seller.

Section 3.3 of the Disposition Agreement, as amended, is hereby deleted in its entirety and is replaced with the following:

This transaction shall close (the "**Closing**") on or before the earlier occurrence of the following: 1) August 20, 2022; or 2) fifteen (15) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City (the "**Closing Date**"). If temporary occupancy

has not been obtained from the City of Oregon City by the Seller on or before August 20, 2022, Seller may extend Closing until temporary occupancy for the Maintenance Facility is obtained. Seller's right to extend the Closing is limited to an additional one hundred eighty (180) days, and may be exercised by giving notice thereof to the County prior to August 20, 2022. In the event Seller exercises its right to extend, the Closing Date shall be set on a date and time within the one hundred eighty (180) day extension timeline that is mutually agreeable to both parties. Seller's exercise of its extension right under this paragraph shall cause a corresponding reduction of the Purchase Price of Sixteen Thousand Six Hundred and Sixty Seven Dollars (\$16,667) for each thirty (30) day period beyond the Closing Date set forth above.²

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the "**Escrow Officer**") of First American Title, 9200 SE Sunnyside Rd. #400, Clackamas, OR 97015 (the "**Title Company**"), in accordance with the terms and conditions of this Disposition Agreement. County agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to Seller at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Thirty One Million Six Hundred Thirty Thousand Three Hundred Seventy Eight Dollars (\$31,630,378), and any reduction attributable to the County's portion of the Contingency Savings. The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Disposition Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Disposition Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Seller.

4. **Amendment to Section 3.6.2. Section 3.6.2 of the Disposition Agreement which, after the Second Amendment to Disposition Agreement, reads:**

County shall pay the entire Purchase Price to Seller by wire transfer or cashier's check of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Twenty Seven Million Five Hundred Fifty Thousand Dollars (\$27,550,000.00).

Section 3.6.2 of the Disposition Agreement, as amended, is hereby deleted in its entirety and is replaced with the following:

County shall pay the entire Purchase Price to Seller by wire transfer or cashier's check of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest

² To clarify, if the transaction were to close 25 days beyond the Closing Date, for example, the Purchase Price would be reduced by \$16,667. If the transaction were to close 35 days beyond the Closing Date, the Purchase Price would be reduced by \$33,334. If the transaction were to close 155 days beyond the Closing Date, the Purchase Price would be reduced by \$100,002.

Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Thirty One Million Six Hundred Thirty Thousand Three Hundred Seventy Eight Dollars (\$31,630,378), and any reduction attributable to the County's portion of the Contingency Savings.

5. **Addition to Exhibit B. The document attached to this Amendment identified as "Purchase Price – Change Log" is added to and supplements the Scope of Development attached to the Disposition Agreement as Exhibit B, as amended by the Second Amendment to the Disposition Agreement and the Third Amendment to the Disposition Agreement.**

6. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

7. **Confirmation.** The Disposition Agreement is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Disposition Agreement and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date first written above.

COUNTY:

CLACKAMAS COUNTY
a corporate body politic

By: _____
Name: Tootie Smith
Its: Chair – Clackamas County Board of County Commissioners

DEVELOPER:

BEAVERCREEK STRUCTURES, LLC,
An Oregon limited liability company

By: _____
Name: _____
Its: Manager

PURCHASE PRICE CHANGE BY AMENDMENT					
DESCRIPTION	DISPOSITION AGREEMENT	FIRST AMENDMENT	SECOND AMENDMENT	THIRD AMENDMENT	FOURTH AMENDMENT
	A	B	C	D	E
DA Scope of Development Items (See Purchase Price Breakdown Summary)	April 8, 2019	May 29, 2019	July 30, 2020	December 16, 2020	
DESIGN & ENGINEERING	1 268 750	-	11 900	-	-
SURVEYING & REPORTS	188 400	-	-	-	-
LEGAL - GREENWAY	47 000	-	-	-	-
REGULATORY REQUIREMENTS AND FEES	1 900 000	-	-	(373 379)	-
QUALITY CONTROL & TESTING	87 000	-	-	-	-
BONDS & INSURANCE	212 900	-	-	-	-
FINANCING	1 487 900	-	(1 462 900)	-	-
LAND, DUE DILIGENCE & PROCUREMENT COSTS	2 525 101	-	-	-	-
DEVELOPMENT COORDINATION FEE	1 599 736	-	-	-	-
CONSTRUCTION HARD COSTS	21 453 964	-	540 239	(189 893)	4 080 378
SPECIALTY	14 500	-	-	-	-
SOFT COST CONTINGENCY	520 645	-	-	-	-
PURCHASE PRICE CHANGE BY AMENDMENT			0	(910 761)	(563 272)
DA - PURCHASE PRICE AFTER EACH AMENDMENT	31 305 896	31 305 896	30 395 135	29 831 863	33 912 241

AMENDMENT 4 - CONSTRUCTION HARD COST (REVISED PURCHASE PRICE BREAKDOWN SUMMARY)

DESCRIPTION	CONSTRUCTION HARD COST BREAKDOWN
1 GENERAL REQUIREMENTS	607 900
2 EXISTING CONDITIONS	15 750
3 CONCRETE	2 119 120
4 MASONRY	46 210
5 METALS	3 712 237
6 WOOD AND PLASTICS	152 667
7 THERMAL AND MOISTURE PROTECTION	1 078 864
8 DOORS AND WINDOWS	726 368
9 FINISHES	1 122 103
10 SPECIALTIES	103 104
11 EQUIPMENT	9 190
12 FURNISHINGS	0
13 SPECIAL CONSTRUCTION	221 381
14 CONVEYING SYSTEMS	96 153
21 FIRE SUPPRESSION	269 359
22 PLUMBING	742 821
23 HEATING, VENTILATION AND AIR CONDITIONING	775 193
24 ELECTRICAL	1 472 199
26+ ELECTRONIC SAFETY AND SECURITY	85 941
32+ ON & OFFSITE IMPROVEMENTS	8 493 684
i ALLOWANCE	0
ii 7% CONTRACTING FEE (PROFIT / OVERHEAD / GENERAL LIABILITY INSURANCE)	1 638 626
vi CONTINGENCY	1 600 000
TOTAL	25 884 688

SUMMARY OF PURCHASE PRICE CHANGE - FOURTH AMENDMENT

	Seller's Construction Hard Cost Breakdown After Amendments 1-3	July 19, 2021 Construction Hard Cost Breakdown	Fourth Amendment Purchase Price Increase
PROPOSED PURCHASE PRICE CHANGE	21 804 310	25 884 688	4 080 378

	Purchase Price After Third Amendment	Total Purchase Price Change Pursuant to Fourth Amendment	Adjusted Purchase Price After Fourth Amendment
PURCHASE PRICE RECONCILIATION	29 831 863	4 080 378	33 912 241