



Commissioners encourage public to attend public meeting digitally.

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

AGENDA

Thursday, July 30, 2020 - 6:00 PM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-60

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*****COVID-19 Update**

I. 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. REMOVED for further staff review. Approval of HOME Loan Documents with Green Line Affordable Development Limited Partnership for the Fuller Station Affordable Housing in Happy Valley – *Community Development*
2. Approval of a Personal Services Contract with Do Good Multnomah for Veterans Village Services – *H3S Admin Office*
3. Approval of a Local Subrecipient Grant Agreement with Northwest Family Services to Provide Evidence-based Parenting Education Classes – *Children, Family & Community Connections*
4. Approval of a Local Subrecipient Grant Agreement with Clackamas Women’s Services to Provide Evidence-based Parenting Education Classes - *Children, Family & Community Connections*
5. Approval of an Intergovernmental Facility Use Agreement with the Oregon Trail School District No.46 for the Sandy Clinic – *Health Centers*
6. Approval of a Subrecipient Agreement Amendment No. 4 with City of Wilsonville/Wilsonville Community Center to Provide Social Services for Clackamas County Residents – *Social Services*
7. Approval of Amendment No. 4, to Intergovernmental Subrecipient Agreement with Friends of Canby Adult Center to Provide Social Services for Clackamas County Residents – *Social Services*
8. Approval of a Subrecipient Agreement Amendment No. 2 with Senior Citizen Council of Clackamas County to Provide Social Services for Clackamas County Residents – *Social Services*

B. Department of Transportation & Development

1. Approval of Addendum No. 1 to 2040 Planning and Development Grant Intergovernmental Agreement with Metro: Clackamas County Park Ave Development and Design Standards. Contract No. 935012
2. Approval of a First Amendment to a Disposition Agreement between Clackamas County and the Blue at Abernethy Creek, LLC Pertaining to Property Located at 902 Abernethy Road
3. Approval of a Second Amendment to a Disposition Agreement between Clackamas County and Beaver Creek Structures, LLC Pertaining to Property Located at 19314 S Beaver Creek Road
4. Approval of a Contract with DKS Associates, Inc. for the Clackamas County Regional Freight Intelligent Transportation System (ITS) Project - *Procurement*

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*

D. Central Communications (C-Com)

1. Approval of an Intergovernmental Agreement to Provide Emergency Dispatch Services to the Aurora Fire Department

E. Disaster Management

1. Approval of a Cooperative Agreement with Portland General Electric Company (PGE) for the Activation of the Clackamas County Emergency Notification System

II. NORTH CLACKAMAS PARKS & RECREATION DISTRICT (NCPRD)

1. Approval of Amendment No. 4 to the Interagency Agreement between North Clackamas Parks & Recreation District and Health, Housing and Human Services Social Services Division
2. Approval of Small Grant Project Agreement 12-20-003 between North Clackamas Parks & Recreation District and Oregon Watershed Enhancement Board (OWEB) for the Boardman & Rinearson Headwaters Enhancement Project

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>

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a HOME Loan Documents with
Green Line Affordable Development Limited Partnership
for the Fuller Station Affordable Housing in Happy Valley, OR

Purpose/Outcomes	HOME program funds will assist in the development of 100 affordable rental housing units in the Fuller Station Affordable Housing project.
Dollar Amount and Fiscal Impact	Total HOME funds is \$950,000 <ul style="list-style-type: none"> • \$950,000 long-term loan, 0.0% interest deferred, 60-year term. • No County General Funds are involved.
Funding Source	The fund source is the FY16, FY 17, FY 18 and FY19 HOME Investment Partnerships Program allocations which the County receives annually from the US Department of Housing and Urban Development (HUD). No County General Funds are involved.
Duration	The term of the loan is 60 years, beginning at closing in October 2021 and ending in September 2082. The HOME Period of Affordability is 20 years from date of project completion.
Previous Board Action	No previous Board action. This is a new HOME project.
Strategic Plan Alignment	Increasing housing choice and housing opportunity for low to moderate income households.
County Counsel	Loan was reviewed by Andrew Naylor, County Counsel on 7/14/20.
Contact Person	Pamela Anderson, Manager, Community Development - (971) 804-3464
Contract No.	H3S 9795

BACKGROUND:

HOME funds will be provided to assist in the creation of one multi-family housing apartment building: Fuller Station Affordable Housing. It will include 100-units of multi-family, transit-oriented, mixed-income housing at the Fuller Road Station Park & Ride. The Fuller Road Affordable Housing project will be on 2.15 acres. The development will be located at 9608 SE Fuller Road, Happy Valley, Oregon.

Healthy Families. Strong Communities.

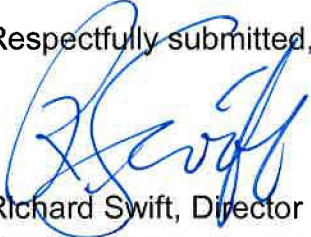
2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us

RECOMMENDATION:

We recommend the approval of this HOME Loan Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

Attachments: Loan Agreement
Promissory Note
Trust Deed & Declaration of Land Use Restrictive Covenants

AFTER RECORDING RETURN TO:
Clackamas County Community Development Division
2051 Kaen Road
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Fuller Station Affordable Housing

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated _____, 2020 by Green Line Affordable Development Limited Partnership and its successors and assigns ("**Owner**") is given as a condition precedent to the award of HOME Investment Partnership ("**HOME**") Program funds by Clackamas County, a political subdivision of the State of Oregon ("**County**") together with any successor to its rights, duties, and obligations.

Owner has applied to the County and entered into HOME Loan Agreements (plurally referred to as "**Agreement**") for an award to the Project in amounts not to exceed **\$950,000.00**. Pursuant to the terms of the Agreement, Owner has represented to the County restrictions regarding rents and tenant eligibility that Owner will maintain for the Period of Affordability specified in the Agreement. County has entered into agreements with Owner pursuant to which Owner assumes all responsibilities of the Project pursuant to the Agreement. This Declaration is subject to the terms and conditions of the Loan Agreement.

In consideration of the promises and covenants set forth below and of other valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner and the County agree as follows:

SECTION 1 - DEFINITIONS

All the words and phrases used in this Declaration shall have the same meaning as when used in the Agreement and in 24 CFR 92 ("**HUD HOME Regulations**") unless the context requires otherwise.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (A) Promptly after this Declaration is signed by Owner and County, Owner shall record this Declaration and all amendments and file in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the County a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.

- (B) The Owner intends, declares, and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project: (1) shall be and are covenants running with the Project land, encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the County and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, each and every contract, deed or other instrument hereafter signed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter signed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.
- (C) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner represents, covenants, and warrants as follows:

- (A) The Owner (1) is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to sign and deliver this Declaration.
- (B) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (C) The Owner will, within 180 days of execution and delivery of this Declaration, have good and marketable title to the Property free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any Loan Documents relating to the Project or other permitted encumbrances).
- (D) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (E) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in 24 CFR Part 92 and applicable regulations.
- (F) **Ten units in the Project are HOME-Assisted Units.**

During the term of this Declaration:

- 50% of the HOME-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 50% of the median income (Very Low-Income as defined in the Loan Agreement). 50% of the HOME-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 80% of the median income (Low-Income as defined in the Loan Agreement); for a total of 10 floating HOME units.
- Rents for the HOME-Assisted Units will not exceed the gross rent allowable under 24 CFR 92.252(b)(1) except that, in accordance with 24 CFR 92.252(b)(2), "If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward the rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e. tenant

contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program."

The determination of whether a tenant meets the income requirement shall be made by the Owner or its designated agent at least annually in accordance with 24 CFR 92.252(h).

- (G) During the term of this Declaration, Owner will maintain the Project and each HOME-Assisted unit in accordance with the Property Standards requirements of 24 CFR 92.251.
- (H) Subject to the requirements of 24 CFR Part 92 and this Declaration, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the prior agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 92 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the County may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 92.

In addition, the withdrawal, or removal of the Managing Member of the Owner for cause pursuant to the terms of the Owner's Amended and Restated Agreement of Limited Partnership shall not constitute a default hereunder or under the Agreement, provided that the substitute Managing Member is reasonably acceptable to the County and is admitted to Owner within ninety days thereafter.

- (I) The Owner will notify the County in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (J) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the County has given its prior written consent.
- (K) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (L) The Owner warrants that it has not and will not sign any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 4 - TERM OF DECLARATION

- (A) This Declaration, and the Terms of Affordability specified herein, applies to the Project immediately upon recordation, and the Owner shall comply with all restrictive covenants herein not later than the first day in the Project period on which any building which is part of the Project is placed in service. This Declaration shall terminate on the later of 20 years after the Project Completion Date or the date on which the loan is paid in full.
- (B) Pursuant to 24 CFR 92.252(e), as amended, this Declaration and the Terms of Affordability shall remain in effect for not less than the period described in section (A) above without regard to the term of the mortgage of other underlying security and without regard to any transfer of ownership; provided however, that the requirements herein, shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original term, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

SECTION 5 – COUNTY'S RIGHT TO INSPECT; OWNER'S OBLIGATION TO REPORT

- (A) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the County, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income tenants which pertain to compliance with the County's Occupancy Restrictions specified in this Declaration.
- (B) The Owner shall submit any other information, documents, or certifications requested by the County which the County shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the County's Occupancy Restrictions specified in this Declaration.

SECTION 6 - ENFORCEMENT OF 24 CFR 92 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS

- (A) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 92 and applicable regulations of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the County) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to Owner's obligations under 24 CFR Part 92 and affecting the Project.
- (B) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with 24 CFR 92 and the applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE COUNTY AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 92 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (C) The Owner agrees that the representations and covenants set forth herein may be relied upon by the County and all persons interested in Project compliance under 24 CFR Part 92 and the applicable regulations.
- (D) The Owner agrees to take any and all actions reasonably required by the County to substantiate the Owner's compliance with occupancy restrictions of 24 CFR Part 92 as now constituted or subsequently amended and other occupancy restrictions of the County as now constituted or subsequently adopted.
- (E) This Declaration and the Agreement of which it is a part may be enforced by the County or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Agreement and legal costs are incurred by the County or one or more of the tenants or beneficiaries, such legal costs, including reasonable attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

SECTION 7 - MISCELLANEOUS

- (A) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (B) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE COUNTY: Community Development Manager
Clackamas County Community Development
2051 Kaen Road, Oregon City, OR 97045

TO THE OWNER: Geller Silvis & Associates, Inc.
8370 SE Causey Ave., Suite B
Happy Valley, OR 97086

WITH A COPY TO: Thomas B. Brenneke
Guardian Real Estate Services LLC
760 SW 9th Avenue, Suite 2200
Portland, OR 97205

The County, Owner and its Investor Partner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (C) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Part 92, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HOME assistance. The County, together with Owner, may sign and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (D) Governing Law. This Declaration shall be governed by the laws of the State of Oregon, and, where applicable, the laws of the United States of America, without giving effect to the conflict of law provisions thereof.
- (E) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the reservation of HOME funds and shall not be deemed to terminate or merge with the awarding of the funds.

Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

PROJECT OWNER: Green Line Affordable Development, Limited Partnership

By: Fuller Affordable Ventures, LLC

Its General Partner

By: 
Anna L. Geller

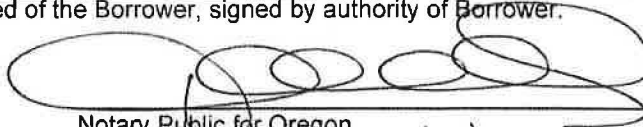
Dated: July 14, 2020

President of Geller Silvis & Associates, Inc., Manager of Northwest Real Estate Developers LLC, sole manager of Fuller Affordable Ventures, LLC general partner of Green Line Affordable Development Limited Partnership

STATE OF OREGON)

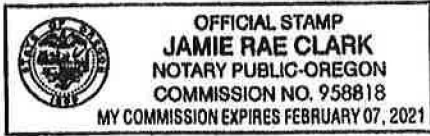
County of CLACKAMAS ss.

On July 14th, 2020, before me personally appeared Anna L. Geller
who being duly sworn, stated that he/she is the General Partner of
Fuller Affordable Dentures LLC and acknowledged the foregoing
instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.



Notary Public for Oregon

My commission expires: 2/7/2021



**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

PARCEL 1: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Raymond Pattridge and Irene Pattridge, recorded August 11, 1950 in Book 434, Page 644, Clackamas County Records, more particularly described as follows:

Lots 1 and 2, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion of said Lot 2 described in Deed to Ronald Aronson and Patricia Aronson recorded August 20, 1965 in Book 661, Page 790, Deed Records, said portion being described as follows:

Beginning at the Southeast corner of said Lot 2; thence North 75.00 feet, along the East line of said Lot 2, to a point; thence West, parallel with the South line of said Lot 2 and 75.0 feet distant North, when measured at right angles to, the South line of said Lot 2, to the Southeast side of Fuller Road; thence Southwesterly along the Southeast side of said Fuller Road, to the Southwest corner of said Lot 2; thence East 192.02 feet along the South line of said Lot 2 to the point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 2: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to David Leatham, recorded June 8, 2004 as Document No. 2004-051900, Clackamas County Records:

A portion of Lot 2, BATTIN ACRES, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of said Lot 2; thence North 75.00 feet, along the East line of said Lot 2, to a point; thence West, parallel with the South line of said Lot 2 and 75.00 feet distant North, when measured at right angles to, the South line of said Lot 2, to the Southeast side of Fuller Road; thence Southwesterly, along the Southeast side of said Fuller Road, to the Southwest corner of said Lot 2; thence East 192.02 feet, along the South line of said Lot 2 to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 3: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in that Contract - Real Estate to Rory S. Sofranko, Dana L. Sofranko and David Leatham, recorded May 3, 1993 as Document No. 93 29399, Clackamas County Records, more particularly described as follows:

Lot 3, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 4: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to E.D. Chase and Erma M. Chase, recorded June 2, 1950 in Book 431, Page 731, Clackamas County Records, more particularly described as follows:

Lot 4, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 5: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described as Parcel 1 in Statutory Warranty Deed to Miles Holding-Otty Road, LLC, recorded January 26, 2000, as Document No. 2000-004885, Clackamas County Records:

A parcel of land lying in Lots 14 and 15, BATTIN ACRES, in the County of Clackamas and State of Oregon, the said parcel being that portion of said Lots 14 and 15 lying Westerly of the following described line:

Beginning at a point opposite and 127 feet Westerly of Engineer's Station "SB3" 592+00 on the centerline of the Southbound lane of the East Portland Freeway; thence Southerly in a straight line to a point opposite and 129.11 feet Westerly of Engineer's Station "SB3" 592+42.51 on said center line; thence Southerly in a straight line to a point opposite and 131.52 feet Westerly of Engineer's Station "SB3" 592+75.88 on said center line; thence Southerly in a straight line to the Southerly line of said Lot 14 at a point 110.00 Westerly of, when measured at right angles to, said center line; thence Southerly parallel with said center line to a point opposite Engineer's Station "SB3" 598+50.

The center line referred to herein is described as follows:

Beginning at Engineer's center line Station "SB3" 550+56.38, said station being 1207.47 feet North and 52.56 feet East of the North quarter corner of Section 28, Township 1 South, Range 2 East, Willamette Meridian; thence South 36°07' West 164.55 feet; thence on a spiral curve left (the long chord of which bears South 35°27' West 399.98 feet) 400.00 feet; thence on a 5729.58 foot radius curve left (the long chord of which bears South 11°54'45" West 4330.51 feet) 4440.83 feet to Engineer's center line Station "SB3" 600+61.76.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, by Deed recorded June 10, 2013 at Recording No. 2013-040130.

PARCEL 6: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Terry W. Emmert, recorded March 21, 2000, as Document No. 2000-017789, Clackamas County Records:

A portion of Lot 16, BATTIN ACRES, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of said Lot 16; thence North 88°44' West (Deed South 88°44' West) along the North line of said Lot, a distance of 90 feet to the East line of a 20 foot roadway conveyed to the public by Deed Order No.: 45141816385 recorded August 23, 1962 in Book 609, Page 230, Deed Records; thence South along the East line of said roadway, a distance of 238.59 feet to the Northwest corner of that certain tract of land conveyed to Alex Craigen, et ux, by Deed recorded July 30, 1963 in Book 625, Page 617, Deed Records; thence East along the North line of said Craigen tract, a distance of 90 feet to the East line of said Lot 16; thence North along the East line of said Lot 16, a distance of 237.55 feet to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 7: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Warranty Deed to Frank H. Carlin and Brenda M. Carlin, recorded August 1, 2001 as Document No. 2001-060862, Clackamas County Records:

A portion of Lot 16, BATTIN ACRES, in the County of Clackamas, State of Oregon, described as follows:

Beginning at a point which is South 88°04' East 20.00 feet and South 00°25' West 238.59 feet from the Northwest corner of said Lot 16; thence South 88°04' East 90.00 feet to the East line of said Lot 16; thence South 00°25' West 140.00 feet along said East line to the Northeast corner of a tract conveyed to Jacob Jensen by Deed recorded August 31, 1962 in Book 609, Page 799, Deed Records; thence North 89°04' West, along the North line of said Jensen tract, 90.00 feet to the Northwest corner of said Jensen tract; thence North 00°25' East 140.00 feet to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

ALSO: A portion of Lot 16, BATTIN ACRES, in the County of Clackamas, State of Oregon, described as follows:

Beginning at the Southeast corner of said Lot 16; thence running 90 feet North 89°04' West along the South line of said Lot 16; thence North 00°25' East 70 feet parallel with the East line of said Lot 16, to the Southwest corner of a tract conveyed to Alex Craigen, et utilities, by Deed recorded July 31, 1962, as Fee No. 16364, Deed Records; thence South 89°04' East 90 feet to the East line of said Lot 16; thence South 00°25' West 70 feet along the East line of said Lot 16 to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

PARCEL 8: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Frank H. Carlin and Brenda M. Carlin, recorded March 26, 1976 as Document No. 76 9437, Clackamas County Records:

A portion of Tract 17, BATTIN ACRES, a recorded Plat, described as follows:

Beginning at the Northeast corner of said Tract 17; thence South 00°25' West along the East line of said Tract 17, 220.00 feet to the True Point of Beginning of the tract of land herein to be described; thence North 88°44' West parallel with the North line of said Tract 17, 110.00 feet to a point in the West line of said Tract 17; thence South 00°25' West along the West line of said Tract 17, 228.83 feet to the Southwest corner thereof; thence South 89°04' East (South 88°44' East, Document No. 76 9437) along the South line of said Tract 17, 110.00 feet to the Southeast corner thereof; thence North 00°25' East along the East line of said Tract 17, 228.19 feet to the true point of beginning.

PARCEL 9: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Special Warranty Deed to David G. Bradley and Martin E. Fleck, recorded February 4, 2004 as Document No. 2004-008554, Clackamas County Records:

A portion of Tract 17, BATTIN ACRES, a recorded Plat, described as follows:

Beginning at the Northeast corner of said Tract 17; thence South 00°25' West along the East line of said Tract, 110.00 feet to the True Point of Beginning of the tract of land herein to be described; thence North 88°44' West parallel with the North line of said Tract, 110.00 feet to a point in the West line of said Tract; thence South 00°25' West along the West line of said tract, 110.00 feet; thence South 88°44' East parallel with the North line of said Tract, 110.00 feet to a point in the East line of said Tract; thence North 00°25' East along the East line of said Tract 110.00 feet to the true point of beginning.

PARCEL 10: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Warranty Deed to Edward F. Zachary and Mary L. Zachary, recorded August 1, 1985 as Document No. 85 26700, Clackamas County Records:

A portion of Lot 17, BATTIN ACRES, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said Lot 17; thence South 00°25' West along the East line of said Lot 17, 110.00 feet; thence North 88°44' West parallel with the North line of said tract, 110.00 feet to the West line thereof; thence North 00°25' East 110.00 feet, along said West line to the Northwest corner thereof; thence East along the North line of said tract, 110.00 feet to the point of beginning.

EXCEPTING THEREFROM the Northerly 5 feet conveyed to Clackamas County for road purposes by Deed recorded July 23, 1975 as Recorder's Fee No. 75-20126, Deed Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 11: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Frances E. Mulick and Rose A. Mulick, recorded December 20, 1968 as Document No. 68 25543, Clackamas County Records, more particularly described as follows:

Lot 18, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

AFTER RECORDING RETURN TO:
Clackamas County Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

TRUST DEED, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Fuller Station Affordable Housing

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of _____, 2020 by Green Line Affordable Development Limited Partnership ("**Grantor**" or "**Borrower**" or "**Investor Member**"), having its office at 8370 SE Causey Avenue Suite B., Happy Valley, OR 97086, to Fidelity National Title, 900 SW 5th Avenue, Portland Oregon 97204 c/o Lori Medak ("**Trustee**" or "**Title Company**"), for the benefit of Clackamas County, a political subdivision of the State of Oregon, through its Community Development Division, having its office at 2051 Kaen Road, Oregon City, OR 97045 ("**Beneficiary**" or "**County**").

County has made a **zero percent (0.0%) interest deferred payment** loan to Borrower in the sum of **NINE HUNDRED THOUSAND FIFTY DOLLARS (\$950,000.00)** under Title II of the National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq., and 24 CFR Part 92 (the "HOME" program). The loan is evidenced by this Trust Deed, a Promissory Note, a Loan Agreement and a Declaration of Land Use Restrictive Covenants, as they may be amended or supplemented from time to time, together referred to as the "**Loan Documents**." Capitalized terms have the meaning set forth in the Loan Agreement, except as otherwise defined in this Trust Deed. The purpose(s) of the loan are set forth in the Loan Agreement entered into between the parties.

The loan is due and payable in full at the earliest of: (i) the Maturity Date which is exactly **sixty (60) years from the executed date of this Trust Deed** except as otherwise provided in the Loan Agreement, (ii) the date the property is sold, (iii) title is transferred, or (iv) the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below).

The loan is due and payable in full at the earliest of: **60 years** from the Project Completion Date; except as otherwise provided in the Loan Agreement, the property is sold, title is transferred; or the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below). The Initial HUD-required Period of Affordability shall be 20 years, without regard to the term of the loan or the transfer of ownership.

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record this Trust Deed.

For good consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the County, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to the real property located in Clackamas County, Oregon, described as:

See **Exhibit A** attached hereto and incorporated herein,

Together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, (the "Property"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "Improvements"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be re-conveyed.

BORROWER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

Particular Covenants and Warranties of Borrower

1.01 Obligations Secured. This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future (the "Obligations").

1.02 Property. Borrower warrants that within 180 days of execution of the document, it will hold good and merchantable title to the Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in **Exhibit B**. Borrower covenants that it shall forever defend County's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

1.03 [Reserved]

1.04 Further Assurances; Filing; Refiling; Etc.

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as County or Title Company may require to accomplish the purposes of this Trust Deed.
- 2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
- 3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

1.05 Compliance with Laws. Borrower represents, warrants, and covenants that:

- 1) The Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments, including the HOME requirements (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
- 2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

1.06 Definitions; Environmental Covenants; Warranties and Compliance

- 1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
- 2) For the purposes of this section, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.
- 3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.
- 4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 5) Borrower shall give prompt written notice to County of:
 - (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;
 - (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
 - (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or
 - (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.
- 6) Borrower shall promptly provide to County copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. County shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by

Borrower, if County determines that such participation is reasonably necessary to protect its interest in the Trust Property.

- 7) If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to County a complete copy of any environmental assessment obtained by Borrower.
- 8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by County for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- 9) Borrower shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to County that:
 - (a) Neither the Property nor Borrower is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - (b) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
 - (c) To the best of Borrower's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- 11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the re-conveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without County's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, so that it continues to meet the property standards set forth in 24 CFR 92.251, and shall at County's election and Borrower's cost, restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below) pursuant to Sections 1.14 and 2.01, as applicable. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear accepted.

1.08 Liens. Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B.

1.09 Impositions

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.
- 2) Borrower may, at its expense and after prior notice to County, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and

may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither County nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to County cash, corporate surety bond, or other additional security in the amount determined by County with respect to the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final judgment.

- 3) Borrower shall furnish to County, promptly upon request, satisfactory evidence of the payment of all Impositions. County is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

1.10 Books and Records; Inspection of the Property. Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied, and in accordance with the record-keeping requirements of the Loan Agreement. Borrower shall permit Title Company, County, the Secretary of HUD and the Comptroller General of the U.S., and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times as County or Title Company may choose.

1.11 Limitations of Use. Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of County.

1.12 Insurance

- 1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:
 - (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance;
 - (b) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to County, and in no event less than \$2,000,000 per occurrence and \$4,000,000 aggregate coverage; and
 - (c) Unless County otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as County may require.
- 2) Insurance Companies and Policies. Insurer must be authorized to do business in Oregon. All insurance shall be written by a company or companies reasonably acceptable to County with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of County with loss proceeds under any policy payable to County, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to County of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against County; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. County shall be named as additional insured on all liability policies. Borrower shall forward to County, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.
- 3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and County are insured under such policy in the proper designated amount.
- 4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

1.13 Assignments of Policies upon Foreclosure. In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

1.14 Casualty/Loss Restoration

- 1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to County, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. County may make proof of loss if it is not made promptly and to County's satisfaction by Borrower.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, Borrower assigns to County all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements

(subject to disbursement procedures established by County) if Borrower can demonstrate, to County's satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess insurance proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

1.15 Actions to Protect Trust Property; Reserves

- 1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, County may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that County shall first give notice to Borrower of such failure and a reasonable opportunity to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of County's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by County under this section shall impair any other right or remedy available to County or constitute a waiver of any default.
- 2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, County may require Borrower thereafter to pay and maintain with County reserves for payment of such obligations. In that event, Borrower shall pay to County each month a sum estimated by County to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to County upon demand. The reserves may be commingled with County's other funds, and County shall not be required to pay interest to Borrower on such reserves. County shall not hold the reserve in trust for Borrower, and County shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

1.16 Insurance Warning. Unless Borrower provides County with evidence of the insurance coverage required by the Loan Documents, County may purchase insurance at Borrower's expense to protect County's interest.

This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage County purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by County. The cost of this insurance may be added to Borrower's loan balance. If the cost is added to Borrower's loan balance, the interest rate of 8.0% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage County purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

1.17 Estoppel Certificates. Borrower, within five days of the request, shall furnish Title Company and County a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations. If Borrower shall fail to furnish such a statement within the time allowed, County shall be authorized, as Borrower's attorney-in-fact, to sign and deliver such statement.

1.18 Financial Information. Borrower shall furnish to County within 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's financial statement for such year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to County any and all such other financial information as County shall reasonably request from time to time.

**ARTICLE II
Condemnation**

2.01 Condemnation

- 1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to County.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, County shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at County's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the Improvements (subject to reasonable disbursement procedures established by County) if Borrower can demonstrate, to County's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

ARTICLE III

Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Borrower assigns and transfers to County (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party. This assignment is intended by Borrower and County to create a present and unconditional assignment to County subject only to the license set forth in Section 3.04 below.

3.02 Rights of County. Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, County shall have the right, power, and authority to:

- 1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to County and that all Rents are to be paid directly to County, whether or not County shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not County has taken possession of the Trust Property;
- 2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to County;
- 3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or County, with respect to any and all Leases and Rents; and
- 4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

3.03 Application of Receipts. County shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of County, and in collecting any Rents, including internal personnel costs; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after County shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, County shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as County shall determine. The exercise or failure by County to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

3.04 License. County grants to Borrower a revocable license to collect and receive the Rents. Such a license may be revoked by County, without further notice to Borrower, other than the notice required by Article 5.01, if Borrower defaults under Article III or any other term of the loan documents. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all Lease obligations;
- 2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain County's prior written approval of the form and content of all future Leases.

Upon request of County, Borrower agrees:

- 1) To collect Rents no earlier than 30 days in advance of the day when they are due, and
- 2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

3.05 Limitation of County's Obligations. Notwithstanding the assignment provided for in this Article III, County shall not be obligated to perform or discharge, and County does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon County, or to make County responsible for any condition of the Property. County shall be accountable to Borrower only for the sums actually collected and received by County pursuant to this assignment. Borrower shall hold County fully harmless from, indemnify County for, and defend County against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against County on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the gross negligence or willful misconduct of County.

3.06 Termination. The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to County shall cease and terminate.

3.07 Attorney-in-Fact. Borrower irrevocably constitutes and appoints County, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and

authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower, and Borrower ratifies and confirms any and all such actions that may be taken or omitted to be taken by County, its employees, agents, and attorneys.

ARTICLE IV

Security Agreement and Fixture Filing

4.01 Security. To secure the Obligations, Borrower grants to County a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien, subordinate only to those liens previously approved by the County; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of County from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

ARTICLE V

Events of Default; Remedies

5.01 Events of Default. Each of the following shall constitute an event of default under the Loan Documents; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to Northwest Real Estate Developers, LLC, an Oregon limited liability company ("Managing Member"), the general partner of the Borrower, and Green Line Affordable Development, limited partnership ("Investor Member"), the limited partner of the Borrower. County agrees that any cure of any default made or tendered by Owner shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

- 1) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 2) Failure of Owner to comply with the Affordability Requirements at any time during the Period of Affordability.
- 3) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 4) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for HOME funds.
- 5) Other Default. The occurrence of any other event of default under the Loan Documents.
- 6) Cross-Defaults. Owner's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project, including but not limited to the documents which evidence the other sources of funds listed in the Loan Documents.
- 7) Bankruptcy. The occurrence of any of the following with respect to Owner or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- 8) Transfer; Due-on-Sale. Any sale, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without County's prior written consent, shall constitute an event of default. In the case of an LIHTC project, this section shall not apply to a transfer to an affiliate of the Managing Member or the Investor Member of the Borrower, to a successor or assignee of the Managing Member or the removal of any general partner of the Borrower by Investor Member for cause in accordance with Borrower's Amended and Restated Agreement of Limited Partnership Agreement. If a general partner of Borrower is so removed, County shall not unreasonably withhold its consent to the substitute general partner, provided that County's consent shall not be required if the Investor Member or an entity which is directly or indirectly owned and/or controlled by Green Line Affordable Development, Limited Partnership, is the substitute general partner.

5.02 Remedies in Case of Default. If an Event of Default shall occur, subject to the terms of Section 13 of the Loan Agreement, County or Title Company may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- 1) **Extend Period of Affordability.** If Borrower fails to provide the required rents, fails to rent to eligible tenants, or fails to maintain the units according to applicable Property Standards, County may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** County may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** County may have a receiver appointed for the Trust Property. County shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or County shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at County's option and waives any and all defenses to such an appointment.

- 4) **Possession.** County may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as County shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to County or any receiver appointed under this Trust Deed.
- 5) **Rents.** County may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. County shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (5). If Rents are collected by County under this subsection(), Borrower irrevocably appoints County as Borrower's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.
- 6) **Power of Sale.** County may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
- 7) **Foreclosure.** County may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of County, County may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Abandonment.** County may abandon all or any portion of the Trust Property by written notice to Borrower.

5.03 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as County may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including County, its elected officials, officers, agents, and employees, may purchase at any such sale. County and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, County and its officers may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to County or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of County, for such purpose.

5.04 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by County to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, County, or a receiver may:

- 1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
- 2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
- 3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
- 4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, County, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

5.06 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

- 1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
- 2) **Indebtedness.** To pay all Obligations, in such order as County shall determine in its sole discretion.
- 3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

5.07 Deficiency. No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance

of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

5.09 Continued LIHTC obligations. This Trust Deed shall to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the property. This subordination shall cease to be effective as of the earlier of (i) the date the property is acquired by foreclosure (or instrument in lieu of foreclosure), or (ii) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), for such other reason provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h)(6)(E)(ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the property. This subordination shall be interpreted to constitute a subordination of this Trust Deed, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B) of the Code.

ARTICLE VI General Provisions

6.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

6.02 Re-conveyance by Title Company. At any time upon the request of County, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may re-convey, without warranty, all or any part of the Trust Property. The grantee in any re-conveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

6.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

6.04 Substitute Trustee. In the event of dissolution or resignation of Title Company, County may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

6.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and County. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, County shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as County deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

6.06 Indemnity. Borrower shall hold County and Title Company and their respective elected officials, directors, officers, employees and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, arising out of or in connection with Title Company's or County's interest under this Trust Deed, except Borrower shall not be liable for acts performed by County or Title Company in violation of applicable law or resulting from the gross negligence or willful misconduct of County or Title Company.

6.07 Expenses and Attorney Fees. If County refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if County is the prevailing party in any litigation instituted in connection with any of the Obligations; or if County or any other person initiates any judicial or non-judicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by County to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce County's interests, then in any such event Borrower shall pay reasonable attorney fees, costs, and expenses incurred by County or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.

6.08 Applicable Law. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

6.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.10 Rights of Prior Mortgagee. In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of County with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to County to be applied in accordance with this Trust Deed.

6.11 Person Defined. As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

6.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

6.13 Entire Agreement. This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

6.14 Commercial Property. Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

6.15 Standard for Discretion

In the event this Mortgage is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

6.16 ORS 93.040 Warning. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated: _____, 2020

PROJECT OWNER: Green Line Affordable Development Limited Partnership

By: Fuller Affordable Ventures, LLC
Its General Partner

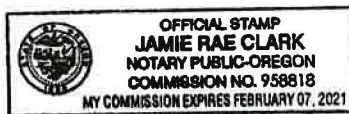
By: Anna L. Geller
Anna L. Geller

President of Geller Silvis & Associates, Inc., Manager of Northwest Real Estate Developers LLC, sole manager of Fuller Affordable Ventures, LLC the general partner of Green Line Affordable Development Limited Partnership

STATE OF OREGON)

County of Clackamas ss.

On July 14th, 2020, before me personally appeared Anna L. Geller, who being duly sworn, stated that she is the General Partner, and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.



[Signature]
Notary Public for Oregon
My commission expires: 2/7/2021

**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL 1: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Raymond Pattridge and Irene Pattridge, recorded August 11, 1950 in Book 434, Page 644, Clackamas County Records, more particularly described as follows:

Lots 1 and 2, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion of said Lot 2 described in Deed to Ronald Aronson and Patricia Aronson recorded August 20, 1965 in Book 661, Page 790, Deed Records, said portion being described as follows:

Beginning at the Southeast corner of said Lot 2; thence North 75.00 feet, along the East line of said Lot 2, to a point; thence West, parallel with the South line of said Lot 2 and 75.0 feet distant North, when measured at right angles to, the South line of said Lot 2, to the Southeast side of Fuller Road; thence Southwesterly along the Southeast side of said Fuller Road, to the Southwest corner of said Lot 2; thence East 192.02 feet along the South line of said Lot 2 to the point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 2: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to David Leatham, recorded June 8, 2004 as Document No. 2004-051900, Clackamas County Records:

A portion of Lot 2, BATTIN ACRES, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of said Lot 2; thence North 75.00 feet, along the East line of said Lot 2, to a point; thence West, parallel with the South line of said Lot 2 and 75.00 feet distant North, when measured at right angles to, the South line of said Lot 2, to the Southeast side of Fuller Road; thence Southwesterly, along the Southeast side of said Fuller Road, to the Southwest corner of said Lot 2; thence East 192.02 feet, along the South line of said Lot 2 to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 3: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in that Contract - Real Estate to Rory S. Sofranko, Dana L. Sofranko and David Leatham, recorded May 3, 1993 as Document No. 93 29399, Clackamas County Records, more particularly described as follows:

Lot 3, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 4: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to E.D. Chase and Erma M. Chase, recorded June 2, 1950 in Book 431, Page 731, Clackamas County Records, more particularly described as follows:

Lot 4, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 5: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described as Parcel 1 in Statutory Warranty Deed to Miles Holding-Otty Road, LLC, recorded January 26, 2000, as Document No. 2000-004885, Clackamas County Records:

A parcel of land lying in Lots 14 and 15, BATTIN ACRES, in the County of Clackamas and State of Oregon, the said parcel being that portion of said Lots 14 and 15 lying Westerly of the following described line:

Beginning at a point opposite and 127 feet Westerly of Engineer's Station "SB3" 592+00 on the centerline of the Southbound lane of the East Portland Freeway; thence Southerly in a straight line to a point opposite and 129.11 feet Westerly of Engineer's Station "SB3" 592+42.51 on said center line; thence Southerly in a straight line to a point opposite and 131.52 feet Westerly of Engineer's Station "SB3" 592+75.88 on said center line; thence Southerly in a straight line to the Southerly line of said Lot 14 at a point 110.00 Westerly of, when measured at right angles to, said center line; thence Southerly parallel with said center line to a point opposite Engineer's Station "SB3" 598+50.

The center line referred to herein is described as follows:

Beginning at Engineer's center line Station "SB3" 550+56.38, said station being 1207.47 feet North and 52.56 feet East of the North quarter corner of Section 28, Township 1 South, Range 2 East, Willamette Meridian; thence South 36°07' West 164.55 feet; thence on a spiral curve left (the long chord of which bears South 35°27' West 399.98 feet) 400.00 feet; thence on a 5729.58 foot radius curve left (the long chord of which bears South 11°54'45" West 4330.51 feet) 4440.83 feet to Engineer's center line Station "SB3" 600+61.76.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, by Deed recorded June 10, 2013 at Recording No. 2013-040130.

PARCEL 6: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Terry W. Emmert, recorded March 21, 2000, as Document No. 2000-017789, Clackamas County Records:

A portion of Lot 16, BATTIN ACRES, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of said Lot 16; thence North 88°44' West (Deed South 88°44' West) along the North line of said Lot, a distance of 90 feet to the East line of a 20 foot roadway conveyed to the public by Deed Order No.: 45141816385 recorded August 23, 1962 in Book 609, Page 230, Deed Records; thence South along the East line of said roadway, a distance of 238.59 feet to the Northwest corner of that certain tract of land conveyed to Alex Craigen, et ux, by Deed recorded July 30, 1963 in Book 625, Page 617, Deed Records; thence East along the North line of said Craigen tract, a distance of 90 feet to the East line of said Lot 16; thence North along the East line of said Lot 16, a distance of 237.55 feet to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 7: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Warranty Deed to Frank H. Carlin and Brenda M. Carlin, recorded August 1, 2001 as Document No. 2001-060862, Clackamas County Records:

A portion of Lot 16, BATTIN ACRES, in the County of Clackamas, State of Oregon, described as follows:

Beginning at a point which is South 88°04' East 20.00 feet and South 00°25' West 238.59 feet from the Northwest corner of said Lot 16; thence South 88°04' East 90.00 feet to the East line of said Lot 16; thence South 00°25' West 140.00 feet along said East line to the Northeast corner of a tract conveyed to Jacob Jensen by Deed recorded August 31, 1962 in Book 609, Page 799, Deed Records; thence North 89°04' West, along the North line of said Jensen tract, 90.00 feet to the Northwest corner of said Jensen tract; thence North 00°25' East 140.00 feet to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

ALSO: A portion of Lot 16, BATTIN ACRES, in the County of Clackamas, State of Oregon, described as follows:

Beginning at the Southeast corner of said Lot 16; thence running 90 feet North 89°04' West along the South line of said Lot 16; thence North 00°25' East 70 feet parallel with the East line of said Lot 16, to the Southwest corner of a tract conveyed to Alex Craigen, et utilities, by Deed recorded July 31, 1962, as Fee No. 16364, Deed Records; thence South 89°04' East 90 feet to the East line of said Lot 16; thence South 00°25' West 70 feet along the East line of said Lot 16 to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

PARCEL 8: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Frank H. Carlin and Brenda M. Carlin, recorded March 26, 1976 as Document No. 76 9437, Clackamas County Records:

A portion of Tract 17, BATTIN ACRES, a recorded Plat, described as follows:

Beginning at the Northeast corner of said Tract 17; thence South 00°25' West along the East line of said Tract 17, 220.00 feet to the True Point of Beginning of the tract of land herein to be described; thence North 88°44' West parallel with the North line of said Tract 17, 110.00 feet to a point in the West line of said Tract 17; thence South 00°25' West along the West line of said Tract 17, 228.83 feet to the Southwest corner thereof; thence South 89°04' East (South 88°44' East, Document No. 76 9437) along the South line of said Tract 17, 110.00 feet to the Southeast corner thereof; thence North 00°25' East along the East line of said Tract 17, 228.19 feet to the true point of beginning.

PARCEL 9: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Special Warranty Deed to David G. Bradley and Martin E. Fleck, recorded February 4, 2004 as Document No. 2004-008554, Clackamas County Records:

A portion of Tract 17, BATTIN ACRES, a recorded Plat, described as follows:

Beginning at the Northeast corner of said Tract 17; thence South 00°25' West along the East line of said Tract, 110.00 feet to the True Point of Beginning of the tract of land herein to be described; thence North 88°44' West parallel with the North line of said Tract, 110.00 feet to a point in the West line of said Tract; thence South 00°25' West along the West line of said tract, 110.00 feet; thence South 88°44' East parallel with the North line of said Tract, 110.00 feet to a point in the East line of said Tract; thence North 00°25' East along the East line of said Tract 110.00 feet to the true point of beginning.

PARCEL 10: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Warranty Deed to Edward F. Zachary and Mary L. Zachary, recorded August 1, 1985 as Document No. 85 26700, Clackamas County Records:

A portion of Lot 17, BATTIN ACRES, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said Lot 17; thence South 00°25' West along the East line of said Lot 17, 110.00 feet; thence North 88°44' West parallel with the North line of said tract, 110.00 feet to the West line thereof; thence North 00°25' East 110.00 feet, along said West line to the Northwest corner thereof; thence East along the North line of said tract, 110.00 feet to the point of beginning.

EXCEPTING THEREFROM the Northerly 5 feet conveyed to Clackamas County for road purposes by Deed recorded July 23, 1975 as Recorder's Fee No. 75-20126, Deed Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 11: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Frances E. Mulick and Rose A. Mulick, recorded December 20, 1968 as Document No. 68 25543, Clackamas County Records, more particularly described as follows:

Lot 18, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

EXHIBIT B
EXCEPTIONS TO CLEAR TITLE

None listed.

PROMISSORY NOTE

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Fuller Station Affordable Housing

\$950,000.00 _____, **2020**

For value received, Green Line Affordable Development Limited Partnership, ("Borrower"), promises to pay to the order of Clackamas County ("Lender"), the sum of **NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **zero percent (0.0 %) deferred payment per year, compounded annually**. The loan is evidenced by this Promissory Note the ("Note"), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, the "Loan Documents"). Unless otherwise defined herein, capitalized terms have the meaning assigned to them in the Loan Agreement.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of this Note and the Loan Agreement, the terms of the Loan Agreement shall control:

1. **Payment of Obligation**. Lender makes this loan for the development and construction of Fuller Station Affordable Housing (the "Project"), under Title II, Section 216 and 217 of the National Affordable Housing Act of 1990, and 24 CFR Part 92 (the "HOME" program).
 - a. The loan shall bear interest at a rate of **zero percent (0.0 %) deferred payment per year, compounded annually**.
 - b. The term of the loan is 60 years.
 - c. The Maturity Date is 60 years from the date on this Note shown above.
 - d. The loan shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Property on which the Project will be constructed without Lender's consent, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents including, but not limited to, failure to acquire title to the Property on which the Project will be constructed or failure to record the Trust Deed or Declaration of Restrictive Covenants within 30 days of acquiring title to the Property on which the Project will be constructed.
 - e. Payments shall be made at such place as Lender may designate in writing.
 - f. Payments of principal and interest shall be made until the loan is paid in full.
2. **Governing Law**. This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
3. **Security**. This Note shall be secured by a trust deed from Borrower as grantor to Lender as beneficiary in the Project.

If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

Dated July 14, 2020

PROJECT OWNER:

Green Line Affordable Development Limited Partnership

By: Fuller Affordable Ventures, LLC

Its General Partner

By: Anna L. Geller

Anna L. Geller

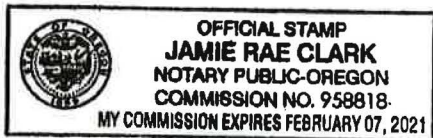
President of Geller Silvis & Associates, Inc.,

Manager of Northwest Real Estate Developers LLC, sole manager of Fuller Affordable Ventures, LLC general partner of Green Line Affordable Development Limited Partnership

STATE OF OREGON)

County of CLATSOP) ss.

On July 14th, 2020, before me personally appeared Anna L. Geller, who being duly sworn, stated that he/she is the General Partner of Fuller Affordable Ventures, LLC and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.



[Signature]
Notary Public for Oregon
My commission expires: 2/7/2021

**LOAN AGREEMENT
CLACKAMAS COUNTY HOME PROGRAM**

Name of Project: Fuller Station Affordable Housing

This Loan Agreement ("Agreement") is entered into between Green Line Affordable Development Limited Partnership ("Owner" & "Investor Member"), of which Fuller Affordable Ventures, LLC (the "General Partner"), is the sole general partner, and Clackamas County ("County"), a Participating Jurisdiction under the HOME Investment Partnerships Program ("HOME").

This Agreement includes the following attachments:

- | | |
|-----------------------------|--|
| A. Legal Description | E. HOME Affordability Requirements |
| B. Sources and Uses | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| C. Schedule of Tasks | G. Project Completion documentation |
| D. HOME Match Contributions | |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
 - a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **CHDO.** Community Housing Development Organization. This is a HOME specific designation. There is no CHDO designated for this project.
 - d. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units ("HOME units") are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
 - e. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
 - f. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD's regulations and requirements for the HOME Program are located in 24 CFR Part 92. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - g. **HUD.** The United States Department of Housing and Urban Development
 - h. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
 - i. **Low-Income and Very Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County's Median Income. A Very Low-Income household is one whose total income does not exceed 50% of the County's Median Income.
 - j. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
 - k. **Owner.** The initial Owner and any subsequent Project owner, subject to the County consenting to any transfer under Section 30 ~~30~~ below.
 - l. **Period of Affordability.** See Section 9 below.

- m. **Project.** The project, Fuller Station Affordable Housing will consist of 100 newly constructed multi-family rental apartment units in one building. Upon completion, the project will provide a total of 17 one bedroom units, 62 two bedroom units, 20 three bedroom units and 1 two bedroom manager's unit. Of the total units, HOME funds will be utilized for 5 of the two bedroom units and 5 of the three bedroom units. The purpose of the project is to provide a high-quality affordable housing option in a transit-oriented, services and employment rich environment that supports households as they work to climb out of poverty. The legal description of the property (the "Property") comprising the Project is set forth in **Attachment A**.
- n. **Project Completion Date.** The later of the date when (a) the construction is completed, (b) the final HOME drawdown has been disbursed to the Project, and (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown. This date will start the HOME Period of Affordability (see Section 9 below).
- o. **Transfer.** For purposes of this Agreement, "Transfer" shall mean any sale, assignment or transfer, whether voluntary or involuntary, of (i) any rights and/or obligations under the Loan Documents and/or (ii) any interest in the Property (including the Project and any other improvement thereon); provided, however, that "Transfer" shall not mean the transfer of the Property to a limited partnership of which Owner (or a limited liability company of which Owner is the sole member) is the general partner or to a limited liability company of which Owner is the managing member. County shall approve other Transfers requested by Owner if the proposed transferee has the necessary qualifications and experience to construct the Project and/or own, operate and maintain the Project, as applicable, as contemplated by this Agreement, as reasonably determined by the County.

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$950,000** to the **Owner** for the Project. The HOME funds will be used for the development of the Project. Eligible activities include acquisition, construction, engineering and architectural services and other related activities. Use of the HOME funds for any other purpose, without the expressed written consent of the County is prohibited and may constitute a breach of this agreement.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of 60 years**. Loan repayment, satisfaction, or conveyance shall not relieve Owner of any performance, affordability or programmatic obligations and requirements of the HOME program.
 - ii. Notwithstanding the loan terms described above, and subject to available sale or refinance proceeds, the entire amount of the loan (\$950,000) together with any accrued interest or fees, shall be paid in full upon the refinance, sale, assignment or other transfer of title to the Property without the County's consent; or the date Owner or its agents or subcontractors is otherwise in default under any of the prior written Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Sections 9 & 10 below, failure to acquire title to the Property, or failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of acquiring title to the Property).
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, and a Declaration of Land Use Restrictive Covenants, and secured by a Trust Deed executed by Owner in favor of the County all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."
- d. **Recording Requirement:** The Owner agrees to execute and record, or cause to be recorded, the Trust Deed and the Declaration of Land Use Restrictive Covenants, within 30 days after signing and acquiring title to the Property.

3. PAYMENT OF OBLIGATION.

- a. Payments of principal and interest shall be made until the loan is paid in full. All payments on the loan shall be applied first to the interest due on the loan and then the remaining amount shall be applied to the principal. No late fees will be charged.

- b. Payments shall be made at such place as County may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

4. HOME-ASSISTED UNITS

- a. Ten (10) units in the project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the project, including, but not limited to, this loan. The HOME units are as follows:

Bedroom Size	TOTAL UNITS	Low-Home Units	High Home Units	Total HOME-Assisted
1-bedroom (tenant) unit:	17			0
2-bedroom (tenant) unit:	62	3	2	5
3-bedroom (tenant) unit:	20	2	3	5
One 2 bedroom managers unit	1			
TOTALS	100			10

- b. Fixed/Floating: The HOME-Assisted units are designated as **FLOATING HOME** units as defined at 24 CFR 92.252.
- c. See Section 10 below and Attachment E for rent and income limits for the HOME-Assisted Units.
- d. Special Needs Set-aside. A minimum of 5% of the units in the project (but not less than one) must be accessible to individuals with mobility impairment, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. 5 units will be accessible to individuals with physical/mobility impairment; and 2 units will be accessible to individuals with sensory impairments.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. All sources and uses of funds for the acquisition phase of the Project are set forth in **Attachment B**. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

6. MATCH REQUIREMENT

Attachment D documents the Project-related eligible sources of matching contributions as allowed by 24 CFR 92.218 through 92.222.

7. HOME REGULATIONS

The Owner agrees to comply with the HOME Regulations and with the other requirements of the Loan Documents.

8. ENVIRONMENTAL REVIEW

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental

environmental review information and data to the County for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. This shall be 20 years for all new HOME units**, without regard to the term of the loan or the transfer of ownership, except as noted in subsection d below. The Initial Period of Affordability begins on the Project Completion Date entered into HUD IDIS.
- b. **The Extended Period of Affordability, if any** begins at the end of the INITIAL Period of Affordability and continues for an additional 60 years or until such time as the loan is deemed paid in full.
- c. Unless specified otherwise, the Period of Affordability includes both the Initial and the Extended Periods of Affordability.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the Owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former Owner or any partner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the project or property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)

- a. To ensure compliance with the HOME "Program Rule", at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 60% of the Median Income.
- b. **Low-HOME Units.** If the number of HOME-Assisted Units is 5 or more, at least 20% of the HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- c. **High-HOME Units.** After initial occupancy as indicated in paragraph (a) above, the remaining HOME-Assisted Units must be rented during the Period of Affordability to tenants, who at the time of their initial occupancy are low-income tenants and the initial rents for these units must not exceed the High HOME rents shown in **Attachment E**. These rents are subject to periodic adjustments by HUD.
- d. Increases in Tenant's Income:
 - i. Low-HOME rent units
 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of Median Income, but does not exceed 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income so increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") increase beyond the maximum applicable LIHTC rent for such unit.
 2. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
 - ii. High-HOME rent units
 1. The income of a tenant in a High-HOME rent unit can increase to 80% of Median Income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
 2. If the income of a tenant in a High-HOME rent unit rises above 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of Median Income.
 3. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.

- iii. Project-based Rent Subsidy In accordance with 24 CFR 92.252(b)(2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
- iv. Over-income Tenants In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:
 - 1. In no event shall the tenant of a HOME-assisted unit that has been allocated LIHTCs be charged rent in excess of the maximum applicable LIHTC rent for such unit.
 - 2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.
- e. Certification and Recertification of Tenant Income: Owner must certify each tenant's household income, and must recertify such income annually in accordance with HOME regulations.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS

- a. Owner shall adopt written tenant selection policies and criteria, which must be pre-approved by the County. The criteria must: (i) be consistent with the purpose of providing housing for very-low-income and low-income households, (ii) be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, (iii) provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and (iv) give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. In compliance with 24 CFR 92.253(d), neither the Owner nor General Partner may discriminate against rental assistance subsidy holders.
- d. Tenant leases may not contain any of the following provisions:
 - i. Agreement by the tenant to be sued or to have a judgment entered in favor of Owner;
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties;
 - iii. Agreement by the tenant not to hold Owner liable for any action or failure to act;
 - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Agreement by the tenant that Owner may evict tenant without instituting court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may, however, be obligated to pay costs and attorney fees if the tenant loses.
- e. The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

12. PROPERTY STANDARDS

- a. Upon completion, the Project must meet all of the applicable Property Standards in 24 CFR 92.251 for new construction. County staff will periodically inspect the Project during construction and at completion to assure compliance with the Property Standards.
- b. Upon project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251.

13. INDEMNIFICATION AND INSURANCE

Owner agrees to indemnify, defend and hold harmless the County and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the County's sole negligence or intentional misconduct, arising from performance of this Agreement.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$2,000,000 per occurrence, \$4,000,000 aggregate, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this Agreement, and again upon request of the County. Owner shall give county no less than 30 days' notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

Owner shall diligently undertake to repair or restore the Property if damaged or destroyed, with such work commencing no later than 120 days after the damage or 30 days following receipt of the insurance proceeds and completed within one-year of the damage, and that the Owner is responsible to make up any insufficiency in insurance proceeds.

14. EVENTS OF DEFAULT

An event of default under the Loan Documents includes, but is not limited to, the following; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30 day period, or during such longer period as is agreed to by the non-defaulting party in writing:

- Noncompliance with the term and conditions of the Loan Documents
- Bankruptcy
- Non-payment of judgments within 30 days
- Suspension of business
- Dissolution or liquidation of Owner
- Liens against the Property not paid in 60 days
- Construction abandoned for more than 15 days for cause not beyond reasonable control of developer
- Construction stopped by governmental authority or entitlement withdrawn or suspended
- Prohibited transfer
- Material misrepresentation
- Noncompliance with the Affordability Requirements at any time during the term of this Loan
- Default under other secured loans, foreclosure, bankruptcy, receivership and non-payment.
- Failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of obtaining title to the Property
- Failure to obtain title to the Property within 180 days of executing this Agreement.

The following shall also be an event of default under the Loan Documents:

- a. Securing all Funding. The Owner must secure all fund sources identified in Attachment B, as evidenced by a commitment letter or similar agreement, within 12 months from the Effective Date identified in Section 32.
- b. Full Occupancy requirement. Within 18 months from the date of project completion, the project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.
- c. Noncompliance with the Affordability Requirements at any time during the term of this Agreement.

15. County agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

16. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed.
- b. The County and any tenant or applicant who meets the income limitation applicable under 24 CFR 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner and/or Recipient of its obligations under this Agreement in state court.

17. AFFIRMATIVE MARKETING

If the Project contains five or more HOME-Assisted Units, the Owner must to implement and follow the adopted Affirmative Marketing Plan of the County, **Attachment F** (the "Plan"). The Recipient must cause the Owner to maintain records evidencing compliance with the Plan.

18. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment F**.

19. NON-DISCRIMINATION

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
 - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
 - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
 - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
 - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. Owner shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

20. DISBURSEMENT OF FUNDS

- a. Owner agrees to request funds under this Agreement only when they are needed for payment by Owner of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.

- c. County will disburse HOME funds for eligible predevelopment costs upon execution of this Agreement and the Promissory Note. County will not disburse any additional HOME funds until all the Loan Documents are signed and the following conditions are satisfied:
 - i. All the Loan Documents are signed;
 - ii. Owner has acquired title to the Property no later than 180 days from the date of this Agreement;
 - iii. The Trust Deed and Declaration of Land Use Restrictive Covenants are signed and recorded no later than 30 days from acquisition of the Property; and
 - iv. The Owner has provided the County with the most recently available documentation that all sources of financing for the Project are committed or in the process of being committed. With the understanding that if leveraged dollars do not come through and HOME funds are used for predevelopment expenses, the HOME funds must still be repaid.
- d. Other Submittals and Approvals
 - i. Cost certification audit (this item should be submitted within 30 days of completion of construction and lease up, and is required to receive IRS Form 8609)
 - ii. Annual operating budget 60 days prior to beginning of the fiscal year for the Project
 - iii. Replacement reserve withdrawals within 30 days of such withdrawals.
 - iv. Operating reserve withdrawals within 30 days of such withdrawals.
 - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year
 - vi. Green Line Affordable Development Limited Partnership financial statements/audit, within 90 days of the end of their fiscal year.
- e. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- f. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.

21. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 24 CFR Part 24, the Owner must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

22. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

23. LEAD BASED PAINT AND HAZARDOUS MATERIALS

- a. For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner shall comply with the HUD Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 et. seq.) as amended requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978. *This part is not applicable to new construction.*
- b. For purposes of this Section 23, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions,

including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC ̄39601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC ̄3901-6992. For the purposes of this Section 23, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law

- c. If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Project, the Property, or any improvements thereon in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property, the Project, or improvements thereon, County may require Owner to obtain or may itself obtain, at Owner's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Owner shall promptly provide to County a complete copy of any environmental assessment obtained by Owner.
- d. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Owner shall, within 30 days after written demand by County for Owner's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Owner including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Owner shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by the Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- e. Owner shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Owner's warranties in this Section 23, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, the Project, or any improvements thereon, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the Project, or any improvements thereon, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- f. To the best of Owner's knowledge, Owner represents and warrants to County that:
 - i. Neither the Property (including the Project and any other improvement thereon) nor Owner is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - ii. Owner has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
 - iii. To the best of Owner's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- g. All representations, warranties, and covenants in this Section 23 shall survive the satisfaction of Owner's payment obligations under the Loan Documents, the re-conveyance of the Property, or the foreclosure of the Trust Deed by any means.

24. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

Owner shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-4655).

25. CONFLICT OF INTEREST

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the Recipient, developer or sponsor, may occupy a HOME-Assisted Unit in the Project. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

26. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

27. RECORDS

- d. Owner must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review.
- e. Owner must annually provide tenant eligibility records to the County.
- f. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - ii. Owner shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iii. Written agreements must be retained for five years after the Agreement terminates.
 - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- g. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Recipient's and/or Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, the Recipient must assist, or must cause Owner to assist, the County by serving notice to affected tenants, as required under Oregon Law.

28. MONITORING

- a. Within 60 days of acquisition, the County staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor Project performance to ensure compliance with the requirements of this Agreement. During the initial Period of Affordability, the monitoring will be conducted in accordance with 24 CFR 92.504(d)(ii)(A-D) and will include on-site inspections and a review of all records required in Section 0 above.

29. WAIVER

Failure by either party to enforce any right under this Agreement or any of the Loan Documents shall not be deemed to be a waiver of that right or of any other right.

30. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party.

31. AUTHORITY TO SIGN

Each party signing this Agreement, and the other Loan Documents, represents that it has full power and authority to enter into this Agreement and all other documents contemplated thereby, and the persons signing this Agreement for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this Agreement, and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with the Loan Documents. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

32. EFFECTIVE DATE

The Effective Date of this Agreement is the date it is signed by the Director of Health, Housing and Human Services Department.

33. **COMPLIANCE AND FURTHER ASSURANCES.** Owner shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Owner agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement and the other Loan Documents including, but not limited to, executing all additional documentation necessary for County to comply with applicable Federal requirements.

34. **LIMITATION OF LIABILITIES.** This Agreement and the other Loan Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and are contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

Attachment A. Legal Description

PARCEL 1: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Raymond Pattridge and Irene Pattridge, recorded August 11, 1950 in Book 434, Page 644, Clackamas County Records, more particularly described as follows:

Lots 1 and 2, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion of said Lot 2 described in Deed to Ronald Aronson and Patricia Aronson recorded August 20, 1965 in Book 661, Page 790, Deed Records, said portion being described as follows:

Beginning at the Southeast corner of said Lot 2; thence North 75.00 feet, along the East line of said Lot 2, to a point; thence West, parallel with the South line of said Lot 2 and 75.0 feet distant North, when measured at right angles to, the South line of said Lot 2, to the Southeast side of Fuller Road; thence Southwesterly along the Southeast side of said Fuller Road, to the Southwest corner of said Lot 2; thence East 192.02 feet along the South line of said Lot 2 to the point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 2: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to David Leatham, recorded June 8, 2004 as Document No. 2004-051900, Clackamas County Records:

A portion of Lot 2, BATTIN ACRES, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of said Lot 2; thence North 75.00 feet, along the East line of said Lot 2, to a point; thence West, parallel with the South line of said Lot 2 and 75.00 feet distant North, when measured at right angles to, the South line of said Lot 2, to the Southeast side of Fuller Road; thence Southwesterly, along the Southeast side of said Fuller Road, to the Southwest corner of said Lot 2; thence East 192.02 feet, along the South line of said Lot 2 to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 3: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in that Contract - Real Estate to Rory S. Sofranko, Dana L. Sofranko and David Leatham, recorded May 3, 1993 as Document No. 93 29399, Clackamas County Records, more particularly described as follows:

Lot 3, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 4: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to E.D. Chase and Erma M. Chase, recorded June 2, 1950 in Book 431, Page 731, Clackamas County Records, more particularly described as follows:

Lot 4, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2001 at Recording No. 2011-052522.

PARCEL 5: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described as Parcel 1 in Statutory Warranty Deed to Miles Holding-Otty Road, LLC, recorded January 26, 2000, as Document No. 2000-004885, Clackamas County Records:

A parcel of land lying in Lots 14 and 15, BATTIN ACRES, in the County of Clackamas and State of Oregon, the said parcel being that portion of said Lots 14 and 15 lying Westerly of the following described line:

Beginning at a point opposite and 127 feet Westerly of Engineer's Station "SB3" 592+00 on the centerline of the Southbound lane of the East Portland Freeway; thence Southerly in a straight line to a point opposite and 129.11 feet Westerly of Engineer's Station "SB3" 592+42.51 on said center line; thence Southerly in a straight line to a point opposite and 131.52 feet Westerly of Engineer's Station "SB3" 592+75.88 on said center line; thence Southerly in a straight line to the Southerly line of said Lot 14 at a point 110.00 Westerly of, when measured at right angles to, said center line; thence Southerly parallel with said center line to a point opposite Engineer's Station "SB3" 598+50.

The center line referred to herein is described as follows:

Beginning at Engineer's center line Station "SB3" 550+56.38, said station being 1207.47 feet North and 52.56 feet East of the North quarter corner of Section 28, Township 1 South, Range 2 East, Willamette Meridian; thence South 36°07' West 164.55 feet; thence on a spiral curve left (the long chord of which bears South 35°27' West 399.98 feet) 400.00 feet; thence on a 5729.58 foot radius

curve left (the long chord of which bears South 11°54'45" West 4330.51 feet) 4440.83 feet to Engineer's center line Station "SB3" 600+61.76.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, by Deed recorded June 10, 2013 at Recording No. 2013-040130.

PARCEL 6: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Terry W. Emmert, recorded March 21, 2000, as Document No. 2000-017789, Clackamas County Records:

A portion of Lot 16, BATTIN ACRES, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of said Lot 16; thence North 88°44' West (Deed South 88°44' West) along the North line of said Lot, a distance of 90 feet to the East line of a 20 foot roadway conveyed to the public by Deed Order No.: 45141816385 recorded August 23, 1962 in Book 609, Page 230, Deed Records; thence South along the East line of said roadway, a distance of 238.59 feet to the Northwest corner of that certain tract of land conveyed to Alex Craigen, et ux, by Deed recorded July 30, 1963 in Book 625, Page 617, Deed Records; thence East along the North line of said Craigen tract, a distance of 90 feet to the East line of said Lot 16; thence North along the East line of said Lot 16, a distance of 237.55 feet to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 7: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Warranty Deed to Frank H. Carlin and Brenda M. Carlin, recorded August 1, 2001 as Document No. 2001-060862, Clackamas County Records:

A portion of Lot 16, BATTIN ACRES, in the County of Clackamas, State of Oregon, described as follows:

Beginning at a point which is South 88°04' East 20.00 feet and South 00°25' West 238.59 feet from the Northwest corner of said Lot 16; thence South 88°04' East 90.00 feet to the East line of said Lot 16; thence South 00°25' West 140.00 feet along said East line to the Northeast corner of a tract conveyed to Jacob Jensen by Deed recorded August 31, 1962 in Book 609, Page 799, Deed

Records; thence North 89°04' West, along the North line of said Jensen tract, 90.00 feet to the Northwest corner of said Jensen tract; thence North 00°25' East 140.00 feet to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

ALSO: A portion of Lot 16, BATTIN ACRES, in the County of Clackamas, State of Oregon, described as follows:

Beginning at the Southeast corner of said Lot 16; thence running 90 feet North 89°04' West along the South line of said Lot 16; thence North 00°25' East 70 feet parallel with the East line of said Lot 16, to the Southwest corner of a tract conveyed to Alex Craigen, et utilities, by Deed recorded July 31, 1962, as Fee No. 16364, Deed Records; thence South 89°04' East 90 feet to the East line of said Lot 16; thence South 00°25' West 70 feet along the East line of said Lot 16 to the point of beginning.

TOGETHER WITH that portion of vacated public road which inured thereto by Vacation Ordinance No. 2007-464, recorded September 24, 2007 at Recording No. 2007-082092.

PARCEL 8: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Frank H. Carlin and Brenda M. Carlin, recorded March 26, 1976 as Document No. 76 9437, Clackamas County Records:

A portion of Tract 17, BATTIN ACRES, a recorded Plat, described as follows:

Beginning at the Northeast corner of said Tract 17; thence South 00°25' West along the East line of said Tract 17, 220.00 feet to the True Point of Beginning of the tract of land herein to be described; thence North 88°44' West parallel with the North line of said Tract 17, 110.00 feet to a point in the West line of said Tract 17; thence South 00°25' West along the West line of said Tract 17, 228.83 feet to the Southwest corner thereof; thence South 89°04' East (South 88°44' East, Document No. 76 9437) along the South line of said Tract 17, 110.00 feet to the Southeast corner thereof; thence North 00°25' East along the East line of said Tract 17, 228.19 feet to the true point of beginning.

PARCEL 9: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Special Warranty Deed to David G. Bradley and Martin E. Fleck, recorded February 4, 2004 as Document No. 2004-008554, Clackamas County Records:

A portion of Tract 17, BATTIN ACRES, a recorded Plat, described as follows:

Beginning at the Northeast corner of said Tract 17; thence South 00°25' West along the East line of said Tract, 110.00 feet to the True Point of Beginning of the tract of land herein to be described;

thence North 88°44' West parallel with the North line of said Tract, 110.00 feet to a point in the West line of said Tract; thence South 00°25' West along the West line of said tract, 110.00 feet; thence South 88°44' East parallel with the North line of said Tract, 110.00 feet to a point in the East line of said Tract; thence North 00°25' East along the East line of said Tract 110.00 feet to the true point of beginning.

PARCEL 10: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Statutory Warranty Deed to Edward F. Zachary and Mary L. Zachary, recorded August 1, 1985 as Document No. 85 26700, Clackamas County Records:

A portion of Lot 17, BATTIN ACRES, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said Lot 17; thence South 00°25' West along the East line of said Lot 17, 110.00 feet; thence North 88°44' West parallel with the North line of said tract, 110.00 feet to the West line thereof; thence North 00°25' East 110.00 feet, along said West line to the Northwest corner thereof; thence East along the North line of said tract, 110.00 feet to the point of beginning.

EXCEPTING THEREFROM the Northerly 5 feet conveyed to Clackamas County for road purposes by Deed recorded July 23, 1975 as Recorder's Fee No. 75-20126, Deed Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

PARCEL 11: A parcel of land situated in the Southwest one-quarter of Section 28, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being all that property described in Warranty Deed to Frances E. Mulick and Rose A. Mulick, recorded December 20, 1968 as Document No. 68 25543, Clackamas County Records, more particularly described as follows:

Lot 18, BATTIN ACRES, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Clackamas County for public road and right-of-way by Document recorded September 15, 2011 at Recording No. 2011-052626.

Attachment B. Sources and Uses of Funds

Sources of funding for project: as of date of Application on March 16, 2020

HOME	\$950,000
OHCS 4% LIHTC (Equity)	\$16,468,831
OHCS Weatherization	\$332,381
Metro Bond Funds (HACC)	\$11,500,000
Metro TOD	\$500,000
UMPQA Bank loan	\$13,730,000
Deferred Development fee	\$3,594,402
Special limited partner	\$100
Total Proposed Development Cost	\$47,075,714

Uses of HOME funds: Eligible expenses include acquisition, construction, engineering and architectural services and other related activities.

Attachment C. Schedule of Tasks
As of date of Application on March 16, 2020

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed			Oct. 5, 2018
Site Acquisition	Aug 27, 2020		
Zoning Approval			Sept 10, 2019
Site Analysis			Dec 5, 2018
Building Permits & Fees	April 27, 2020		Dec 4, 2019*
Off-site Improvements	Aug 28, 2020		
PRE-DEVELOPMENT			
Plans Completed (permit)	April 2, 2020		
Final Bids	July 7, 2020		
Contractor Selected			Nov 2019
FINANCING			
CONSTRUCTION LOAN:			
Proposal	April 2, 2020		
Firm Commitment (submittal)	June 5, 2020		
Closing/Funding of Loan	Feb 28, 2020		
PERMANENT LOAN			
Proposal	Aug 27, 2020		
Firm Commitment	Aug 28, 2020		
Closing/funding of Loan	Feb 28, 2022		
DEVELOPMENT			
Syndication Agreement	Aug 27, 2020		
Construction Begins	Aug 28, 2020		
Construction Completed	Oct 28, 2021		
Certificate Of Occupancy	Oct 28, 2021		
MARKETING			
Lease up begins	Aug 2, 2021		
Lease up completed	Nov 5, 2021		
Absorption (units per month)	33.33 units		
		*Submitted permit, sent to County	

Attachment D. Home Match Contribution Form

PROJECT: Fuller Station Affordable Housing

Total number of units in project: 100
Number of HOME-assisted units: 10
Applicable match credit percentage*: 10%

MATCH SOURCE*	ELIGIBLE MATCH TYPE	ELIGIBLE MATCH AMOUNT	MATCH CREDIT
METRO Transit Oriented Development	5	\$500,000	1.06%
METRO Affordable Housing Bond	5	\$11.5 million	24.43%
Oregon Multifamily Energy Program	1	\$332,351	.71%

Eligible forms of match as defined in 24 CFR 92.220(a):

- (1) Cash Contribution from Non-federal Source
- (2) Foregone Taxes, Fees and Charges
- (3) Donated Land or Other Real Property
- (4) On-site or Off-site Infrastructure
- (5) Proceeds from Affordable Housing Bonds
- (6) Donated Site Preparation and Construction Materials
- (7) Donated Site Preparation and Construction Equipment
- (8) Donated or Voluntary Labor or Professional Services
- (9) Sweat Equity (homeownership only)
- (10) Supportive Services (for rental projects only)

*24 CFR 92.219 states that 100% of the matching contribution can be recognized if "...at least 50 percent of the housing units in the project are HOME-assisted."

Attachment E. HOME Affordability Requirements

1. HOME Rent Schedule

US Department of Housing and Urban Development
PMSA: Portland-Vancouver-Hillsboro, OR-WA MSA
Effective: July 1, 2020

	Low HOME	High HOME
1 Bedroom	\$863	\$1,103
2 Bedroom	\$1,036	\$1,326
3 Bedroom	\$1,197	\$1,522

Notes:

- Utility Allowance: The gross rents must be reduced if the tenant pays for any utilities besides telephone. The utility allowances prepared by the County Housing Authority shall be used when adjusting rents. Utility adjustments may be proposed by Recipient for the Project, but must be approved by the County.
- Residents will pay their own electricity. A utility allowance will cover electric heating, lighting and cooking. Water and sewer will be paid by the owner, along with garbage and natural gas to heat the hot water. The utility allowances are \$50 for a 1 bedroom; \$64 for a 2 bedroom, and \$78 for a 3 bedroom, per month.
- Throughout the Period of Affordability rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

2. HOME Tenant Income Limits

US Department of Housing and Urban Development
Effective: July 1, 2020

HOUSEHOLD SIZE	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$32,250	\$38,700	\$51,600
2 Person	\$36,850	\$44,220	\$59,000
3 Person	\$41,450	\$49,740	\$66,350
4 Person	\$46,050	\$55,260	\$73,700
5 Person	\$49,750	\$59,700	\$79,600
6 Person	\$53,450	\$64,140	\$85,500
7 Person	\$57,150	\$68,580	\$91,400
8 Person	\$60,800	\$72,960	\$97,300

Note: This schedule will be updated from time to time when adjustments are provided by HUD.

ATTACHMENT F.

AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owner to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project Owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.

For outreach purposes, the Owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, County will assess the efforts of Owner through the use of certifications of compliance by the Owner or Property Manager. Thereafter, County will annually assess the efforts and the success of the affirmative marketing actions by the project Manager.

In the event Owner fails to comply with the affirmative marketing requirements, County will require corrective actions which include, but are not limited to, requiring the Owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. County may require other corrective actions as necessary.

**OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED
BUSINESSES ENTERPRISES (MBE/WBE)**

Clackamas County Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
 - ◆ Encourage project sponsors, developers and Recipients to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

Monitor project sponsors, developers and Recipients to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

ATTACHMENT G.

1. **Monthly Progress Reports.**

During the construction phase, the Owner or its representative must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The Owner or its representative submits all of the following documentation:
 - i. Documentation that relocation (If any) was conducted in accordance with Section 24 of this Agreement;
 - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(3);
 - iii. Certificate of Occupancy;
 - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget;
 - v. Documentation for each source of match;
 - vi. Contractor information:
 - (1) Copy of construction contract between Owner and General Contractor.
 - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - (3) Forms and Assurances from General Contractor:
 - (a) Affidavit of Payment of Debts and Claims;
 - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
 - (c) Consent of Surety Company to Final Payment (if bonded);
 - (d) Section 3 Summary Report (form HUD-60002);
 - (e) Minority- and Woman-Owned Business Enterprise Activity (form HUD-40107); and
 - (f) Contractor/Subcontractor Activity form (form HUD-2516).
 - vii. Copy of the Management Agreement;
 - viii. Copy of HOME tenant lease;
 - ix. Copy of the written tenant selection criteria; and
 - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted within 120 days of the request for final disbursement.

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services contract
with Do Good Multnomah for Veterans Village services

Purpose/Outcomes	Contractor will provide staffing and services for the Veterans Village.
Dollar Amount and Fiscal Impact	Not to exceed \$157,080
Funding Source	County General Funds - Policy Level Proposal
Duration	July 1, 2020 through June 30, 2021
Previous Board Action	None
Strategic Plan Alignment	1. This funding aligns with H3S's strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	Counsel Reviewed 7/14/20
Contact Person	Vahid Brown, Houseless coordinator (503) 742-5345
Contract No.	9799

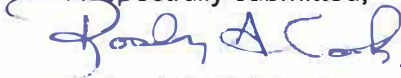
BACKGROUND:

The Administration Division of the Health, Housing and Human Services Department (H3S) requests approval of a Personal Services contract with Do Good Multnomah (DGM). The Clackamas County Veterans Village serves as a critical program resource in furthering the County's goal of ending veteran homelessness. It provides safety off the streets, opportunities for intensive service engagement, a supportive community environment, and a proven track record of securing permanent housing for the overwhelming majority of program participants. It is the only non-domestic violence adult shelter program in Clackamas County. Over the history of the project the Clackamas County Veterans Village and its program operator, Do Good Multnomah, has served 49 veterans experiencing homelessness in Clackamas County. In the past fiscal year it helped 14 program participants transition into permanent housing, 7 of those into housing with supportive housing services. The average length of stay at the Village prior to transitioning into permanent housing is 6 months. With the donation of four new sleeping pods during the past fiscal year the Village can now host 19 program participants at a time, and is currently at full occupancy.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director, or his designee; be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

 H3S Deputy / FOX

Richard Swift, Director
Health, Housing and Human Services Department

Healthy Families. Strong Communities.

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

www.clackamas.us



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
H3S Contract # 9799**

This Personal Services Contract (this "Contract") is entered into between Do Good Multnomah, an Oregon nonprofit corporation ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Health, Housing & Human Services Administration Division.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective July 1, 2020. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021.
- 2. Scope of Work.** Contractor will provide the following personal services: To provide houseless veterans a programmatic opportunity with a safe place to sleep and engage in stabilizing and supportive services provided by H3S and community providers ("Work"), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **One Hundred Fifty Seven Thousand Eighty Dollars (\$157, 080)**, for accomplishing the Work required by this Contract. Consideration rates are on a [time and materials] [fixed fee] basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall be submitted to: **Jaymi Stark, jstark@clackamas.us**

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, and Exhibit F.
- 7. Contractor and County Contacts.**

Contractor: Do Good Multnomah
Administrator: Chris Aiosa
Phone: (503) 490-7298
Email: caiosa@dogoodmultnomah.org

County: Clackamas County
Administrator: Vahid Brown
Phone: (503) 742-5345
Email: VBrown@clackamas.us

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

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans’ Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a

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

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

9. **INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on said policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County, Health, Housing and Human Services Department, 2051 Kaen Road, Suite 238, Oregon City, OR 97045 or jstark@clackamas.us.

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

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 either party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 0. If notice is sent to County, a copy shall also be sent to: Clackamas County, Health, Housing & Human Services, 2051 Kaen Road, Suite 238, Oregon City, OR 97045, or jstark@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 15, and 20, and all other rights and obligations which by their context are intended to survive. However, such

expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (C) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
 - f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose

of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by its breach of its data security or confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

28. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF

EXHIBIT A
SCOPE OF WORK

A. Under this Agreement the responsibilities of Do Good shall be as follows:

1. Will maintain 93.3% to 100% occupancy at all times ongoing, allowing participants consecutive 24 months occupancy.
2. Provide for the staffing and supervision of an On-Site Program Manager, 1.0 FTE, 2.0 FTE Peer Support Specialist and 1.0 FTE Mental Health Counselor with the duties and responsibilities to be mutually agreed upon between Do Good and H3S. *Exhibit C: Do Good Staffing Plan*
 - a. H3S will be invited to participate and provide input into the hiring of the On-Site Program Manager Position.
3. Administration of a Village Manual.
4. Have each vet village participant sign the Agreement and Waiver (Exhibit F)
5. Village Management to include:
 - a. Work with Coordinated Housing Access to screen and admit eligible participants.
 - b. Maintain access to and scheduling of the sleeping pods.
 - c. HMIS intake, annual, and exit paperwork and data entry requirements.
 - d. Refer Villagers to and provide support to connect with community and H3S resources.
 - e. Coordinate and calendaring services and activities on-site.
 - f. Coordinating and calendaring volunteer activities and events on-site.
 - g. Developing an Individual Service Plan with each program participant and helping them reach their goals.
6. Committed to contributing \$50,000.00 in client service funds.
7. Work with community partners to promote the development of village social infrastructure including supporting weekly participant general assemblies.
8. Participants will be screened and referred through the H3S Coordinated Housing Access. Final eligibility and participation determination will be made in consultation with at least one Clackamas county staff member.
9. Participate in the Homeless Veterans Coordination Team.
10. A Do Good staff person shall participate in meetings of the Village oversight committee that will be convened by H3S staff.
11. Provide appropriate documentation of program participation and material for payment requests.
12. Provide support in developing resources for fifteen additional sleeping pods.
13. Provide support in developing resources for a construction training program, to coordinate the building of new pods with opportunities for Villagers to earn on-the-job construction skills.

B. Under this Agreement the responsibilities of the County shall be as follows:

1. H3S divisions will have a coordinated service commitment. *Exhibit E; H3S Commitments*

2. Work with Coordinated Housing Access to identify, screen and admit eligible participants in a timely manner
3. Creation and convening of oversight committee to include not fewer than 3 people with representation from Do Good, H3S and a program participant.
4. Oversight committee will create own bylaws approved by the Board.
 - i. To include; no participant may be displaced without their case being considered by the oversight committee.
 - ii. Plans to create participant retention, transition plans and success planning.

EXHIBIT B EXAMPLE INVOICE

Contractor: Do Good Multnomah
Address: 5830 NE Alameda Street
Address: Portland, OR 97213
Phone: (503) 490-7298

Invoice Date: _____
Invoice Number: _____
Invoice Period: _____
Contract #: _____
Program: Vet's Village

Submit to: Clackamas County-H3S Administration,
 Jaymi Stark, jstark@clackamas.us
 2051 Kaen Road,
 Oregon City, OR 97045

Date of Service	Service Description - Transitional Shelter Facility Operations & Residential Support	Current Invoice Charges
	Example: Staff time	
	Example: Equipment/supplies	
		\$ -

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 contract. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by: _____

Phone: _____ **E-mail:** _____

Authorized Signer: _____ **Date:** _____

**EXHIBIT C
BUDGET AND STAFFING PLAN**

CCVV/ Do Good - Support Services 19 PODS

Starting Date: July 1st, 2020

Total Budget	\$210,680.
Estimated Expenses	TBD
Contract Request	\$157,080.

Staffing			
Description	Estimated cost	Column4	Column5
Staffing (Wages)	\$132,000.	3 FTE	
Benefits	\$6,000.		
Taxes	\$15,180.		
Total	\$153,180.		

Operations			
Description	Estimated Cost	Column2	Column3
Food, Coffee, etc.	\$0.00	Donation	
Office Supplies	\$1,500.00		Phone, etc.
TRIMET	\$2,400.00	DGM Funds	
Total	\$3,900.00		

Rental/ Deposit Funds			
Description	Estimated Cost	NOTES	Difference
Client Assistance	\$50,000.00	DGM Funds	
Total	\$50,000.00		

Administration			
Description	Estimated Cost	Column4	Difference
Insurance	\$2,400.00		
Bookkeeper/ CPA	\$1,200.00	DGM Funds	
Total	\$3,600.00		

Salary		
	Position	Salary
1	Manager	\$48,000
2	Mental Health Specialist	\$43,200
3	Peer Support Staff	\$40,800
	Payroll Taxes	\$14,520
	Total	\$146,520

EXHIBIT D H3S COMMITMENTS

Community Solutions for Clackamas County (CSCC)-

Has operated customized employment projects for job seekers and businesses for over 35 years. These projects are targeted at increasing the employability and wage potential of special populations. For over 10 years CSCC has been committed to providing workforce services to our County's Veterans.

The Clackamas County Veterans Workforce Program focuses on providing intensive workforce services to Clackamas County veterans including those living with Post Traumatic Stress Disorder (PTSD) and/or Traumatic Brain Injury (TBI). Individuals interested in participating in the program must have stable housing, in order to participate in job search and be able to get to and from a job.

Community Solutions can assist with bus tickets, gas cards (with a valid license and proof of insurance), interview & work clothing, short term training & items needed to get and keep a job. CSCC is located at 112 11th St. in downtown Oregon City. We are located adjacent to the transit center. (Staff contact person: Ken Bietschek, Workforce Development Specialist, 503-655-8848 or 503-502-3411. Email: KenBie@clackamas.us)

Social Services-

Existing services available immediately:

Social Services Homeless Veteran Outreach – Outreach and engagement to homeless veterans all across the county and on Springwater Trail. Enroll veterans in Coordinated Housing Access. Assist with locating veterans interested in residing at Veterans Village. Assist with transporting veterans to Veterans Village for interviews and/or move-ins. Assist Veterans Village Case Manager with connecting those veterans at Veterans Village with whom a strong rapport has been established with housing and other services.

Social Services County Veterans Service Office – Assist veterans residing at village with understanding VA and state veterans benefits they may qualify for based on their individual circumstances. Assist veterans residing at village with applying for any and all VA and state veterans benefits they wish to apply for. Fully developed claims will be prepared and submitted whenever possible, and assistance with appeals will be provided as appropriate. Services can be provided on site or in the office.

Social Services Coordinated Housing Access – Provide assessment of the type, level and duration of housing needed and make referrals to housing programs that veterans meet preliminary eligibility for (based on self-report). This service could potentially be provided on site at scheduled times and can also be provided over the phone, in the county offices or other sites such as Clackamas Service Center. Maintain referral lists so that housing programs can successfully contact veterans when housing slots become available.

Social Services Supportive Housing Team – When housing slots become available, provide in depth eligibility determination, enroll veterans in housing programs once eligibility is verified. Provide assistance with housing search and housing placement as well as supportive services, move-in cost assistance and rental subsidies to exit veterans from the village to permanent housing. This includes assisting veterans with identifying and overcoming rental screening barriers and requesting reasonable accommodations as appropriate. Help with transportation and connection to other needed services.

Social Services Rent Well Tenant Education – Provide Rent Well Tenant Education to veterans village residents, including help identifying and overcoming rental screening barriers, providing Rent Well Certification after class and assignment completion. Assist with preparing a housing portfolio to present to prospective landlords and partial assistance with move-in costs as funds are available. These services would be available off site unless a sufficient group of interested shelter residents was identified in which case a class series on site would be considered.

Social Services Housing Rights and Resources – Provide information on fair housing and landlord tenant law to veteran village residents, including expedited referrals to Legal Aid in cases where discrimination or landlord tenant law violations may have occurred.

Clackamas County Aging and Disability Resource Connection (ADRC): the Clackamas County ADRC helps people with disabilities, veterans, older adults and their caregivers. We offer information on services and make it easy for people to connect with services. We follow up to make sure people get the services and answers they need. Included in the ADRC are our Options Counseling services, which help people understand their choices about services they need as they get older.

Proposed services not yet available-

Weekly shuttle service for grocery shopping and appointments provided by the Volunteer Connection.

Public Health-

The H3S / Public Health Division is committed to assuring that transitional shelter communities have standards in place for sanitation, drinking water, food handling & preparation and handwashing stations that are aimed at preventing risks associated with infectious disease outbreaks. The division will conduct site plan reviews and regular health inspections. The division would also like to participate in department & county-wide activities focused on coordinating access to health & human services.

Behavioral Health-

Clackamas County Crisis Line
503-655-8585

- Crisis Line workers will listen and provide free and confidential emotional support for callers experiencing distress
- We provide telephone assessment, including suicide assessment, in order to offer recommendations and resources that can help
- You don't have to be suicidal in order to call the crisis line
- We will also offer consultation to service providers about resources
- The Crisis Line can provide referrals to many different services and supports
- The Crisis Line is available 24/7

Clackamas County Crisis Center Walk-In Clinic
503-722-6200

- Provides mental health crisis services on a walk-in basis
- We will offer an assessment (usually takes an hour or so), which will help determine what services and supports are needed
- Our services are very short-term – we will help you get connected to longer-term services
- Our services include crisis counseling, case management, education, and consultation
- We offer peer support services, provided by individuals who are in recovery from their own mental health and addiction

- Clackamas County Crisis Center is open every day of the year. Hours are 9am-8pm M-F, 10am-7pm Sat-Sun (please call for holiday hours)
- CORE (Community Outreach and Engagement Team) can be access by calling 503-655-8585. CORE performs routine and urgent (within a few days but not necessarily same day) outreaches to veterans, individuals coming out of jail or at risk of incarceration, or persons who have been identified through Emergency Medical Services who are *not connected* with appropriate services and supports and for whom there are *barriers to accessing* services and supports for various reasons.
- Behavioral Health Unit (BHU) is available 7 days a week and responds to Law Enforcement and 911 dispatch requests for crisis services in the field, and their primary goal is assist individuals who are actively in contact with law enforcement.
- Mobile Crisis clinicians can also be accessed through the Crisis line 24/7 when an immediate face to face response by a crisis clinician is clinically indicated.

Administration-

- Provide a representative from H3S to the oversight committee
- Overall Strategic guidance and implementation
- Oversight of program displacement decisions

Housing Authority of Clackamas County-

HACC is committed to helping end Veteran Homelessness. As part of that commitment, HACC will allow referrals for up to 15 preference vouchers per year. The 15 vouchers can be tenant based or Project Based and will depend on vacancies and funding levels. This preference is not a guarantee of immediate assistance, but puts a family ahead of all other families to get assistance when funding is available.

To qualify families must be graduating from a Clackamas County rental assistance program or shelter that serves homeless and/or disabled military veterans. The family must meet the definition of a military veteran as defined as: Any person who served for any length of time in any military service branch. The family must also have actively participated in case management and services that meet their disability needs and have shown progress and stabilization in these programs as documented by their case managers. Families can only be referred by a case manager from the Veteran's Administration or Clackamas County Veteran Services. The referring case management provider must commit to continuing case management with the family through finding housing and after retaining housing to follow a permanent *supportive* housing environment for the family.

Additionally, upon entering HACC's rental assistance program, work "able" Veteran family members will be given preference entry into our Family Self Sufficiency (FSS) Program to establish escrow accounts upon becoming employed and stable. FSS goals can include graduating off assistance and possibly purchasing a home in the future.

EXHIBIT E:

Clackamas County Veteran Village

POLICIES & PROTOCOLS MANUAL

CONTENT: Agreements (p.1), Roles (p.1), Village Governance (p.2), Village Security Plan (p.4), Intervention Action Plan (p.6), Village Safety Plan (p.7), Sleeping Pods (p.9) Food Storage (p.10), Pets (p.11), Abandonment (p.11), Alcohol, Drug &Paraphernalia (p.12), Guests Policy (p.12) Probationary Status (p. 13), Medical & Family Leave (p.13), Bathroom Cleaning (p.14)

AGREEMENTS: There are two sets of agreements that the Village must follow at all times:

The Policies and Protocols Manual: This manual together with the internal agreements that list acceptable behavior for residents within the Village (included in the back of this document).

Operational Agreement: The formal agreement between Do Good Multnomah (DGM) and the Clackamas County Veteran Village (CCVV) that regulates what the Village can and cannot do.

A. ROLES:

Probationary Villager: A new resident undergoing a 4-week trial period, to make sure that they can follow the rules set forth in this Manual and the Villager Participation Agreement before being fully accepted as a villager.

Villager: A Veteran individual who currently resides in a housing unit at the Village.

Village Council Member: 3 to 5 residents elected to have additional responsibility and in the Village as described below in section B(3).

Village Volunteer: A non-resident or prior resident who is trained to assist in the operation and maintenance of the Village.

CCVV Support Committee: A committee of DGM, Clackamas County, and other key individuals responsible for providing oversight and support to CCVV.

Do Good Multnomah: (DGM, or Do Good) will be supporting the CCVV through peer driven services. DGM is a non-profit organization that specifically serves Veterans experiencing homelessness which includes a Board of Directors and staff.

Non-Discrimination Policy: CCVV does not, and shall not discriminate on the basis of age, race, color, national origin, primary language, sex or sexual orientation, religion, disability, genetic information, domestic violence victim status, political affiliation or belief, or any other characteristic protected under applicable federal or state law, in any of its activities or operations. These activities include, but are not limited to, hiring and firing of staff, selection of volunteers and vendors, selection of village residents, and provision of services. We are

committed to providing an inclusive and welcoming environment for all village residents and members of our staff, clients, volunteers, subcontractors, and vendors.

B. VILLAGE GOVERNANCE

Self-governance is a core value of the CCVV. This means that the success of the Village rests on the participation of those who live here. There are three governing groups for making decisions related to the management of the Village. They are:

1. Weekly Village Meeting (All Residents)

Attendance at the weekly Village Meeting is mandatory for all residents. Issues related to the organization of the Village will be discussed and voted on at this time. Specific roles will be identified and filled in order to maintain a safe and sanitary environment. The following applies to Village meetings:

- Advanced notice with documentation must be provided to and approved by the Village Council for excused absences (i.e. work, school, medical).
- Excused absences may vote on policy issues prior to the meeting through absentee ballot.
- A quorum is established when over 50% of residents are present.
- Any decisions made at the Village Meeting must comply with the existing Community Agreement, Village Manual, and Operational Agreement.
- Amendments to the Village Manual may be proposed at the meeting in writing. Proposals will be voted on at the next meeting and require 2/3 majority vote to pass.
- Amendments to the governance and policy sections of the Village Manual must be reviewed and approved by the Support Committee before taking effect.
- Expulsion from the Village may be appealed at the weekly meeting (see appeal process for more details).

2. Villager Participation

- a. As attached as Exhibit E to the Operations Agreement, also known as the Agency Services Agreement between Clackamas County acting through as Health, Housing and Human Services Department (H3S) and Do Good Multnomah, H3S will be providing the listed services to villagers in CCVV.
- b. Upon every participant's arrival at (CCVV), they will have an in depth intake to assess their needs and case management. Depending on the outcome of the intake, the participant will continue to have weekly/bi-weekly or monthly case management with CCVV staff. CCVV will manage and refer participant to services as needed at time of intake. Every participant will have different case management needs. Participants will work with CCVV staff to create their individualized and personalized case plan.

- c. Participants will be required to make their weekly/bi-weekly or monthly goals as outlined in their initial case management plan. Participants will be required to meet with a VA social worker (or other outreach social worker if not VA eligible) and follow through on tasks that they are given. CCVV's primary purpose is to help participants become self-sufficient and transition into permanent housing. It is the participant's responsibility to follow their case plan and to communicate when goals are met and/or when plans need to be adjusted. Case plans will be updated quarterly or more frequently if necessary.
- d. Participants are required to make all appointments outlined on their case plan, unless there is a valid reason why they cannot follow through. If an appointment without a valid excuse or prior notification an intervention/action plan may be implemented as outlined below in Section D(2). Please see policy and procedures manual for further information.
- e. Participants will be made aware that this is a transitional housing program and they need to ensure they are actively working with staff in conjunction with their case plan. Each case plan will be updated every 90 days or less if needed.
- f. A case plan will be created with each individual Veteran in order to assist and mitigate any and all barriers regarding their permanent housing, employment, education, benefits, etc. Disciplinary action will be taken for Veterans who do not engage with a case manager and are out of compliance with their case plan. Veterans who have been given warning and still refuse to engage will be exited from the program (As outlined in section D: Intervention Action Plan).

3. Village Council

- a. Elections. Elections are held during Village Meetings to maintain a Village Council of 3 to 5 residents. To become a Council member, a resident must be nominated by another resident. A majority vote of Villagers present then decides which nominees are elected.
- b. The elected term is three months (3). Council members may serve consecutive terms. Elections are to be staggered so that the entire Council does not change at once, and members stepping down from Council should provide at least two weeks notice. A Council member may be removed from their position by a majority vote at a Village Meeting for failure to perform the duties of a Council member.
- c. The role of the Village Council is to uphold orderly management of the Village. A primary responsibility of the Council is to act between meetings when urgent situations arise. There is to be a designated "Councilor of the Day" as a point of contact for day-to-day operations.
- d. The Council is not meant to have greater power than any other Villager. Those elected to the council are simply given the task of responding to incidents when a Community Agreement is broken, and enacting the appropriate level of intervention as specified in this manual. When an incident occurs that is not described in this manual, it is up to the Village Council to determine the appropriate level of intervention.
- e. All Council decisions are potentially subject to review by the entire village at a Village Meeting following the Appeal Process. In this way, service on the Council is

much like any other form of contribution to the operation and maintenance of the village. For incidents resulting in suspension or expulsion, the offender must be given a chance to appeal before taking their leave—unless the Village Council considers the behavior to be a threat to the village.

- f. The Village Council is to hold at least one regular meeting per week. Impromptu Village Council meetings may also be necessary to address urgent situations. Quorum to hold a Village Council meeting is to have at least 50% of members present, but an attempt must be made to notify all Council Members.

3. Support Committee

- a. The Support Committee will at all times have at least one representative from Clackamas County Health, Housing & Human Services; Do Good; and the Village Council. Membership may expand as warranted to include, for example, a core volunteer or a Clackamas County Sheriff's Office village liaison deputy.
- b. The Village Council representative will be chosen by majority vote of the Village Council at time of Village Council elections. The elected Support Committee liaison Councilor will serve a three month term, and the liaison may serve consecutive terms if he or she is also elected to consecutive terms as a member of the Village Council.
- c. The role of the Support Committee is to provide oversight of the Veterans Village as a whole, of the implementation of this Manual, and of adherence to the Community Agreements.
- d. Final decisions on program displacement of a village participant will be made by the Support Committee. No program participant may be permanently expelled from the Veterans Village without prior review by the Support Committee.
- e. The Support Committee is to hold one regular meeting per month. Additional meetings may be called as needed, and will be called in the event an intervention action involving potential displacement of a Veterans Village program participant occurs. The Support Committee may change any provision in this manual without prior notice.

C. VILLAGE SECURITY PLAN

1. **The Gate Pod** is the only gateway in and out of the Village and shall remain secure. Staffing the front desk is one of the most important duties at CCVV. This will be a mandatory service of all residents. Only residents and Village Volunteers may enter the Village unaccompanied.
2. The Gate Pod is to be staffed by at least two trained individuals during open hours (8am-10pm). At least one person must be a resident. The second may be a resident or a Village Volunteer. Their primary role is to be the "eyes and ears" of the Village during their shift.
3. Staffing the Gate Pod includes the following duties:
 - Answer phone calls
 - Register visitors and locate a resident to accompany the visitor

- Document any disruption to normal operations in the Front Desk Log
 - Inner perimeter checks
 - For further details on this duty, see the "Gate Pod Duties and Information" sheet posted in the Gate Pod
4. The gate will be locked between 10pm-8am. During this time, at least one person is to spend the night at the Front Desk in case assistance is needed at the gate. In the case of an incident, the resident on duty should alert the Village Council.
 5. Weapons are not allowed on the Village site. Weapons are defined as firearms, knives (other than small pocket knives with 4" blade or less or those used for cooking), explosives of any type, clubs, or other striking implements. Chemicals such as Mace or Pepper spray must be checked at the front desk.
 6. There are Three Stages of Response for maintaining a secure and orderly environment within the Village. Stage 1 is the least severe and most common type of response. Stage 3 is the most severe and least common type of response.

Stage 1: Village Council

Village Council members are responsible for maintaining order when urgent situations arise. For a full description of this duty see section B.

Stage 2: Support Committee

When Village Council members are unable to gain the cooperation of a disruptive resident, they are to contact the appropriate person from the Support Committee. If that fails, the next contact is the Executive Director of Do Good.

Stage 3: Clackamas County Sheriff

The Clackamas County Sheriff Dept. is welcome to patrol the Village as they would any other neighborhood in the county. In cases where the law is being broken and residents are unable to gain cooperation of the offender, the police department will be contacted. The previous two Stages of Response are to be tried first if appropriate.

Contact the Clackamas County Sheriff Department when a person crime is committed or is in progress, or upon a victim's request. At the request of the victim only, after being informed that they may contact the Clackamas County Sheriff's Office, the Village Council may resolve lower level crimes such as petty theft and minor criminal mischief.

In the event of any kind of medical or police call out, a critical incident form is to be filled out within 24 hours with as much detailed information about the incident as possible.

D. INTERVENTION ACTION PLAN

1. Complaints

- a) When a complaint that is not technically a rule break is a cause for concern for members of the Village, the Council and staff will meet with said Villager and discuss a plan of action to curtail the behavior. We hope that early intervention will help prevent further and more severe action.

- b) In cases of a complaint by one Villager against another when the complaint is not a clear rule break, a third party mediator should meet with the complainant and the alleged offender to discuss the issue and reach a resolution that is agreeable to both parties.
- c) Any Villager may submit a complaint to the Council using the Complaint Form.

2. Rule Violations

- a. When a rule break occurs, any Villager may write an Incident Report and submit it to a Council member within 48 hours. The Village Council is responsible for verifying that the level of intervention is appropriate. At least one staff and Council member should then deliver written notice to the alleged offender. From there, the alleged offender has two options:
 - i. Accept the Incident Report with the proposed level of intervention;
 - ii. Request that Council provide a date at which they may appeal the decision.
- b. Minor rule violations (i.e. missed host shift, village meeting, bathroom shift, etc.) result in 4 levels of intervention:
 - o Level 1 – Verbal Warning
 - o Level 2 – Written Warning
 - o Level 3 – 24- 48-hour expulsion from Village depending on severity
 - o Level 4 – Expulsion from Village
- c. Minor rule violations will be tracked for a 3-month rolling period.

For example: If you missed a shift on the 5th of October you would receive a verbal warning. If you missed another shift on the 12th of November you would receive a written warning. If you again missed a shift on the 9 of December you would then be on a 48-hour expulsion. If you missed another shift on the 4 of January you would be permanently expelled. However, if your 4th missed shift was on the 6th of January it would be treated as a level 3 again. And if you had missed no shifts between the 5th of October and the 6th of January the January violation would be treated as a level one violation again.
- d) Villagers reserve the right to work off minor rule violations by contributing extra hours towards the operation and maintenance of the Village. Missed host shifts may be made up by working the number of hours missed. The Village Council may designate requirements for other minor rule violations.
- e) More severe rule violations may require action at a heightened level of intervention even though the rule violation may be a first offense. The Village Council will deal with these rule violations on a case-by-case basis unless defined in this manual.
- f) All intervention actions require the agreement of a majority of Village Council members.
- g) In cases of expulsion from the Village, where the Villager is not an imminent threat to others, the Villager to be expelled will be given a reasonable amount of time to make arrangements for their safety. No resident who is not an imminent threat to others will be expelled after 8pm.

3. Appeals

- a) Villagers may appeal an Incident Report at the weekly village meeting. In cases of expulsion, the appeal may include actions for addressing the problematic behavior that caused their expulsion rather than disputing the incident. A majority vote will either uphold or revise the decision.
- b) Appeal Process:
 - 1. Council reads incident report and informs Village of their decision.
 - 2. Accused has a chance to respond and state their case.
 - 3. Village has a chance to ask questions of the accused.
 - 4. Accused leaves the room.
 - 5. Village has opportunity to discuss the details of the incident. In the interest of time, each person may be limited to one chance to speak unless there is a direct response.
 - 6. A motion is made to move to vote on whether to “uphold” or “revise” the Council decision.
 - 7. If a majority vote to revise, a new motion should be made stating a desired revision.

E. VILLAGE SAFETY PLAN

- a. Residents shall report a fire or other emergency to 9-1-1 through the use of a personal cell phone. All residents also have access to a phone at the front desk in emergency situations.
- b. Residents will be notified of a fire or other emergency by word of mouth, and if necessary will relocate and evacuate based upon the designated evacuation route (see Fire Safety and Evacuation Map posted at Front Desk). All new residents are to be informed on this during the orientation process.
- c. A Safety Committee shall be formed with representation from the Village, Clackamas and CCVV staff and Support Committee. Duties of this committee shall include the following:
 - Oversight of fire drills and Food Storage Policy
 - Quarterly safety inspection with attention to trip, slip, and fall hazards
 - Quarterly testing of all smoke and CO2 detectors
 - Quarterly testing of all extension cords and power strips with an approved circuit tester
 - Maintenance of systems and equipment installed to prevent or control fires
 - Maintenance and control of fuel hazard sources
- d. In addition, resident members of the Committee shall be prepared to:
 - Assist others and provide medical aid in an emergency.
 - Take a head count after an evacuation. Identify the names and last known locations of anyone not accounted for and provide them to the Fire Official in charge.
 - Provide additional information or explanation of duties under the plan to residents and volunteers.

- e. The following fire fighting and fire protection measures will be taken:
 - No open flames are permitted within the housing units.
 - ABC fire extinguishers will be accessible throughout the Village (see Fire Safety and Evacuation Map for locations).
 - Smoke detectors and carbon monoxide alarms will be installed in common buildings and dwellings per City Code, and will be inspected to insure they are functional and replaced if they are not functional.
 - A map of the village will be maintained and provided to the Clackamas County Fire Department
- f. Emergency vehicle ingress and egress
 - A fire lane with a minimum width of 20' will be maintained and is identified on the Fire Safety and Evacuation Map. There will be lockable gates at the west and east most ends of the Village, and the fire lane will be defined and kept clear of obstructions within the Village.
 - A minimum 10-foot setback and right-of-way will be maintained between structures on the Village site.
- g. Village residents will participate in at least two fire drills per year with the Clackamas County Fire Marshal's Office present, using the following procedure:
 - Appoint someone to monitor the drill, activate and reset the fire alarm, and time the evacuation.
 - Fire drills shall be conducted at varying times and under varying conditions to simulate conditions that could occur during a fire or other emergency. Make it realistic by requiring participants to use their second way out or to crawl low. This can be done by having someone hold up a sign reading "smoke" or "exit blocked by fire"
 - After the evacuation, take a head count at the designated meeting place(s) to account for everyone's participation and safe evacuation.
 - After the drill, gather everyone together to discuss questions or problems that occurred. Redesign the drill procedures as needed.
- h. The fire drills will be documented and recorded in the Village Operations Records with the following details:
 - Identify the person conducting the drill.
 - Date and time of the drill.
 - Notification method used.
 - Staff members on duty and participating.
 - Number of occupants evacuated.
 - Special conditions simulated.
 - Problems encountered.
 - Weather conditions during the drill.
 - Time required completing the evacuation.
- i. Fire Safety and Evacuation Map (posted at front desk)
- j. If a villager is caught removing batteries from the detectors they will get an immediate

written warning.

F. VILLAGE POLICIES

1. SLEEPING POD POLICY

Each program participant will be assigned one of the “pod” structures to use for sleeping and the storage of personal belongings. The pods are at all times under the direct responsibility of Clackamas County. They are not the property of the program participants.

a. **Entry and Maintenance Assessment:**

As part of your participation in the program at the CCVV, you acknowledge that Do Good (through the Village Manager or other authorized staff) may enter the Pod at any time without notice. Do Good intends to only need to enter the pod assigned to you from time to time to assess health, safety, or maintenance issues. You are expected to cooperate and comply when the Village Manager requests an inspection. Do Good intends that entry for maintenance assessment will be conducted in your presence and with previous notice, except in emergency situations posing a life and safety risk. Do Good reserves the right to consent to the search of any pod at the request of law enforcement.

b. **Modifications.** Before making any modifications to the pod, clients must discuss all proposed modifications with the Village Manager. The Oversight Committee must approve all pod modifications before the change takes place. The installation of shelves and hooks will generally be approved. Some other modifications, such as weatherization, painting, or door changes, in addition to requiring advance approval, may only be performed by the Village Manager or authorized individuals.

c) If you have an issue with the pod or believe that repairs are needed, please speak with the Village Manager as early as possible.

d) **Area Outside of Pods.** In addition to the assigned pods, clients may use up to three (3) feet of the immediate area surrounding the assigned pod for storage. Acceptable uses include, for example, storing a bicycle, a cooler, or yard decorations. Items should not rest or lean on the outside of the pod. Clients may be asked to remove items or store them inside the pod at the Village Manager’s discretion. Permission must be obtained from the Village Manager before making any modifications or using the area for long-term storage.

e. **Keys.** Villagers will be provided with: a gate key code and a pod key. Do not duplicate or distribute either key. Please report any lost or missing keys to the Village Manager immediately. Upon leaving the program, keys must be returned to the Village Manager on the last day of participation. If not returned, Do Good may charge the expense replacing locks, in order to maintain the safety of the Village.

2. FOOD STORAGE POLICY

Fair sharing of resources is critical to the well-being of the Village. Hoarding or inequitable division of resources is unhealthy. Additionally, the Village is vulnerable to food stealth by dogs, cats, rodents and other animals. Rodents themselves provide a health hazard and we must discourage their presence by not having food available to attract them. Consequently, the following Food Storage Policies have been adopted:

- a) All community food that enters the Village as a donation must be stored in the community food pantry in an appropriate sealed container. Donated food must be signed out, and only a single serving should be taken at once. All community food must be eaten in community areas. This is not only for sanitation purposes, but also to promote the social health of the Village.
- b) A limited amount of personal food may be stored in designated refrigerator(s) if it is labeled with a name and date. Items in the refrigerator without a label immediately belong to "everyone." As well as each Villager will get cabinet space to store personal food.
- c) All food should be prepared in the community kitchen or yurt. Coffee and hot water may be prepared in other communal spaces.
- d) It is important, after one eats in the kitchen, they are to immediately wipe or sweep up any crumbs for the prevention of rodent infestation, failure to do so will result in a warning.

3. PET POLICY

Service Animals and pets are honored as an important part of residents' lives. However, the Village has a limited capacity and can only support a small number of such animals. Consequently, the following Pet Policies have been adopted:

- a) Service Animals are welcome at CCVV. A doctor's prescription for a service animal is required. If someone with a service dog does not have a prescription, they may seek assistance from CCVV in locating a doctor to assess the need and prescribe a service animal. A service animal does not count in the "quota" of dogs. Service Animals must follow the same rules as other dogs. However, if someone has a service animal but cannot obtain a prescription, that animal will be considered a pet and must be counted in the quota on a first come first served basis as outlined below.
- b) There will be a maximum of two (2) dogs at CCVV at any one time, including therapy dogs but not service dogs. Space for dogs is on a first come, first served basis.
- c) All pets must be licensed with ID as required by local regulations.
- d) No pets may be acquired AFTER acceptance into CCVV, unless otherwise approved at a Village Meeting
- e) All cats and dogs must be spayed and neutered prior to moving on site. Applicants may seek help from CCVV in finding funds/veterinarian for such procedures.
- f) All dogs must be kept on a leash and be under supervision at all times. If, at any time, the Village Council finds that a pet either poses a nuisance or danger to others or is not properly cared for, the pet must leave CCVV at the instruction of the Village Council. Residents may ask CCVV for assistance in the proper training of their pet.
- g) If the resident is off site, all dogs must be properly kenneled in the kennel area and/or under the supervision of another Villager.

- h) The owner is responsible for proper health and care of their pet, must pick up all solid waste for their pet, and keep their pet from annoying other residents. The animal shall not be allowed to trespass, bark uncontrolled, or any other nuisance behavior. Failure to do so can result in the Village Council ejecting the pet from the premises.

4. ABANDONMENT POLICY

- a. Village residents who have been continuously absent from the Village and have made no effort to remain in contact for a period of 4 days will be considered to have abandoned their sleeping pod. Said persons would no longer be a Villager and their possessions would be removed from their previous sleeping pod immediately upon it being declared abandoned. They would then have a period of 30 days to retrieve their possessions after which time those items would be disposed of at Village discretion.
- b. A pod will also be considered abandoned if a resident is spending less than 8 out of 14 nights at the village.
 - o Exceptions will be made for residents who are unable to contact the village due to extenuating circumstances such as; jail, hospital, etc. Abandonment will not be considered for those Villagers who wish to spend time away from the Village for personal reasons provided they inform a Council member and make arrangements to cover their host hours when possible. In the case of emergencies exceptions will be made to for those unable to make arrangements to cover their host hours.
 - o **Process for documentation and storage of abandoned possessions:** When a pod has been declared abandoned at least 2 members of the Village Council will remove items from the abandoned unit. They will document what items are present and place them in an available storage container or bag that is clearly labeled with the name of the former Villager and the date of the abandonment. These items will then be stored in the storage loft of the Front Desk until such time as the owner retrieves them or they are over the 30-day limit. Once items have reached the 30-day limit the Village will determine the proper disposal of said items during the next Village Meeting.

5. ALCOHOL, DRUG, & PARAPHENALIA POLICY

- a) Drugs and alcohol are not permitted in CCVV
- b) Possession of alcohol and/ or other illegal drugs or drug paraphernalia, including needles (if no proscription for insulin or other IV medications), pipes (used for anything other than tobacco or marijuana), and spoons that have been used for "cooking" drugs: See Intervention Action Plan.
- c) Any other items suspected to have been used for drug related purposes will be dealt with on a case-by-case basis by the Village Council.

6. GUEST POLICY

Program participants may host visiting guests at the Village during operational hours: 8am-6pm. Guests are not permitted to stay beyond 6pm or overnight.

- a. **Registration.** Guests must be logged in and out at the front gate and must be accompanied by their host while visiting. Guests will state their name, the name of the program participant they are visiting, and the times of arrival and departure.
- b. **Common areas.** Guests may use bathrooms but not the community showers. Guests should be escorted by their host while in common areas, including the kitchen.
- c. **Exclusions.** Hosts are responsible for the behavior of their guests. In the event of violence, illegal behavior, destruction of property, or theft, a guest may be permanently banned from the Village. There will be a list at the front gate of banned guests and they will not be allowed on the property.

7. PROBATIONARY STATUS POLICY

- a. New residents undergo a 4-week probationary period to ensure that they are willing to follow the Community Agreements before being fully accepted as a villager. The goal of this program is to obtain a fair and objective view of the potential villager that removes the "popularity contest" factor, and instead focuses on their willingness to be a contributing member of the community.
- b. The villager will be given a mentor who will guide them through orientation and do a daily check-in with the new villager to answer any questions or concerns that they may have. It will also be the mentor's responsibility to counsel the villager when any issues arise so that the concerns may be addressed.

8. MEDICAL & FAMILY LEAVE POLICY

- a. **Definition of Medical Leave:** Medical leave is time off from village duties, that villagers can use to address their health and safety needs without losing their villager or residence status.
- b. **Definition of Family Leave:** Family leave refers to time taken off from village duties, for the purpose of caring for an ill family member or to assist a family member with crisis needs.
- c. **Time allowed for Medical and Family Leave:** A villager is allowed two weeks of medical leave or family leave with no documentation necessary. If the need is longer than two weeks, documentation may be required to present to council. If the villager needs more than 60 days of medical leave or family leave, they would need to vacate their residence in order to allow a new villager to get into the village. (Housing waitlist current policy would still be followed). The current villager would then be placed first on the wait list for re-entering the village when their medical issues are resolved and they are able to be a full villager once more. If more than one villager is on the waitlist, they would be in order of placed on waitlist. When on the waitlist, no utilities are required to be paid. A person would remain on the wait

list for 3 months and would need to reapply if they were not able to become a full villager once more. Exception to this rule would be if no housing units become available before their 3 months are up.

- d. If the villager attends the weekly village meetings, they retain their full voting rights. If they do not attend, they forfeit their voting rights for that meeting.
- e. **How to apply for Medical and Family Leave:** If a villager needs to take medical or family leave, they will need to advise council of their needs as soon as they are able in order to be granted leave. If a villager is staying on-site and needs more than 60 days, they will speak to council and it will be handled on a case-by-case basis.

9. BATHROOM CLEANING POLICY

All villagers are required to sign up to share in the duty of cleaning the village bathrooms, shower and laundry area.

- a. First refusal to sign up or to adequately complete this requirement will result in a verbal warning and villager will be required to sign up for two spots the following month.
- b. Failure to sign up for the 2 days in the following month or adequately complete the cleaning duty will result in a written warning for the first violation and a 48 hour expulsion for the second violation. The villager will again be required to sign up for an additional 2 days on the following month.
- c. Failure to sign up or adequately complete the cleaning duty would then result in a permanent expulsion.

EXHIBIT F

CCVV Participation Agreement and Waiver

- Upon arrival at Clackamas County Veteran Village (CCVV), you will have an in depth intake to assess needs and case management. Depending on the outcome of the intake, you will continue to have weekly/ bi weekly or monthly case management 1 on 1 with CCVV staff. CCVV will manage and refer and/or plug you in to services as needed at time of intake. It is your responsibility to follow through with all referrals and appointments. You will work with CCVV staff to create your individualized and personalized case plan.
- You will be required to make your weekly/bi weekly goals as outlined in your initial case management 1 on 1. You will be required to meet with a VA social worker (or other outreach social worker if not VA eligible) and follow through on tasks that they are given. CCVV's primary purpose is to help you become self-sufficient and transition into permanent housing as CCVV is a transition housing program. It is your responsibility to follow your case plan and to communicate when goals are met and/or when plans need to be adjusted. Case plans will be updated quarterly or more frequently if necessary.
- You are required to make all appointments outlined on your case plan, unless there is a valid reason you cannot follow through. If you miss one appointment without a valid excuse or prior notification, an intervention/action plan may be implemented. Please see policy and procedures manual for further information.
- You have the responsibility to follow all CCVV rules, policies and procedures as stated in the Veteran Village Policies and Protocols Manual.
- This is a transitional shelter program. It is your responsibility to be working with staff and other agencies to secure permanent housing. Staff will re-evaluate your case plan every 90 days and determine at this time if you are working towards self-sufficiency and meeting your individual case plan goals.
- If you are meeting your 90 day goals, your transitional housing plan may be extended at this time for another 90 days.
- Failure to meet 90 day goals could result in a written warning (as per Intervention Action Plan section D in Policies and Procedures manual) or expulsion from CCVV transitional housing program.

I have read and understand the above participation agreement and have been given a copy of the Policies and Protocols Manual. I have had an opportunity to review, ask questions, and understand the Policies and Protocols Manual. I agree to act in a manner that is consistent with the rules outlined in both the Participation Agreement and the Policies and Protocols Manual. If I do not my participation in CCVV may be terminated.

I, individually, and on behalf of my heirs, assigns, and successors, do waive, discharge, release and agree to hold harmless Clackamas County, and the Housing Authority of Clackamas County ("HACC"), and their insurers, employees, officers, directors, and agents ("Clackamas County") from all claims, actions, suits, and damages that I could assert in connection with or arising out of my participation in CCVV.

I understand that this Waiver of Liability, Release of Claims and Hold Harmless Agreement applies to all claims and causes of action, including those based in negligence, which could be asserted against Clackamas County.

I fully understand the terms and provisions of this Waiver of Liability, Release of Claims and Hold Harmless Agreement, I am competent to make this agreement, and I voluntarily accept the terms and provisions contained in this agreement and agree to be bound by them.

Signature

July 30, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Local Subrecipient Grant Agreement with Northwest Family Services to provide Evidence-based Parenting Education Classes

Purpose/Outcome	Northwest Family Services will provide evidence-based Spanish and English parent education class series to parents and children, who are living in Clackamas County. Classes may be conducted in person or virtually to best meet the health and safety needs of the community.
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$48,560.40.
Funding Source	Oregon Community Foundation (\$22,280.65) Oregon State University for its College of Public Health (\$15,408.43) Clackamas County General Fund (\$10,871.32)
Duration	July 1, 2020 to June 30, 2021
Previous Board Action/Review	n/a
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. Date of counsel review: July 6, 2020
Contact Person	Adam Freer 562-676-7675
Contract No.	CFCC 9798

BACKGROUND:

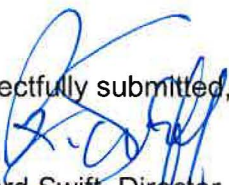
The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of a Local Subrecipient Grant Agreement with Northwest Family Services to provide high quality, evidence-based parenting education series to parents and caregivers in Clackamas County. Evidence-based parent education expands parent knowledge resulting in healthy child development, as well as improved parenting skills, parent-child relationships, and school readiness.

This Grant Agreement is effective upon signature by all parties for services starting on July 1, 2020 and terminating on June 30, 2021. This Agreement has a maximum value of \$48,560.40.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
 Health, Housing & Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

CLACKAMAS COUNTY, OREGON	
LOCAL SUBRECIPIENT GRANT AGREEMENT CFCC- 9798	
Program Name: OPEC Parenting Education	
Program/Project Number: 06162	
This Agreement is between Clackamas County, Oregon , acting by and through its Health, Housing & Human Services Children, Family & Community Connections Division (COUNTY) and Northwest Family Services (SUBRECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Michael Morasko	Program Manager: Chelsea Hamilton
Clackamas County Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5435 mmorasko@clackamas.us	Children, Family & Community Connections 112 11th Street Oregon City, OR 97045 (503) 650-5682 chamilton@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Rose Fuller	Program Representative: Samantha Furlow
Northwest Family Services 6200 SE King Road Milwaukie, OR 97222 503-546-9397 rfuller@nwfs.org	Northwest Family Services 6200 SE King Road Milwaukie, OR 503-421-7122 sfurlow@nwfs.org
FEIN: 93-0841022	

RECITALS

1. Northwest Family Services (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was selected through a competitive process to provide evidence-based Spanish and English parent education class series' to parents and children, who are living in Clackamas County. Evidence-based parent education brings parents and children together in highly interactive sessions resulting in healthy child development, strengthens parenting skills, parent-child relationships and school readiness.
2. SUBRECIPIENT will conduct Spanish and English class series Parenting Inside Out (targeting families with children birth to 6) and Strengthening Families Program (targeting families with children 10-16). Classes may be conducted in person or virtually to best meet the health and safety needs of the community.
3. This Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Local SUBRECIPIENT Agreement, COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse SUBRECIPIENT for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2020** and not later than **June 30, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: SUBRECIPIENT Statement of Program Objectives. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Oregon Community Foundation – Oregon Parenting Education Collaborative Grant Agreement and Oregon State University for its College of Public Health and Human Services Grant Agreement, and Clackamas County that are the source of the grant funding.
4. **Grant Funds.** COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to COUNTY by the Oregon Community Foundation (**\$22,280.65**), Oregon State University for its College of Public Health and Human Sciences (**\$15,408.43**), and Clackamas County (**\$10,871.32**). The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is **\$48,560.40**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

Failure to comply with the terms of this Agreement may result in withholding of payment.

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.
7. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
 - a. Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement, or;
 - b. Mutual agreement by COUNTY and SUBRECIPIENT.
 - c. Written notice provided by COUNTY that funds are no longer available for this purpose.

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

Effect of Termination. The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:

- d. Has already accrued hereunder;
- e. Comes into effect due to the expiration or termination of the Agreement; or
- f. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, SUBRECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by SUBRECIPIENT under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay allowable costs or expenses that will become due and payable as a result of the termination of this Agreement

8. **Funds Available and Authorized.** COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
10. **Nonprofit status.** SUBRECIPIENT warrants that it is, and shall remain during the performance of this Agreement, a private nonprofit Organization as defined in the Regulations, including:
 - a. That it is described in Section 501(c) of the Internal Revenue Code of 1954;
 - b. That it is exempt from taxation under Subtitle A of the Internal Revenue Code of 1954;
 - c. That it has an accounting system and a voluntary board; and
 - d. That it practices nondiscrimination in the provision of its services.
11. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a SUBRECIPIENT, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned”. All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT agrees to expend funds in accordance with the approved budget provided in this agreement. All expenditures that exceed a budget line item by more than 10% or \$500, whichever is greater, must be approved in writing by COUNTY. Budget revisions must be submitted and approved prior to changing the budget. At no time may budget modifications change the scope of the original grant application or agreement.
 - d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with Oregon Community Foundation Oregon Parenting Education Collaborative, Oregon State University for its College of Public Health and Human Sciences/HDFS/Hallie E. Ford Center for Healthy Children and Families and Clackamas County. 1

- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit D: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT must submit Financial Reports according to the schedule specified in Exhibit D: Request for Reimbursement. All reports must be signed and dated by an authorized official of SUBRECIPIENT.
- i) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, and its duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- k) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2021), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

12. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and

administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to SUBRECIPIENT.

- b) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

General Agreement Provision

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
 - 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage

to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured, as well as the but only with respect to SUBRECIPIENT's activities under this agreement.
- 6) **Minors.** 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 occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.
- 7) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
- 8) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 9) **Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

- 10) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
- 11) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.

Waiver of Subrogation. SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.

- a) **Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of COUNTY.
- b) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
- c) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
- d) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- e) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- f) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- g) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- h) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- i) **Integration.** This agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.

SUBRECIPIENT

Northwest Family Services
6200 SE King Road
Portland, OR 97222

CLACKAMAS COUNTY

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

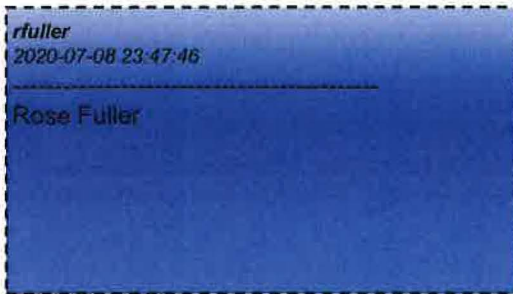
Signing on behalf of the Board:

By: Rose Fuller
Rose Fuller, Executive Director

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: 07/07/2020

Dated: _____



Approved as to budget and work plan:

A handwritten signature in black ink, appearing to read "Adam Freer".

Adam Freer, Director
Children, Family & Community Connections

Dated: July 9, 2020

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Local Subrecipient Grant Agreement with Clackamas Women's Service's
to provide Evidence-based Parenting Education Classes

Purpose/Outcome	Clackamas Women's Services (CWS) will conduct evidence-based Spanish class series of Active Parenting Teens and Active Parenting Now targeting families with children 10-16 years old and provide monthly parent support groups targeting Spanish-speaking families with children birth to 18. Classes may be facilitated in person or virtually to best meet the health and safety needs of the community.
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$20,410. No Impact to County and no match required.
Funding Source	Oregon State University for its College of Public Health and Human Services
Duration	July 1, 2020 to June 30, 2021
Previous Board Action/Review	n/a
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. Date of counsel review: July 1, 2020
Contact Person	Adam Freer 562-676-7675
Contract No.	CFCC 9789

BACKGROUND:

The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of a Local Subrecipient Grant Agreement with Clackamas Women's Services to provide high quality, evidence-based parenting education series to parents and caregivers in Clackamas County. Evidence-based parenting classes and support groups aim to increase positive parent-child relationships, reduce parental stress and isolation and increase academic success, including preparation for children.

This Grant Agreement is effective upon signature by all parties for services starting on July 1, 2020 and terminating on June 30, 2021. This Agreement has a maximum value of \$20,410.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

CLACKAMAS COUNTY, OREGON LOCAL SUBRECIPIENT GRANT AGREEMENT CFCC- 9789	
Program Name: OPEC Parenting Education Program/Project Number: 06162	
This Agreement is between Clackamas County, Oregon , acting by and through its Health, Housing & Human Services Children, Family & Community Connections Division (COUNTY) and Clackamas Women's Services (SUBRECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Michael Morasko	Program Manager: Chelsea Hamilton
Clackamas County Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5435 mmorasko@clackamas.us	Children, Family & Community Connections 112 11 th Street Oregon City, OR 97045 (971) 990-5677 chamilton@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Carla Batcheller	Program Representative: Melissa Erlbaum
Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-557-5801 carlab@cwsor.org	Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-557-5810 melissae@cwsor.org
FEIN: 93-0900119	

RECITALS

1. Clackamas Women's Services (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was selected through a competitive process to provide evidence-based parent education class series to Spanish speaking families with children, who are living in Clackamas County. Evidence-based parent education expands parent knowledge to increase positive parent-child relationships, reduce parental stress and isolation and increase academic success for students, including preparation for kindergarten.
2. SUBRECIPIENT will conduct one Spanish class series of Active Parenting Now, one Spanish class series of Active Parenting Teens and conduct parent support groups to Spanish speaking families with children birth to 18. Classes and support groups may be conducted in person or virtually to best meet the health and safety needs of the community.
3. This Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Local SUBRECIPIENT Agreement, COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse SUBRECIPIENT for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2020** and not later than **June 30, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: SUBRECIPIENT Scope of Work. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Oregon State University for its College of Public Health and Human Services Grant Agreement that is the source of the grant funding.
4. **Grant Funds.** COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to COUNTY by the Oregon State University for its College of Public Health and Human Sciences. The maximum, not to exceed, grant amount that COUNTY will pay on this Agreement is **\$20,410**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

Failure to comply with the terms of this Agreement may result in withholding of payment.

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.
7. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. .
8. **Funds Available and Authorized.** COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.

10. **Nonprofit status.** SUBRECIPIENT warrants that it is, and shall remain during the performance of this Agreement, a private nonprofit Organization as defined in the Regulations, including:
 - a. That it is described in Section 501(c) of the Internal Revenue Code of 1954;
 - b. That it is exempt from taxation under Subtitle A of the Internal Revenue Code of 1954;
 - c. That it has an accounting system and a voluntary board; and
 - d. That it practices nondiscrimination in the provision of its services.

11. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a SUBRECIPIENT, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.

 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.

 - c) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT agrees to expend funds in accordance with the approved budget provided in this agreement. All expenditures that exceed a budget line item by more than 10% or \$500, whichever is greater, must be approved in writing by COUNTY. Budget revisions must be submitted and approved prior to changing the budget. At no time may budget modifications change the scope of the original grant application or agreement.

 - d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with Oregon State University for its College of Public Health and Human Sciences/HDFS/Hallie E. Ford Center for Healthy Children and Families.

 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.

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- l) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

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- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to SUBRECIPIENT.
- b) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.
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- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
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 - 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.
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 - 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured, as well as the but only with respect to SUBRECIPIENT's activities under this agreement.

- 6) **Minors.** 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 occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.
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- 11) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.

Waiver of Subrogation. SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.

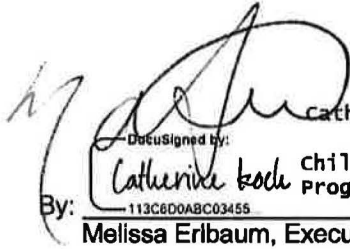
- a) **Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of COUNTY.

- b) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
- c) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
- d) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between the COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- e) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- f) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- g) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- h) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- i) **Integration.** This agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.

(Signature Page Attached)

SUBRECIPIENT

Clackamas Women's Services
256 Warner Milne Rd
Oregon City, OR 97045


DocuSigned by:
Catherine Koch
Children's Program Manager
By: 113C6D0ABC03455
Melissa Erlbaum, Executive Director

Dated: 7/1/2020

CLACKAMAS COUNTY


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

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

Approved as to budget and work plan:


Adam Freer, Director
Children, Family & Community Connections

Dated: July 8, 2020

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

July 30th, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Facility Use Agreement with the
Oregon Trail School District No.46 for the Sandy Clinic

Purpose/Outcomes	Clackamas County Health Centers Division is leasing office space for the Primary Care clinic located in Sandy, Oregon
Dollar Amount and Fiscal Impact	Contract maximum value is \$18,000
Funding Source	No County General Funds are involved. Fee for services through Health Centers' clinics.
Duration	Effective July 1, 2020 and terminates on June 30, 2021
Previous Board Action	The board previously viewed this contract on August 2, 2018 – agenda item 080218-A3.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on June 30, 2020.
Contact Person	Deborah Cockrell – Health Centers Director (503) 742-5495
Contract No.	9790

BACKGROUND:

The Clackamas County Health Centers Division (CCHCD) of the Health, Housing and Human Services Department requests the approval of Intergovernmental Facility Lease Agreement with the Oregon Trail School District 46 for the Sandy clinic. This agreement secures and pays the lease for the property where the Sandy clinic is located.

The maximum contract value is \$18,000. This agreement is effective July 1, 2020 and will expire on June 30, 2021

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing, and Human Services

COUNTY COUNSEL DOCUMENT REVIEW TRANSMITTAL FORM

DATE: Tuesday June 30, 2020

TO: COUNTY COUNSEL ATTORNEY: Kathleen Rastetter or available County Attorney

FROM: Rebecca Howard, Contract Administration

EXTENSION: 5302

DEPARTMENT/DIVISION: Health, Housing and Human Services Department

BILL TO (*Department/Division to be billed*): Health Centers

Contract # 9790

TYPE OF DOCUMENT: Intergovernmental Agreement

CONTRACTOR NAME: Oregon Trail School District No.46

REQUESTED RETURN DATE: Tuesday July 7, 2020

Thank You!

APPROVED AS TO FORM:

County Counsel: *Kathleen J. Rastetter* **Date:** 6/30/2020

Counsel Comments: See changes. Approved as amended.

FACILITY USE AGREEMENT

#9790 **OREGON TRAIL SCL DISTRICT 46 - SANDY HIGH SCHOOL BUILDING**

Start Date: July 1, 2020

End Date: June 30, 2021

Owner: Oregon Trail School District 46, hereafter referred to as "District"
Address: PO Box 547
 Sandy, OR 97055-0547
Phone: 503-668-5541
Contact: Jim Seipel
E-mail: jim.seipel@ortrail.k12.or.us

Facility User: Clackamas County-Health, Housing & Human Services Department
 Acting by and through its Clackamas Health Centers Division
Address: 2051 Kaen Road, #367
 Oregon City, OR 97045
Phone: 503-723-4954
Fax 503-742-5979
Contact: Erin De Armond-Reid
E-mail: ereid@clackamas.us

Premises: Sandy High School – Room 4-18 Health Center

- Summer break schedule: July 1 through September 7, except July 4 holiday; 8:00am – 9pm.
- School year schedule: Monday through Friday, September 8 through June 11; 3:00 pm to 9:00 pm.
- Winter break schedule: Monday through Friday, December 21 through January 1, except December 25 and January 1 holidays; 8:00 am – 9:00 pm
- Spring break schedule: March 22 through March 26; 8:00 am to 9:00 pm
- Summer break schedule: June 14 through June 30; 8:00 am – 9:00 pm (pending any snow days that may cause an adjustment to the school-year calendar)

Purpose of Use: To operate an all ages **Community Health Center**

Usage Fee: \$ 1,500 per month

Deposit: \$ None

General Conditions:

1. **Term** – The term of this Facility Use Agreement ("Agreement") is from the Start date to the End date, inclusive. This Agreement may be terminated by either party upon 30 days written notice to addresses as listed.
2. **Usage Fee** – The Usage Fee is due on the first day of the term of this Agreement.

3. **Deposit** – The deposit is refundable within 30 days after termination of this Agreement. District shall have the right to offset against the Deposit any sums owing from the Facility User not paid when due; any damages caused by Facility User; the cost of curing any default by Facility User; and the cost of performing any repair or cleanup that is Facility User’s responsibility. Offset against Deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by District, at its option, in addition to any other remedy provided by law for Facility User’s nonperformance. If an offset is claimed by the District during the term of this Agreement, Facility User will make whole the Deposit within 20-days of demand.
4. **Use** – Facility User shall use the Premises for no other purposes than stated herein without the District’s written consent. Facility User has a nonexclusive right to reasonable use of common areas of the Sandy High School campus which are normally open during Facility User’s times and dates of usage, i.e. parking areas, walkways, etc. Facility User shall not annoy, obstruct or interfere with the rights, privileges and quiet enjoyment of the Sandy High School campus or building by students, guests, personnel of the District, or other permissive users. Facility User shall promptly comply with all applicable laws, ordinances, rules and regulations of any public authority. Facility User shall not conduct any activities that will increase District’s insurance rates for the Premises or that will in any manner degrade or damage the condition or reputation of the District or the Premises.
5. **Condition of Premises** – Except as otherwise expressly set forth in this Agreement, the Premises are accepted by the Facility User in As Is condition, subject to any and all patent and latent defects and faults, without reliance upon any representation by District as to the condition or suitability of the Premises for any intended use or purpose by Facility User and without any representation or warranty by District as to its compliance with applicable laws, rules, regulations and ordinances.
Exceptions: District agrees to make electrical grounding improvements for the Premises to meet electrical code requirements imposed for health clinic operation.
6. **Equipment** – Facility User shall use in the Premises only such equipment as is customary for Facility User’s use and shall not overload the floors, or electrical circuits of the Premises or Building. Facility User shall not alter the plumbing or wiring or install heating generating equipment without advance District approval of the location of and manner of installation.
7. **Exterior Signs and Devices** – No signs, awnings, antennas, or other apparatus shall be painted on or attached to the exterior of the Premises, common areas, or elsewhere on any property of the District, nor shall anything be placed on any window or positioned so as to be visible from outside the Premises by Facility User, without prior written approval of the District.
8. **Utilities and Services** – District will furnish power, central heating & cooling, and network connectivity to Facility User during the hours of permitted use. Interruption of these services shall not be deemed to constitute a material disturbance of Facility User’s use and possession of the Premises, shall not render the District liable to Facility User for damages, and shall not relieve Facility User from performance of Facility User’s obligations under this Agreement. Facility User shall be responsible for individual POTS lines for their exclusive use and provide its own surge protection for power furnished to the Premises.
9. **Maintenance and Repair** – District will provide daily janitorial service for Premises. District will maintain interior walls, floors, ceilings, light fixtures, doors, windows and related hardware, within reasonable wear and tear. Repair of damage to the Premises, the Building, or other

property of District caused by any negligent or intentional acts or breach of this Agreement by Facility User, its employees, or invitees, shall be at Facility User's expense. District may erect scaffolding and other apparatus necessary for maintenance and repair. District shall have no liability for interference with Facility User's use because of maintenance and repair. Under no circumstances shall Facility User shall have a claim against District for any interruption or interference with Facility User's occupancy of Premises.

Exceptions: Janitorial services will not be provided on District furlough days or during the summer break period. Facility User may request janitorial services during these periods but will be billed, in addition to Usage Fee, the overtime rate of District janitorial staff for such services.

10. **Improvements** – Provided that District gives advance written approval therefor, Facility User may, at its expense, make such improvements to the Premises as may be reasonably necessary from time to time for its operations. Improvements include, but are not limited to: changing the color of the interior, installing or removing any wall, and modifying floor coverings.
11. **Access** – District authorized staff shall have the right to enter the Premises at any time to determine Facility User's compliance with this Agreement and to perform necessary services, maintenance and repairs or alterations to the Premises. Except in case of emergency, such entry shall be upon one calendar day's advance notice and at such times and in such manner as to minimize interference with the reasonable use of the Premises by Facility User. Facility User will be provided with electronic access cards for Premises and must report the loss of such cards immediately to District. District will program electronic access of facility entrance to coincide with the authorized Premises Use hours.
12. **Compliance with Laws** – Facility User shall substantially comply with all applicable laws relating to its possession and use of the Premises.
13. **Hazardous Substances** – Facility User shall be responsible for the control, use and appropriate disposal of hazardous substances necessarily incurred in Facility User's health clinic operations. Facility User shall defend, indemnify and hold District harmless from any and all claims threatened or made in any way related to hazardous substances attributable to Facility User.
14. **Insurance** – Facility User shall carry at all times during the Term of the Agreement, at its own cost or self-insured fund (in such an amount that is acceptable to District), comprehensive liability insurance in an amount not less than \$1,000,000 pre occurrence/\$2,000,000 general aggregate. Such insurance or self-insurance shall cover all risks arising directly or indirectly out of Facility User's use of Premises and shall name the District as an additional insured for such activities. A certificate of insurance bearing such endorsements is required prior to Start Date of this Agreement. Government entity Facility Users may self-insure to provide equivalent coverage.

During the term of this contract, District shall maintain in force, at its own expense, comprehensive liability insurance in an amount not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate.

15. **Security** – While limited intrusion security is provided for Premises, District shall have no obligation to provide additional security services or measures to Facility User, its employees, officers, agents, clients, or guests, and under no circumstances will the District be deemed liable for any personal injuries or property damage related to breach of Premises security. Facility User will cooperate with security measures established by District.
16. **Regulations** – District shall have the right, but shall not be obligated, to make, revise, and enforce regulations or policies consistent with this Agreement for the purpose of promoting safety, health, order, harmony, economy, cleanliness, and good service to all permissive users of the campus in which Premises are located. All such regulations and policies shall be complied with as if part of this Agreement.
17. **Default** – Any of the following shall constitute a default by Facility User under this Agreement:
 - 1) Facility User's failure to pay Usage Fee or any other charges under this agreement within 5 days after due, 2) failure to comply with any other term or condition within 10 days of written notice from District specifying the noncompliance, 3) Facility User's insolvency or assignment for the benefit of creditors, 4) Facility User's commencement of proceedings under any provision of bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer or the appointment of a receiver for all or any portion of District properties or financial records, 5) vacating or abandoning the Premises, or 6) disturbing the quiet enjoyment of the campus, as District may determine in its sole discretion, which is the grounds for immediate termination.
18. **Remedies** – In case of default, District shall have the right to the following remedies which are intended to be cumulative in addition to any other remedies provided under applicable law:
 - 1) District may terminate the Agreement without notice to Facility User, 2) District may take exclusive possession of the Premises and may make use thereof without accepting surrender or waiving the right to damages 3) District may recover all damages caused by Facility User default, 4) District may make any payment or perform any obligation which Facility User has failed to perform, in which case District shall be entitled to recover from Facility User upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of five (5.00%) percent each month, which rate shall apply to any past due Usage Fees.
19. **Surrender** - On termination of this Agreement, Facility User shall deliver all keys and all access cards to District and surrender the Premises vacuumed, swept, and free of debris and in the same condition as at the commencement of the Term, subject only to reasonable wear and tear from ordinary use. Facility User shall remove all of its furnishings and trade fixtures that remain its property and repair all damage resulting from such removal. Failure to remove shall be deemed an abandonment of the property, and District may dispose of it in any manner without liability. If Facility User fails to vacate the Premises when required, including failure to remove all of its personal property, the hold-over Usage Fee rate shall be one and one-half times the total Usage Fee being charged when the right to occupy expires.
20. **Indemnification** – Within the liability limits stated in the Oregon Tort Claims Act, each party to this Agreement shall defend, indemnify and hold the other party harmless against all liability, loss, or expenses, and against all claims, actions or judgements based upon or arising out of damage or injury (including death) to persons or property to the extent caused by or resulting from any act, error or omission by the indemnifying party or its agents and employees in

connection with the performance of this Agreement. The parties' liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

21. **Assignment and Subletting** – Facility User may not assign this Agreement, or any of its rights hereunder, or attempt to sublet the Premises without District's prior written consent, which the District may withhold at its sole discretion.
22. **Notices** – Notices between the parties relating to this Agreement shall be in writing, effective when delivered, or if mailed, effective on the second day following certified and first class mailing, postage prepaid, to the address for the party stated in this Agreement or to such other address either party may specify by notice to the other. Notice to Facility User shall be deemed adequate and effective immediately when hand-delivered to, or posted upon or within, the Premises. Usage Fee shall be payable to District at the same address and in the same manner, but shall be considered paid only when received.
23. **This agreement** is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 1 O of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.
24. **Interpretation of this Agreement** – This Agreement shall be governed by the laws of the state of Oregon. If any provision of this Agreement is found invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of the Agreement shall not be diminished. Both District and Facility User have had the opportunity to have this Agreement reviewed and approved by attorneys of their own choosing, and therefore this Agreement shall be interpreted as having been drafted jointly by the parties hereto. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever. If the Facility User is a corporate entity, the person signing this Agreement hereby warrants that he/she is authorized to make this Agreement by the entity's governing board. The exclusive venue for any disputes shall be in the Clackamas County Circuit Court.
25. **Entire Agreement** – This agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior written and oral agreements and representations and there are no implied covenants or other agreements between the parties except as expressly set forth in this Agreement. Neither District nor Facility User is relying on any representations other than those expressly set forth herein.

Facility User:
Clackamas County

By: _____

Title: _____

Date: _____

Approved as to form:

Clackamas County Counsel

Date: _____

District:
Oregon Trall School District 46



Timothy Belanger

Director of Business Services

Date: 6-9-2020

School Board Approved 6-8-20

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Agreement Amendment #4 with City of
Wilsonville/Wilsonville Community Center to Provide Social Services for
Clackamas County Residents

Purpose/Outcomes	Subrecipient Agreement Amendment #4 with City of Wilsonville/Wilsonville Community Center to provide Older American Act (OAA) funded services for residents of Clackamas County.
Dollar Amount and Fiscal Impact	This amendment adds \$95,906 for FY20/21 services. The contract is funded through the Social Services Division agreement with the Oregon Dept. of Human Services, Community Services.
Funding Source	Older Americans Act (OAA) - no County General Funds are involved.
Duration	Effective July 1, 2020 and terminates on June 30, 2020
Previous Board Action	060619-A6, 060420-A4, 070920-A4
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 needs of low income and older adults in the community.
Counsel Review	Amendment in a format approved by County Counsel.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S #9271; Subrecipient #20-011

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Subrecipient Agreement #20-011, Amendment #4; with City of Wilsonville/Wilsonville Community Center to provide Older American Act (OAA) funded services for qualified persons living in the Wilsonville area. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

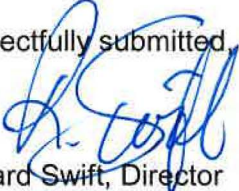
This is a budget adjustment that distributes the OAA program funding for services to be provided during the 2020-21 fiscal year.

This amendment adds \$95,906 in funding for the 2020-21 fiscal year and extends the term of the agreement to June 30, 2021. This amendment is in a format approved by County Counsel

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; or his designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
Health Housing and Human Services

Subrecipient Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 9271

Subrecipient #: 20-011

Board Agenda 060619-A6, 060420-A4, 070920-A4

Amendment Number: 4

Division: Social Services

Contractor: City of Wilsonville – Community Center

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY20-21. This results in an increase to the award budget of \$95,906.

This Amendment #4, when signed by the City of Wilsonville – Community Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County ("COUNTY") will become part of the award documents, superseding the original to the applicable extent indicated.

WHEREAS, SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2019 as may be amended ("agreement");

WHEREAS, Subrecipient and County desire to amend and restart the Agreement in its entirety as of July 1, 2020 and otherwise modify it as set forth herein;

NOW, THEREFORE, County and Subrecipient hereby agree that the Agreement is amended as follows:

Term and Effective Date. This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Amendment may be used to reimburse SUBRECIPIENT for expenses approved in writing by COUNTY relating to the project incurred no earlier than July 1, 2020 and not later than June 30, 2021, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

- 4. Grant Funds.** The maximum, not to exceed, compensation COUNTY will pay for the period of July 1, 2019 through June 30, 2020 is \$118,403. This is a cost reimbursement grant and disbursements will be made in accordance with the requirements contained in Exhibit 4 – Reporting Requirements and Exhibit 5 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. The split between funding sources is outlined in Exhibit 5 – Budget and Units of Services.

City of Wilsonville – Community Center
Subrecipient Grant Agreement #20-011, Amendment 4

- a. **Grant Funds.** COUNTY's funding of **\$108,403** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.045, 93.053) issued to COUNTY by the State of Oregon, Department of Human Services, Community Services & Supports Unit.
 - b. **Other Funds.** The COUNTY's funding of **\$10,000** for nutrition program raw food purchases is from Meals on Wheels People (MOWP) funds issued to the COUNTY by MOWP and Oregon Food Bank.

4. **Grant Funds.** The maximum, not to exceed, compensation COUNTY will pay for the period of July 1, 2020 through June 30, 2021 is \$95,906. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained Exhibit 4 – Reporting Requirements and Exhibit 5 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. The split between funding sources is outlined in Exhibit 5 – Budget and Units of Services. (The split between funding sources is outlined in Exhibit 5 – Budget and Units of Services.)
 - a. **Grant Funds.** COUNTY's funding of **\$95,906** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.045, 93.053) issued to COUNTY by the State of Oregon, Department of Human Services, Community Services & Supports Unit.

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I. Amend: Exhibit 5 – Budget and Units of Services - Unit Cost Schedule

CITY OF WILSONVILLE - COMMUNITY CENTER

Fiscal Year 2019-20

Amend:

	OAA III B Funds	OAA IIIB Funds	OAA IIIC1 Funds	OAA IIIC2 Funds	OAA IIIC2 Funds	OAA III D Funds	OAA Match	NSIP Funds	Other Funds	Prog. Income	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE
Federal Award Numbers	16AORT3SS	CARES Act	16AORT3CM	16AORT3HD	FF & CARES Acts	16AORT3PH		16AORNSIP					
CFDA Number	93.044	93.044	93.045	93.045	93.045	93.043	N/A	93.053					
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
COVID Grant Award		\$6,725			10,071		N/A					\$16,796	
Case Management	\$2,106	\$825					234				101.63	\$3,165	\$28.84
Reassurance	\$1,894	\$825					211				95.98	\$2,930	\$28.33
Info. & Assistance	\$1,460						162				65	\$1,622	\$22.46
Transportation	\$5,371	\$1,000					597				1,343	\$6,968	\$4.00
PHYSICAL ACTIVITY/ FALLS PREVENTION						\$2,860	0				38.1 Classes	\$2,860	\$32.87
OAA/NSIP Food Service			\$8,695	\$6,493	\$8,094		1,689	\$10,553		\$16,080	16,750	\$51,604	\$2.02
OAA Meal Site Mngt.			\$9,604	\$6,786	\$20,381		1,823				16,750	\$38,594	\$2.20
Site Purchased Meals - Restaurant					\$2,160		N/A				270	\$2,160	\$8.00
OAA Nutrition Supplies					\$2,500		N/A					\$2,500	
MOWP-Raw Food Reimbursement							0		10,000			\$10,000	
TOTALS	\$10,831	\$9,375	\$18,299	\$13,279	\$43,206	\$2,860	\$4,716	\$10,553	\$10,000	\$16,080		\$139,199	

Source of OAA Match -Staff time & Units of Service in excess of contract

Prog. Income = Program Income/Participant Donations

CONTRACT AMOUNT: \$ 118,403

Federal Award Total \$ 108,403

To Read:

CITY OF WILSONVILLE - COMMUNITY CENTER

Fiscal Year 2020-21

	OAA III B Funds	OAA IIIC1 Funds	OAA IIIC2 Funds	OAA IIIC2 Funds	OAA III D Funds	OAA Match	NSIP Funds	Other State Funds	Prog. Income	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE
Federal Award Numbers	16AORT3SS	16AORT3CM	16AORT3HD	CARES Acts	16AADRT3PH		16AORNSIP					
CFDA Number	93.044	93.045	93.045	93.045	93.043	N/A	93.053					
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Case Management	\$2,106					234				73.02	\$2,340	\$28.84
Reassurance	\$1,894					211				66.85	\$2,105	\$28.33
Info. & Assistance	\$1,460					162				65	\$1,622	\$22.46
Transportation	\$5,371					597				1,343	\$5,968	\$4.00
PHYSICAL ACTIVITY/ FALLS PREVENTION					\$2,860	0				38.1 Classes	\$2,860	\$32.87
OAA/NSIP Food Service		\$11,482	\$8,451	\$7,127		2,217	\$10,395		\$15,840	16,500	\$55,512	\$2.27
OAA Meal Site Mngt.		\$17,502	\$12,883	\$10,865		3,379				16,500	\$44,629	\$2.50
Site Purchased Meals - Restaurant		\$475	\$875	\$2,160		N/A				360	\$3,510	\$9.75
OPI HDM						0		0			\$0	
TOTALS	\$10,831	\$29,459	\$22,209	\$20,152	\$2,860	\$6,800	\$10,395	\$0	\$15,840		\$118,546	

Source of OAA Match -Staff time & Units of Service in excess of contract

Prog. Income = Program Income/Participant Donations


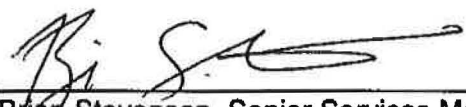
CONTRACT AMOUNT: \$ 95,906

Federal Award Total \$ 95,906

City of Wilsonville – Community Center
Subrecipient Grant Agreement #20-011, Amendment 4

Except as set forth herein, COUNTY and SUBRECIPIENT ratify the remainder of this Agreement and affirm that no other changes are made hereby.

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

City of Wilsonville	CLACKAMAS COUNTY
By:  Bryan Cosgrove, City Manager	Commissioner: Jim Bernard, Chair Commissioner: Sonya Fischer Commissioner: Ken Humberston Commissioner: Paul Savas Commissioner: Martha Schrader
Date: 7/6/2020	Signing on Behalf of the Board:
Approved as to Content:	
 Brian Stevenson, Senior Services Manager	Rodney A. Cook, Deputy Director Health, Housing & Human Services Dept.
Date: 7/11/20	Date

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #4, to Intergovernmental Subrecipient Agreement
with Friends of Canby Adult Center to Provide Social Services for
Clackamas County Residents

Purpose/Outcomes	Subrecipient Agreement, Amendment #4 with the Friends of Canby Adult Center to provide Older American Act (OAA) funded services for persons in the Canby service area.
Dollar Amount and Fiscal Impact	The maximum agreement is \$228,425. The contract is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
Funding Source	The Older American Act (OAA), Ride Connection pass-through funds and Low Income Home Energy Assistance Program (LIHEAP) funds - no County General Funds are involved.
Duration	Effective July 1, 2020 and terminates on June 30, 2021
Previous Board Action	060619-A3, 043020-A5, 070920-A2
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 needs of older adults in the community.
County Counsel	Amendment in a format approved by County Counsel
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S #9269; Subrecipient #20-001

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement, Amendment #4 with the Friends of Canby Adult Center to provide Older American Act (OAA) funded services for persons living in the Canby area. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

This is a budget adjustment that distributes the OAA program funding, Ride Connection transportation pass through Special Transportation Formula funds and LIHEAP funding for services to be provided during the 2020-21 fiscal year.

This amendment adds \$228,425 in funding for the 2020-21 fiscal year and extends the term of the agreement to June 30, 2021. This amendment is in a format approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; or his designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,


Richard Swift, Director

Health Housing & Human Services

Subrecipient Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 9269

Subrecipient #: 20-001

Board Agenda #: 060619-A3, 043020-A5, 062520-A5

Amendment Number: 4

Division: Social Services

Contractor: Canby Adult Center, The Friends of the

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY20-21. This results in an increase to the contract budget of \$228,425.

This Amendment #4, when signed by City of Wilsonville – Community Center (“SUBRECIPIENT”) the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County (“COUNTY”) will become part of the contract documents, superseding the original to the applicable extent indicated.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2019 as may be amended (“agreement”);

WHEREAS, the SUBRECIPIENT and COUNTY desire to amend and restart the Agreement in its entirety as of July 1, 2020 and otherwise modify it as set forth herein;

NOW, THEREFORE, the COUNTY and SUBRECIPIENT hereby agree that the Agreement is amended as follows:

Term and Effective Date. This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Amendment may be used to reimburse SUBRECIPIENT for expenses approved in writing by COUNTY relating to the project incurred no earlier than **July 1, 2020** and not later than **June 30, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

4. Grant Funds. The maximum, not to exceed, compensation COUNTY will pay for the period of July 1, 2019 through June 30, 2020 is **\$291,854**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)

- a. **Grant Funds.** The COUNTY's funding of **\$237,804** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging and **\$4,800** from Federal Transportation Administration funds (Federal Statute: 49 USC 5310; CFDA: 20.513) issued to the COUNTY by Ride Connection, Inc., an Oregon nonprofit corporation.
 - b. **Other Funds.** The COUNTY's funding of **\$26,525** for transportation services outlined in this agreement are from Elderly and Disabled Transportation funds issued to the COUNTY by Ride Connection, Inc. and TriMet. The COUNTY's funding of **\$2,100** for National Diabetes Prevention Program are from Oregon Wellness Network. The **\$625** is for Low Income Home Energy Assistance application assistance outlined in this Agreement are issued to the COUNTY from HEAT Oregon, an Oregon nonprofit organization. The COUNTY's funding of **\$20,000** for nutrition program raw food purchases is from Meals on Wheels People (MOWP) funds issued to the COUNTY by MOWP and Oregon Food Bank.
- 4. Grant Funds.** The maximum, not to exceed, compensation COUNTY will pay for the period of July 1, 2020 through June 30, 2021 is **\$228,425**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)
- a. **Grant Funds.** COUNTY's funding of **\$194,375** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging and **\$4,800** from Federal Transportation Administration funds (Federal Statute: 49 USC 5310; CFDA: 20.513) issued to the COUNTY by Ride Connection, Inc., an Oregon nonprofit corporation.
 - b. **Other Funds.** COUNTY's funding of **\$26,525** for transportation services outlined in this agreement are from Elderly and Disabled Transportation funds issued to COUNTY by Ride Connection, Inc. and TriMet. COUNTY's funding of **\$2,100** for National Diabetes Prevention Program are from Oregon Wellness Network, and **\$625** for Low Income Home Energy Assistance application assistance outlined in this Agreement are from HEAT Oregon, an Oregon nonprofit organization.

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I. **Amend:** Exhibit 6 – Budget and Units of Services - Unit Cost Schedule

CANBY ADULT CENTER
 Fiscal Year 2019-20

Amend

	OAA III B	OAA III B	OAA III C1	OAA III C2	OAA III C2	OAA III D	Required Match	NSIP Funds	State Funds	Other Funds	Ride Connection		TriMet STF Funds	MEDICAID Funds	LIEAP Funds	Program Income	NO. OF UNITS	TOTAL COST	Reimbursement Rate	
	Funds	Funds	Funds	Funds	Funds	Funds					STF	5310 Funds								
Federal Award Numbers	16AORT3SS	CARES Act	16AORT3CM	16AORT3HD	FF & CARES Act	16AORT3PH		16AORNIP	N/A	N/A	Funds	OR-65-012	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
CFDA Number	93.044	93.044	93.045	93.045	93.045	93.043		93.053	N/A	N/A	N/A	20.513	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	
COVID Grant Award		\$15,400			\$23,194		N/A											\$38,594		
Case Management	\$2,035	\$1,550					\$226										155.06	\$3,811	\$23.12/hr	
Reassurance	\$1,022	\$1,550					\$114										123	\$2,686	\$20.86	
Info. & Assistance	\$9,010						\$1,002										663	\$10,012	\$13.58	
Public Outreach	\$150						\$17										7	\$167	\$21.43	
Transportation - OAA	\$0	\$1,000					\$0									\$842	1,684	\$1,842	\$0.00	
Evidence Based Health & Wellness Program						\$10,700	\$0		\$0								142.6	Classes	\$10,700	\$75.04
National Diabetes Prevention Program										\$2,100						\$0	28	Classes	\$2,100	\$75.00
Trans - Ride Con. Out of Dist							\$0				\$25,475					\$1,456	2,911	\$26,931	\$8.75	
Non Medical T19 Transportation							\$0						344	706			75	\$1,050	\$14.00	
Ride Connection Vehicle Maintenance							\$1,200				\$4,800.00						N/A	\$6,000	N/A	
OAA Meal Site Management			\$16,266	\$23,748	\$47,537		\$4,450										38,000	\$92,001	\$1.05	
Food Service - OAA & NSIP			\$15,985	\$23,338	\$18,879		\$4,373	\$23,940								#####	38,000	\$122,995	\$1.66	
OAA Nutrition Supplies					\$2,500				\$0									\$2,500		
MOWP-Raw Food Reimbursement										\$20,000								\$20,000		
LIEAP Intakes							\$0								\$625		25	\$625	\$25.00	
TOTALS	\$12,217	\$19,500	\$32,251	\$47,087	\$92,110	\$10,700	\$11,381	\$23,940	\$0	\$22,100	\$25,475	\$4,800	\$344	\$706	\$625	\$38,778		\$303,419		

Source of OAA Match - Staff time

CFDA Number 20.513 & Federal Award Number only applies to Ride Connection Vehicle Maintenance funds only

Contracted Amount: \$291,854

Federal Award Totals 242,604

CANBY ADULT CENTER
 Fiscal Year 2020-21

To Read

	OAA III B	OAA III C1	OAA III C2	OAA III C2	OAA III D	Required Match	NSIP Funds	State Funds	Other Funds	Ride Connection		TriMet STF Funds	MEDICAID Funds	LIEAP Funds	Program Income	NO. OF UNITS	TOTAL COST	Reimbursement Rate
	Funds	Funds	Funds	Funds	Funds					STF	5310 Funds							
Federal Award Numbers	16AAORT3SS	16AAORT3CM	16AAORT3HD	CARES Acts	16AAORT3PH		16AAORNSIP	N/A	N/A	Funds	OR-65-012	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CFDA Number	93.044	93.045	93.045	93.045	93.043		93.053	N/A	N/A	N/A	20.513	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
Case Management	\$2,035					\$226										88.02	\$2,261	\$23.12/hr
Reassurance	\$1,022					\$114										49	\$1,136	\$20.86
Info. & Assistance	\$9,010					\$1,002										663	\$10,012	\$13.58
Public Outreach	\$150					\$17										7	\$167	\$21.43
Transportation - OAA	\$0					\$0									\$842	1,684	\$842	\$0.00
Evidence Based Health & Wellness Program					\$5,200	\$0		\$0								104 Classes	\$5,200	\$50.00
National Diabetes Prevention Program									\$2,100						\$0	28 Classes	\$2,100	\$75.00
Trans - Ride Con. Out of Dist						\$0				\$25,475					\$1,456	2,911	\$26,931	\$8.75
Non Medical T19 Transportation						\$0						344	706			75	\$1,050	\$14.00
Ride Connection Vehicle Maintenance						\$1,200					\$4,800.00					N/A	\$6,000	N/A
OAA Meal Site Management		\$18,600	\$26,306	\$25,339		\$4,994										39,150	\$75,239	\$1.79
Food Service - OAA & NSIP		\$27,819	\$40,141	\$14,089		\$7,557	\$24,665								#####	39,150	\$151,854	\$2.73
LIEAP Intakes						\$0							\$625			25	\$625	\$25.00
TOTALS	\$12,217	\$46,419	\$66,447	\$39,428	\$5,200	\$15,109	\$24,665	\$0	\$2,100	\$25,475	\$4,800	\$344	\$706	\$625	\$39,882		\$283,416	

Source of OAA Match - Staff time

CFDA Number 20.513 & Federal Award Number only applies to Ride Connection Vehicle Maintenance funds only

Contracted Amount: \$228,425

Federal Award Totals 199,175

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Agreement Amendment #2 with Senior Citizen
Council of Clackamas County to Provide Social Services for
Clackamas County Residents

Purpose/Outcomes	Subrecipient Agreement Amendment #2 with Senior Citizen Council of Clackamas County to provide Older American Act (OAA) funded services for residents of Clackamas County.
Dollar Amount and Fiscal Impact	This amendment adds \$160,784 for FY20/21 services. The contract is funded through the Social Services Division agreement with the Oregon Dept. of Human Services, Community Services and Supports and County General Funds.
Funding Source	Older Americans Act (OAA) and County General Funds are involved.
Duration	Effective July 1, 2020 and terminates on June 30, 2020
Previous Board Action	0516519-A1
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 needs of low income and older adults in the community.
Counsel Review	Amendment in a format approved by County Counsel.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S #9260; Subrecipient #20-010

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Subrecipient Agreement #20-010, Amendment #2 with Senior Citizen Council of Clackamas County (Sr. Council) to provide Older Americans Act (OAA) and County General Fund funded services for persons living in Clackamas County. The services provided include Guardianship/Conservatorship, Guardianship Diversion and Case Management. The County General Funds in this agreement provide funding services to resident who do not qualify for Older Americans Act funded services and have no other means of access these types of services. The services assist older and disabled county residents in meeting their individual needs. The Guardianship/Conservatorship service helps those unable, in a variety of home settings, to handle their business affairs.

This is a budget adjustment that distributes the OAA program funding for services to be provided during the 2020-21 fiscal year.

Page 2 – Staff Report: H3S#9260
July 30, 2020

This amendment adds \$160,784 in funding for the 2020-21 fiscal year and extends the term of the agreement to June 30, 2021. This amendment is in a format approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; or his designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
Health Housing and Human Services

Subrecipient Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 9260

Subrecipient #: 20-010

Board Agenda #: 051619-A1

Amendment Number: 2

Division: Social Services

Contractor: Senior Citizens Council of Clackamas County

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY20-21. This results in an increase to the award budget of \$160,784.

This Amendment #2, when signed by the Senior Citizens Council of Clackamas County ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County ("COUNTY") will become part of the award documents, superseding the original to the applicable extent indicated.

WHEREAS, SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2019 as may be amended ("agreement");

WHEREAS, Subrecipient and County desire to amend and restart the Agreement in its entirety as of July 1, 2020 and otherwise modify it as set forth herein;

NOW, THEREFORE, County and Subrecipient hereby agree that the Agreement is amended as follows:

Term and Effective Date. This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Amendment may be used to reimburse SUBRECIPIENT for expenses approved in writing by COUNTY relating to the project incurred no earlier than **July 1, 2020** and not later than **June 30, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

- 4. Grant Funds.** The maximum, not to exceed, compensation COUNTY will pay for the period of July 1, 2019 through June 30, 2020 is **\$169,784**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)

Senior Citizens Council of Clackamas County
Subrecipient Grant Agreement #20-010, Amendment 2

- a. **Grant Funds.** The COUNTY's funding of **\$69,819** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.044) issued to the COUNTY by the State of Oregon, Department of Human Services, Community Services & Supports Unit.
 - b. **Other Funds.** The COUNTY's funding of **\$99,965** for the Guardianship/Conservator Program Expansion services outlined in this agreement are from County General Funds.
4. **Grant Funds.** The maximum, not to exceed, compensation COUNTY will pay for the period of July 1, 2020 through June 30, 2021 is **\$160,784**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)
- a. **Grant Funds.** The COUNTY's funding of **\$60,819** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.044) issued to the COUNTY by the State of Oregon, Department of Human Services, Community Services & Supports Unit.
 - b. **Other Funds.** The COUNTY's funding of **\$99,965** for the Guardianship/Conservator Program Expansion services outlined in this agreement are from County General Funds.

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I. Amend: Exhibit 6 – Budget and Units of Services - Unit Cost Schedule

Amend:

SENIOR CITIZENS COUNCIL OF CLACKAMAS COUNTY, INC.

Fiscal Year 2019-20

	III B Funds	III B Funds	OAA Match	County Gen. Fund	P.I (if Applicable)	NO. OF UNITS	TOTAL COST	REIMBURSEMENT RATE
Federal Award Number	16AAORT3SS	CARES Act						
CFDA Number	93.044	93.044						
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Guardian/Conservator	26,575		2,955	30,000	8,000	2074.62	\$67,530	\$27.27
Guardian Diversion	17,730		1,972	45,000	4,000	2300.33	\$68,702	\$27.27
Case Management	16,514	9,000	1,836	24,965	1,000	1851.08	\$53,315	\$27.27
TOTALS	\$60,819	\$9,000	\$6,763	\$99,965	\$13,000		\$189,547	

Total Cost Equals (1 + 2 + 3 + 4 = 6)

Source of OAA Match - Staff time

Contract Amount: \$169,784

Federal Award Total: \$69,819

To Read:

SENIOR CITIZENS COUNCIL OF CLACKAMAS COUNTY, INC.

Fiscal Year 2020-21

	III B Funds	OAA Match	County Gen. Fund	P.I (If Applicable	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE
Federal Award Number	16AAORT3SS						
CFDA Number	93.044						
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Guardian/Conservator	26,575	2,955	30,000	8,000	2074.62	\$67,530	\$27.27
Guardian Diversion	17,730	1,972	45,000	4,000	2300.33	\$68,702	\$27.27
Case Management	16,514	1,836	24,965	1,000	1521.05	\$44,315	\$27.27
TOTALS	\$60,819	\$6,763	\$99,965	\$13,000		\$180,547	

Total Cost Equals (1 + 2 + 3 + 4 = 6)

Source of OAA Match - Staff time

Contract Amount: \$160,784

Federal Award Total: \$ 60,819.00

Senior Citizens Council of Clackamas County
Subrecipient Grant Agreement #20-010, Amendment 2

Except as set forth herein, COUNTY and SUBRECIPIENT ratify the remainder of this Agreement and affirm that no other changes are made hereby.

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

Senior Citizens Council of Clackamas County	CLACKAMAS COUNTY
By: <u>Cindy Crowell</u> Cindy Crowell, Executive Director	Commissioner: Jim Bernard, Chair Commissioner: Sonya Fischer Commissioner: Ken Humberston Commissioner: Paul Savas Commissioner: Martha Schrader
Date <u>July 8 2020</u>	Signing on Behalf of the Board:
	<u>Rodney A. Cook, Deputy Director</u> Health, Housing & Human Services Dept.
	<u>Date</u>



DAN JOHNSON
DIRECTOR

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

July 30, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of Addendum #1 to 2040 Planning and Development Grant
Intergovernmental Agreement with Metro: Clackamas County
Park Ave Development and Design Standards. Contract No. 935012

Purpose/ Outcomes	Approval of Addendum #1 to 2040 Planning and Development Grant Intergovernmental Agreement with Metro: Clackamas County Park Avenue Development and Design Standards. Contract No. 935012 to increase the funding amount by \$10,000 to address unexpected expenses due to COVID-19
Dollar Amount and Fiscal Impact	The increased grant award is for \$10,000, with the total grant award being \$190,000. The departments of Transportation and Development (DTD), and Business and Community Services (BCS) have contributed the required match of staff time during this project.
Funding Source	The Metro 2040 grants are funded through Construction Excise Taxes. The additional grant funds do not require matching funds.
Duration	September 2018 – December 2020
Previous Board Action	BCC Policy Session – Update Phase 2: August 6, 2019 BCC Planning Session – Direction on Next Steps: June 11, 2019 BCC Policy Session – Update on Phase 1: May 22, 2019 BCC Policy Session – IGA Approval: September 4, 2018 BCC Business Meeting – Approval to Apply: June 29, 2017 BCC Policy Session – Approval to Apply: June 13, 2017
Strategic Plan Alignment	1. How does this item align with your department’s Strategic Business Plan goals? The project aligns with the DTD Strategic Plan in that it supports the completion of a project in the adopted Long Range Planning Work Program. 2. How does this item align with the County’s Performance Clackamas goals? The additional funding will support community engagement of a project that is focused on creating a more walkable community, therefore it is in alignment with the Policy Perspectives listed in the Performance Clackamas goals of: <ul style="list-style-type: none"> • Equity, Diversity and Inclusion. • Healthy and Active Lifestyle, guiding housing, transportation and land use policies and decisions.
Counsel Review	<ul style="list-style-type: none"> • Reviewed and approved on 07/21/20
Procurement Review	1. Was this item process through Procurement? No 2. If no, provide a brief explanation: This is an amendment to an IGA
Contact Person	Karen Buehrig, Long Range Planning Manager, DTD 503-742-4683
Contract No.	Contract #2213

BACKGROUND:

In 2017 Clackamas County, in response to a community request, applied for a Metro 2040 Planning and Development Grant for the Park Avenue Development & Design Standards project for unincorporated Clackamas County lands approximately ½ mile from the Park Avenue Light Rail Station. The project is providing an inclusive and innovative public engagement process, an assessment of neighborhood livability and economic vitality, and ultimately revisions to the development and design standards on commercial land and multi-family sites around the light rail station to support a more walkable, transit-oriented environment.

On October 24, 2017, Clackamas County received notice that it was awarded a \$180,000 - 2040 Planning and Development Grant by Metro for the proposed project. The original request for funding was made in partnership with the McLoughlin Area Plan Implementation Team (MAP-IT) to support the 2017-18 Long-Range Planning Work Program. This item included working with the community to submit an application to fund a community outreach process in order to engage property owners about the development and design standards.

Exhibit C outlines the reimbursements the County receives for completion of the project milestones. Milestones 1-4 focused on initial IGA implementation; Milestones 4 – 8 were completed during the Phase 1 contract with Bridge Economic Development; and Milestones 9 – 16 address the work outlined in the Phase 2 contract with SERA Architects.

Since the COVID-19 pandemic has created a public health crisis requiring social distancing, and limiting community gatherings for the immediate future and an unknown period of time, the Metro Chief Operating Officer has approved additional funds of \$10,000 to provide increased financial support to 2040 Planning and Development projects. This additional funding will be used to overcome the challenges posed by the COVID-19 pandemic, and support equitable engagement approaches that should be implemented with special consideration of the region's historically marginalized communities who have been disproportionately impacted by the pandemic and the resulting economic downturn.

Exhibit C of the IGA is updated to reflect the grant milestones for reimbursement of the funds to the County. Details regarding to how the additional funds will be expended have been added to Milestone 17 of Exhibit C.

RECOMMENDATION:

Staff respectfully request that the Board of County Commissioners approve this Addendum #1 to 2040 Planning and Development Grant Intergovernmental Agreement with Metro: Clackamas County Park Ave Development and Design Standards; contract No. 935012.

Respectfully submitted,

Karen Buehrig, Long Range Planning Manager
Transportation and Development

ATTACHMENT:

1. 2040 PLANNING AND DEVELOPMENT GRANT ADDENDUM #1 TO INTERGOVERNMENTAL AGREEMENT Metro – Clackamas County Park Avenue Development and Design Standards Contract 935012

**2040 PLANNING AND DEVELOPMENT GRANT
ADDENDUM #1 TO INTERGOVERNMENTAL AGREEMENT
Metro – Clackamas County
Park Avenue Development and Design Standards**

This is an addendum to the 2040 Planning and Development Grant Intergovernmental Agreement between Metro, and Clackamas County, referred to herein as the “Parties” or each, individually as a “Party”.

RECITALS

WHEREAS, the COVID-19 pandemic has created a public health crisis requiring social distancing and limiting community gatherings in the immediate future and for an unknown period of time; and

WHEREAS, it is important for Grant Project work to continue to the fullest extent practical while adhering to public health guidelines, in order continue to support equitable community engagement in planning and development projects and public decision-making processes; and

WHEREAS, Grant projects underway will need additional resources to overcome the challenges posed by the COVID-19 pandemic; and

WHEREAS equitable engagement approaches should be implemented with special consideration of the region’s historically marginalized communities who have been disproportionately impacted by the pandemic and the resulting economic downturn; and

WHEREAS, the Metro Chief Operating Officer has approved additional funds to provide increased financial support to 2040 Planning and Development grantee.

AGREEMENT

NOW THEREFORE, the Parties hereto agree as follows:

1. Additional Metro Grant Award. Metro shall provide \$10,000 of additional Grant Funds to Grantee for the Project subject to the terms and conditions negotiated by the Parties and set forth in an updated version of Exhibit C.
2. Use of Grant Funds. Additional grant funds will enable grantees to cover unanticipated engagement expenses such as, but not limited to:
 - staff time for consultants or community partner organizations to develop revised public engagement strategies appropriate to the new realities of social distancing
 - participation incentives, stipends, or compensation as appropriate to support the involvement of members of historically marginalized communities in advisory committees, focus groups, relationship-building efforts and decision-making processes
 - additional staff time for community-based liaisons to facilitate outreach and connections with community members through methods in alignment with public health directives
 - direct costs for public engagement, including items such as mailings, telephone surveys or wifi hotspots, to bridge the digital divide with community members who may not have internet access

METRO

CLACKAMAS COUNTY

By: _____
Lisa Miles
2040 Grant Program Manager

By: _____
Jim Bernard
Chair, Clackamas County Board of
Commissioners

Date: _____

Date: _____

935012 Revised Exhibit C

(Amendment #3 July 2020)

IGA for 2040 Planning and Development Grant Park Avenue Development and Design Standards

Milestone and Deliverables Schedule for Release of Funds

	Project milestone and specified grant deliverables	Date due*	Matching contributions	Grant payment
1	Execution of Grant IGA. a) Signed IGA document	Sept.15, 2018	Project staff: \$1,000	
2	Phase I Community assessment contract Draft contract with consultant team for Phase I	Sept. 30, 2018	Project staff: \$1,000	
3	Signed contract with consultant team for Phase I.	Oct. 31, 2018	Project staff: \$1,000	
4	Project Kick-off a. Kick-off meeting b. Finalize schedule c. 2 project calls and meetings summaries (2x\$270.41) d. 1 meeting with Community Group for project updates (\$980)	Nov. 30, 2018	Project staff: \$1,500	Phase I Consultants: \$3,511
5	Research a. Market and demographic research b. MAP Review and Policy Review c. Organizational summary d. GIS Property analysis e. Draft Memo 1: Community Overview and Development Trends f. 2 project calls and meeting summaries (2x \$270.41) Final Memo 1 a. Final Memo 1: Community Overview and Development Trends	January 31, 2019	Project staff: \$4,000	Phase I Consultants: \$30,682

Revised Exhibit C

CONTINUED

	<p>Education and Outreach</p> <ul style="list-style-type: none"> a. Presentation Development b. Three Standing Committee meetings c. 5 Roundtable Meetings d. Station Intercept survey e. 2 Project calls and Meeting summaries (2*270.41) 			
6	<p>Draft Memo 2</p> <ul style="list-style-type: none"> a. Draft Memo 2: Summary of Findings of Survey, neighborhood meetings and roundtables b. 1 meeting with Community Group for Project Update (1 * \$980) 	Feb. 28, 2019	Project Staff: \$1,000	Phase I Consultants: \$3,860
7	<p>Final Memo 2</p> <ul style="list-style-type: none"> a. Final Memo 2: Summary of Findings of Survey, neighborhood meetings and roundtables b. 1 meeting with Community Group for Project Update (1 * \$980) c. 2 Project Calls and Meeting Summaries (2*\$270.41) 	March 31, 2019	Project staff: \$1,500	Phase I Consultants: \$2,091
8	<p>Engagement and Governance Recommendations for Phase II</p> <ul style="list-style-type: none"> a. Draft Memo 3: Revised Phase II Scope of Work, including engagement strategies b. Final Memo 3 c. 2 Project calls and Meeting summaries (2*270.41) <p>Direction and Adoption</p> <p>Board of County Commissioners hearings & action</p> <ul style="list-style-type: none"> a) Final Report: Phase 1 b) Presentation to Board c) 2 Project Calls and Meeting Summaries (2*270.41) d) Travel throughout project (\$350) 	June 30, 2019	Project staff: \$9,000	Phase I Consultants: \$9,372

Revised Exhibit C

CONTINUED

9	<p>Phase II Project</p> <ul style="list-style-type: none"> a) Completed Selection process for Phase II Consultant b) Determine remaining project milestones for Phase II (T1.1) c) Signed contract with Phase II Consultants d) CAC Kickoff Meeting with consultant (T4.2) e) Walking Tour with materials and presentation (T4.1) f) Grant Management Team Meeting (T1.3) g) Determine appropriate grant performance measures 	Feb 29, 2020	Project staff: \$25,000	Consultants: \$7,312
10	<p>Equitable Public Engagement Plan</p> <ul style="list-style-type: none"> a) Equitable Engagement Discovery Process Memo (T2.1) b) Public Engagement Workshop with CAC (T4.2) c) Draft Public Engagement Strategy Memo (T2.2) d) Final Public Engagement Strategy memo (T2.3) e) Grant Management Team meeting (T1.3) 	March 31, 2020		Consultants: \$24,668
11	<p>Guiding Principles</p> <ul style="list-style-type: none"> a) Guiding Principles public workshop with CAC (T4.3) b) Public workshop material compilation (T5.10) c) Guiding Principles Memorandum (T5.2) d) Workshop materials e) Grant management meeting (T.3) 	May 31, 2020		Consultants: \$ 15,144
12	<p>Business Anti-Displacement Strategy</p> <ul style="list-style-type: none"> a) Draft Anti-displacement strategy memo (T3.1) b) Final Anti-displacement Strategy Memo (T3.2) c) Business and property owner outreach (T4.5) d) Meeting summaries and market brief (T4.5) e) Grant Management Meeting (T1.3) 	August 31, 2020		Consultants: \$ 17,798
13	<p>Framework Plan</p> <ul style="list-style-type: none"> a) Framework Plan Workshop and CAC meeting (T4.4) (Additional Framework Plan Deliverables to be completed under direct contract with Metro) 	August 31, 2020		Consultants: \$ 7,352
14	<p>Development and Design Standards</p> <ul style="list-style-type: none"> a) Draft code concepts (T7.1) b) Draft development and design standards (T7.2) 	October 31, 2020		Consultants: \$ 45,058

Revised Exhibit C

CONTINUED

	<ul style="list-style-type: none"> c) Opportunity Site concept (T7.3) d) Refined development and design standards (T7.4) e) Public Workshop #3 – Development and Design Standards (T4.6) f) Grant Management Meeting (T1.3) 			
15	Implementation Action Items List <ul style="list-style-type: none"> a) Implementation action items list (T8.1) b) Implementation action items CAC meeting (T4.7) c) Grant Management Meeting (T1.3) 	November 30, 2020		Consultants: \$ 5,520
16	Board of County Commissioners hearings & action <ul style="list-style-type: none"> a) Grant Management meeting (T1.3) b) Presentation to the Board of County Commissioners (T9.1) c) Action on proposed code changes d) Final reporting on grant and performance measures 	December 31, 2020		Consultants: \$ 7,632
17	Services for additional COVID funds <ul style="list-style-type: none"> a) Project management / client and consultant coordination (T10.1) b) Three additional CAC meetings (T10.2) c) Ten (10) additional Grant Management Meetings (T10.3) d) One (1) public engagement focus group (T10.4) 	December 31, 2020		Consultants: \$10,000
GRANT PROJECT COMPLETION <ul style="list-style-type: none"> • All grant project deliverables submitted by grantee and approved by Metro • All required fiscal documentation submitted or retained on file as appropriate • Final reporting on grant performance measures submitted and approved by Metro 			Total Grantee Match	Total Grant Funding
			Project staff: \$ 45,000 TOTAL: \$ 45,000	Phase I Consultants: \$49,515 Phase II: \$130,485 COVID Funding: \$10,000 TOTAL: \$190,000

NOTE: Due dates are intended by the parties to be hard estimates of expected milestone completion dates. Grantee shall not commence work for a new milestone until the prior milestone deliverable(s) has been completed approved, unless Metro’s project manager has provided written approval to continue, or to work on milestones simultaneously. If the Grantee anticipates that a milestone due date cannot be met due to circumstances beyond its control, it shall inform Metro in writing no later than ten (10) days prior to the due date set forth above and provide a revised estimated due date; and Metro and the Grantee shall mutually agree upon a revision to the milestone due dates set forth in this Agreement.

*Note that the total grant award to be provided for this project through this Grant IGA is \$190,000. However, Metro has also approved additional technical assistance funding of \$25,000 to support this project. This supplemental funding will flow to the project through a separate personal services contract directly between Metro and the consultant ultimately selected to implement Phase II.



DAN JOHNSON
DIRECTOR

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

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a First Amendment to a Disposition Agreement Between Clackamas County
and
The Blue at Abernethy Creek, LLC Pertaining to Property Located at 902 Abernethy Road**

Purpose/Outcome	Agreement authorizing disposition of the Abernethy Transportation Maintenance facility.
Dollar Amount and Fiscal Impact	\$3,344,251 – Appraised Land Value
Funding Source	Not applicable
Duration	The proposed amendment to the sale agreement for the property sets closing on or before May 20, 2022, contingent upon the successful acquisition and occupancy of a replacement site for the Transportation Maintenance Division.
Previous Board Action/Review	Executive Session
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	Review and approved by Nate Boderman on 07/22/20
Contact Person	Dan Johnson, Transportation and Development – Director 503-742-4325

Since the devastating flooding in February 1996 of the county's property at 902 Abernethy Road in Oregon City, Clackamas County has been working to relocate all operations housed at that facility. At one time the site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff's Office Fleet Operations and the Transportation Maintenance Division.

Over the past year, County Administration had made it a goal to prioritize the relocation of Transportation Maintenance from the current site for the following reasons.

- Existing facilities on the site are located within a Federal Emergency Management Agency (FEMA)-designated 100-year flood plain. The risk of flooding was most recently and dramatically demonstrated in 1996 when the property was overwhelmed by floodwater. Abernethy Creek, which is adjacent to the site, has crested above the floor heights of the existing facilities eight times since 1923. When the public needs the vital

operations of the Transportation Maintenance Division most, it is essential that its facilities are not underwater.

- The Transportation Maintenance Division is forced to spend money and time every year to move critical equipment in and out of the flood zone during potential flooding events to try to mitigate the risk of operational disruptions in the event of flooding.
- The Transportation Maintenance Division has outgrown existing facilities and the existing facilities are inefficient, for the following reasons:
 - Many years of growth in the County's Department of Transportation and Development resulting in additional staff and equipment;
 - The shape of the site – long and narrow – does not support efficient and safe movement of equipment
 - The limited size of the site does not allow for proper vehicle circulation.
- There are cost and safety issues stemming from unauthorized camping and property use along the Abernethy Creek on the Subject Property.
- The property is underdeveloped compared to its highest and best use. Redevelopment would create additional assessed value for the County and the City of Oregon City.

With this direction, staff has advanced negotiations with The Blue at Abernethy Creek, LLC, on a rare opportunity to acquire a turnkey facility and to liquidate the Abernethy Road facility to foster more compatible redevelopment opportunities benefitting the local community and the City of Oregon City.

The value of the facility was established by independent appraisal. The revenue from this disposition will be allocated to the acquisition of a future site to house Transportation Maintenance and Fleet Services.

This first amendment adjust timelines to correspond with partnering Disposition Agreement between Clackamas County and Beaver Creek Structures, LLC. Specifically, the next due diligence timeline is extended an additional 90 days, to correspond to the additional due diligence timeline provided to the County related to the Transportation Maintenance facility, and the closing date is amended to reflect updated timelines associated with the closing of the Transportation Maintenance facility, which is now anticipated to close on or before May 20, 2022.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners authorize the Chair to execute the attached first amendment to the agreement, any version of the agreement with no material changes, and any subsequent materials needed to facilitate the transaction described in the agreement.

Sincerely,



Dan Johnson – Director of Transportation and Development
Attachment: First Amendment to Disposition Agreement

FIRST AMENDMENT TO DISPOSITION AGREEMENT

THIS FIRST AMENDMENT TO DISPOSITION AGREEMENT (“Amendment”) is entered into effective as of July 30, 2020, between **CLACKAMAS COUNTY**, a corporate body politic (“**County**”), and The Blue at Abernethy Creek, LLC, an Oregon limited liability company or assigns (“**Developer**”).

RECITALS

A. County and Developer are parties to that certain Disposition Agreement dated effective as of April 8, 2019, (the “**Disposition Agreement**”), concerning approximately 22.75 acres of land located at 902 Abernethy Road, Oregon City, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).

B. 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.

AGREEMENT

1. **Amendment to Section 2.4. Section 2.4 of the Disposition Agreement which reads:**

Developer shall have a period of time after the Effective Date (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Developer's intended use, zoning, access, and utilities. The Due Diligence Period shall expire upon the earlier of four hundred eighty-five (485) days after the Effective Date or upon the expiration of the Design and Entitlement Due Diligence Period, as that term is specifically defined in the Maintenance Facility Sale Agreement. During the period from the Effective Date until the expiration of the Due Diligence Period, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. Developer agrees to provide the County with copies of all third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide the County with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Developer at its option and in its sole and absolute discretion may provide notice to the County of its election to terminate this Agreement prior to the

expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to the County prior to expiration of the Due Diligence Period. Where Developer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

Is hereby deleted in its entirety and is replaced with the following:

Developer shall have a period of time after the Effective Date (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Developer's intended use, zoning, access, and utilities. The Due Diligence Period shall expire upon the earlier of five hundred seventy-five (575) days after the Effective Date or upon the expiration of the Design and Entitlement Due Diligence Period, as that term is specifically defined in the Maintenance Facility Sale Agreement. During the period from the Effective Date until the expiration of the Due Diligence Period, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. Developer agrees to provide the County with copies of all third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide the County with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Developer at its option and in its sole and absolute discretion may provide notice to the County of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to the County prior to expiration of the Due Diligence Period. Where Developer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

2. **Amendment to Section 3.3. Section 3.3 of the Disposition Agreement which reads:**

This transaction shall close (the “**Closing**”) concurrent with the close of the Maintenance Facility Sale Agreement (the “**Closing Date**”). The Closing Date of this Agreement shall be dictated by the closing of the Maintenance Facility Agreement. The County and Developer shall be prepared to close within One Thousand Forty Nine (1,049) days from the Effective Date of this Agreement, except for any extensions which are provided for in the Maintenance Facility Agreement.

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 Road, Suite 400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to the County 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 Agreement, including a credit for the Earnest Money. The County and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Developer.

Is hereby deleted in its entirety and is replaced with the following:

This transaction shall close (the “**Closing**”) concurrent with the close of the Maintenance Facility Sale Agreement (the “**Closing Date**”). The Closing Date of this Agreement shall be dictated by the closing of the Maintenance Facility Agreement. The County and Developer shall be prepared to close 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. If temporary occupancy for the Maintenance Facility has not been obtained from the City of Oregon City by the Developer on or before May 20, 2022, Developer may extend Closing until temporary occupancy for the Maintenance Facility is obtained pursuant to Section 3.3 of the Maintenance Facility Sales Agreement. Developer’s right to extend the Closing is limited to an additional one hundred eighty (180) days, as set forth in the Maintenance Facility Sales Agreement.

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 Road, Suite 400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to the County 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 Agreement, including a credit for the Earnest Money. The County and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Developer.

3. **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.

4. **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.

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
a corporate body politic

By: _____

Name: _____

Its: _____

DEVELOPER:

THE BLUE AT ABERNETHY CREEK, LLC,
An Oregon limited liability company

By: _____

Name: _____

Its: _____



DAN JOHNSON
DIRECTOR

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

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Second Amendment to a Disposition Agreement Between Clackamas County and Beaver Creek Structures, LLC Pertaining to Property Located at 19314 S Beaver Creek Road

Purpose/Outcome	Agreement authorizing acquisition of a turnkey facility to house Transportation Maintenance and Fleet Services
Dollar Amount and Fiscal Impact	\$30,395,135 – a reduction of \$910,761
Funding Source	Land Sale Proceeds and Road Fund
Duration	The proposed sale agreement for the property sets closing on or before May 20, 2022.
Previous Board Action/Review	Executive Session 1 st Amendment- signed by County Administrator May 29, 2019, reviewed by BCC June 6, 2019. March 28, 2019 – Business Meeting
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	Reviewed and approved by Nate Boderman on 07/22/20
Contact Person	Dan Johnson, Transportation and Development – Director 503-742-4325

Since the devastating flooding in February 1996 on county-owned property at 902 Abernethy Road in Oregon City, Clackamas County has been working to relocate all operations housed at that facility. At one time this site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff's Office Fleet Operations and the Transportation Maintenance Division.

Over the past two years, County Administration had made it a goal to prioritize the relocation Transportation Maintenance from the current site as:

- Existing facilities on the site are located within a Federal Emergency Management Agency (FEMA)-designated 100-year flood plain. The risk of flooding was most recently and dramatically demonstrated in 1996 when the property was overwhelmed by

floodwater. Abernethy Creek, which is adjacent to the site, has crested above the floor heights of the existing facilities eight times since 1923. When the public needs the vital operations of the Transportation Maintenance Division most, it is essential that its facilities are not underwater.

- The Transportation Maintenance Division is forced to spend money and time every year to move critical equipment in and out of the flood zone during potential flooding events to try to mitigate the risk of operational disruptions in the event of flooding.
- The Transportation Maintenance Division has outgrown existing facilities and the existing facilities are inefficient, for the following reasons:
 - Many years of growth in the County's Department of Transportation and Development resulting in additional staff and equipment;
 - The shape of the site – long and narrow – does not support efficient and safe movement of equipment
 - The limited size of the site does not allow for proper vehicle circulation.
- There are cost and safety issues stemming from unauthorized camping and property use along the Abernethy Creek on the Subject Property.
- The property is underdeveloped compared to its highest and best use. Redevelopment would create additional assessed value for the County and the City of Oregon City.

With this direction, staff has advanced negotiations with Beaver Creek Structures, LLC on a rare opportunity to acquire a turnkey facility and liquidate the Abernethy Road facility to foster more compatible redevelopment opportunities benefitting the local community and the City of Oregon City.

The Beaver Creek Road Site of approximately 11.76 acres at 19314 Beaver Creek Road meets or exceeds all requirements identified by the County as a potential new location for Transportation Maintenance Division operations. The County criteria for a new site location includes but is not limited to the following:

- a. Close proximity to Clackamas County headquarters on the Red Soils Campus in Oregon City
- b. Signalized access onto a major road – in this case, Beaver Creek Road
- c. Central location within the Transportation Maintenance Division's service area
- d. Proper zoning for County's desired use

The owners of the Beaver Creek Road Site propose to acquire, for fair market value supported by appraisal, the Abernethy Road site for redevelopment, subject to the Transportation Maintenance Division's successful acquisition and occupancy of the Beaver Creek Road Site.

Funding for acquisition of the Beaver Creek Road Site will be secured through land sale proceeds and long-term borrowing. Debt service for any borrowing will be covered by available road funds secured through reallocation of forecasted revenue including adjustments in heavy equipment purchases, material purchases, restructuring service delivery agreements resulting in additional revenues and other measures. No revenue from the recently approved countywide Vehicle Registration Fee will be directed towards this acquisition.

This second amendment recognizes adjustments to the facility to be acquired, adjusts timelines, memorializes a reduction in overall price, and provides financing flexibility. The adjustments to the facility to be acquired are identified in Exhibit A, which is attached to the second amendment. The amendment extends the County's current due diligence period an additional 90 days, and makes a corresponding adjustment to the closing date, which should now occur on or before May 20, 2022. Due to cost adjustments, the amendment reduces the overall purchase price of the facility by \$910,761. Finally, the amendment advances payment of earnest money due by the County, contributing to the reduction of the overall purchase price by reducing the transaction costs associated with the acquisition.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners authorize the Chair to execute the attached second amendment to the agreement, any version of the agreement with no material changes and any subsequent materials needed to facilitate the transaction described in the agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Johnson', is written over a horizontal line.

Dan Johnson - Director
Transportation and Development

Attachments: Second amendment to Disposition Agreement

SECOND AMENDMENT TO DISPOSITION AGREEMENT

THIS SECOND AMENDMENT TO DISPOSITION AGREEMENT (“Amendment”) is entered into effective as of July 30, 2020, 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, and the First Amendment to the Disposition Agreement dated effective as of May 29, 2019 (collectively, the “**Disposition Agreement**”), concerning approximately 11.76 acres of land located at 19314 S. Beaver Creek 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. Seller has prepared and the County has approved architectural Design Drawings pursuant to Section 2.5 of the Disposition Agreement. The Design Drawings were submitted to the City of Oregon City for site plan and design review. Seller submitted the Design Drawings to the City of Oregon City for site plan and design review on November 26, 2019. The Design Drawings are subject to BPA, local utility and City planning, engineering and building department approval criteria and conditions (hereafter ‘Governing Jurisdiction’) as well as public appeal on the site plan and design review submittal. It is anticipated that further changes to the Design Drawings may be required subject to Governing Jurisdiction approval criteria. The most recent updates to the Design Drawings are attached hereto. Changes to the contemplated realty improvements that impact the purchase price are outlined in the attached document entitled “Purchase Price – Change Log”, and as more particularly described herein. This Amendment shall, in part, serve to reconcile the purchase price and completion time to accommodate changes to the realty for delivery at Closing, and to memorialize the County’s approval of the amended Design Drawings.
- D. Further, the County desires to reasonably reduce the Purchase Price and to reduce its risk of economic loss, without affecting the realty improvements contemplated for delivery by Seller. Correspondingly, Seller desires to reduce its risk of economic loss in the event the County fails to Close beyond the expiration of the Design and Entitlement Due Diligence Period. Accordingly, the Earnest Money amount and deposit schedule, as well as refund provisions, are modified to meet the Parties aforementioned objectives, which is more particularly described herein.

AGREEMENT

1. **Amendment to Section 2.4. Section 2.4 of the Disposition Agreement which reads:**

The County’s due diligence shall occur over two separate periods. The first due diligence period (the “**Title Commitment Due Diligence Period**”) is as further described in Sections 2.1, 2.2 and 2.3 herein. The Title Commitment Due Diligence Period shall be fifty five (55) days or

less. During the Title Commitment Due Diligence Period, County will investigate all aspects of the Preliminary Commitment, Underlying Documents, and the Survey as set forth in Sections 2.1, 2.2 and 2.3.

The second due diligence period (the “**Design and Entitlement Due Diligence Period**”) is as further described in Sections 2.4 and 2.5 herein. The Design and Entitlement Due Diligence Period shall extend, at a minimum, to the date the County receives and approves the Construction Plans described in Section 2.6, as well as the date the County certifies to the Seller that, in the County’s sole opinion, sufficient appropriations are available to proceed under the terms of this Agreement. Subject to the minimum time requirement in the preceding sentence, the Design and Entitlement Due Diligence Period shall expire upon the earlier of four hundred eighty-five (485) days after the Effective Date or fifteen (15) days from the date the building permit associated with the Maintenance Facility is issued by the city of Oregon City, or as may be extended by mutual agreement of the Parties. During the Design and Entitlement Due Diligence Period, the County shall satisfy itself as to the suitability of the Maintenance Facility for the County’s intended uses, including without limitation consistency with the Scope of Development, the existing physical condition of the Subject Property, zoning, access, utilities, building coverage, possible improvements, development limitations or restrictions. During the Design and Entitlement Due Diligence Period until the termination of this Agreement, County and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Subject Property to perform such tests, inspections and studies as County may deem necessary, including without limitation environmental assessments provided it is prearranged with Seller and County meets all reasonable safety requirements imposed by Seller and its agents as well as all applicable OSHA safety standards. County’s entry onto the Subject Property shall not be unreasonably withheld by the Seller. County hereby indemnifies and holds the Seller and their respective officers, agents and employees harmless from any injury or damages arising out of any activity of County, its agents, employees and contractors performed and conducted on the Subject Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. County shall restore the Subject Property to its pre-examination state after conducting such due diligence at its own expense. County agrees to provide the Seller with copies of all third-party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. County may exercise its rights under this paragraph during the Title Commitment Due Diligence Period, in which case all provisions of this paragraph shall apply as if the County were conducting its activities during the Design and Entitlement Due Diligence Period.

Section 2.4 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

The County’s due diligence shall occur over two separate periods. The first due diligence period (the “**Title Commitment Due Diligence Period**”) is as further described in Sections 2.1, 2.2 and 2.3 herein. The Title Commitment Due Diligence Period shall be fifty five (55) days or less. During the Title Commitment Due Diligence Period, County will investigate all aspects of the

Preliminary Commitment, Underlying Documents, and the Survey as set forth in Sections 2.1, 2.2 and 2.3.

The second due diligence period (the “**Design and Entitlement Due Diligence Period**”) is as further described in Sections 2.4 and 2.5 herein. The Design and Entitlement Due Diligence Period shall extend, at a minimum, to the date the County receives and approves the Construction Plans described in Section 2.6, as well as the date the County certifies to the Seller that, in the County’s sole opinion, sufficient appropriations are available to proceed under the terms of this Agreement. Subject to the minimum time requirement in the preceding sentence, the Design and Entitlement Due Diligence Period shall expire upon the earlier of six hundred thirty-five (635) days after the Effective Date or fifteen (15) days from the date the building permit associated with the Maintenance Facility is issued by the city of Oregon City, or as may be extended by mutual agreement of the Parties. During the Design and Entitlement Due Diligence Period, the County shall satisfy itself as to the suitability of the Maintenance Facility for the County’s intended uses, including without limitation consistency with the Scope of Development, the existing physical condition of the Subject Property, zoning, access, utilities, building coverage, possible improvements, development limitations or restrictions. During the Design and Entitlement Due Diligence Period until the termination of this Agreement, County and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Subject Property to perform such tests, inspections and studies as County may deem necessary, including without limitation environmental assessments provided it is prearranged with Seller and County meets all reasonable safety requirements imposed by Seller and its agents as well as all applicable OSHA safety standards. County’s entry onto the Subject Property shall not be unreasonably withheld by the Seller. County hereby indemnifies and holds the Seller and their respective officers, agents and employees harmless from any injury or damages arising out of any activity of County, its agents, employees and contractors performed and conducted on the Subject Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. County shall restore the Subject Property to its pre-examination state after conducting such due diligence at its own expense. County agrees to provide the Seller with copies of all third-party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. County may exercise its rights under this paragraph during the Title Commitment Due Diligence Period, in which case all provisions of this paragraph shall apply as if the County were conducting its activities during the Design and Entitlement Due Diligence Period.

2. Amendment to Section 2.6. Section 2.6 of the Disposition Agreement which reads:

Within three hundred fifty (350) days after the expiration of the Title Commitment Due Diligence Period, Seller shall prepare and submit to the County final construction plans of the improvements to be constructed on the Subject Property (“**Construction Plans**”), for County review. The Construction Plans shall be consistent with the Scope of Development, attached hereto as **Exhibit “B”** and the approved Design Drawings. The County shall diligently, in good faith, review the Construction Plans to determine whether they are complete and in substantial conformance with the Scope of Development and the approved Design Drawings. Within thirty (30) days after receipt of the Construction Plans, County may deliver to Seller, in writing, any objections alleging in sufficient detail how the Construction Plans are either incomplete or inconsistent with the Scope of Development and the approved Design Drawings (the “**Construction Objections**”). County’s failure to timely object to any such matters shall be deemed to constitute County’s approval thereof and such shall then become Permitted Exceptions, as defined in Section 2.1. If County timely objects to any omission or inconsistency

related to the Construction Plans, then Seller shall have the right, but not the obligation, to agree in writing to cure such Construction Objections, or to decline to cure such Construction Objections. Seller will have twenty (20) days after receiving County's Construction Objections within which to notify County in writing whether Seller is willing or able to cure the Construction Objections. If Seller agrees to cure the Construction Objections, Seller will be obligated to do so within twenty (20) days after notifying the County of its intent to do so. If Seller is unwilling or unable to cure the Construction Objections, County may terminate this Agreement or elect to accept the Construction Objections and proceed by giving written notice to Seller within ten (10) days of receiving notice from Seller. If County does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Construction Objections and all of the Construction Objections shall become Permitted Exceptions. County approval shall not be deemed approval by any Clackamas County department or service district. In the event the County terminates this Agreement as provided in this Section 2.6, a portion of the Initial Earnest Money (defined below) shall be refunded to County in accordance with Section 3.2 and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.6 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

Within four hundred and ten (410) days after the expiration of the Title Commitment Due Diligence Period, Seller shall prepare and submit to the County final construction plans of the improvements to be constructed on the Subject Property ("**Construction Plans**"), for County review. The Construction Plans shall be consistent with the Scope of Development, attached hereto as **Exhibit "B"** and the approved Design Drawings. The County shall diligently, in good faith, review the Construction Plans to determine whether they are complete and in substantial conformance with the Scope of Development and the approved Design Drawings. Within thirty (30) days after receipt of the Construction Plans, County may deliver to Seller, in writing, any objections alleging in sufficient detail how the Construction Plans are either incomplete or inconsistent with the Scope of Development and the approved Design Drawings (the "**Construction Objections**"). County's failure to timely object to any such matters shall be deemed to constitute County's approval thereof and such shall then become Permitted Exceptions, as defined in Section 2.1. If County timely objects to any omission or inconsistency related to the Construction Plans, then Seller shall have the right, but not the obligation, to agree in writing to cure such Construction Objections, or to decline to cure such Construction Objections. Seller will have twenty (20) days after receiving County's Construction Objections within which to notify County in writing whether Seller is willing or able to cure the Construction Objections. If Seller agrees to cure the Construction Objections, Seller will be obligated to do so within twenty (20) days after notifying the County of its intent to do so. If Seller is unwilling or unable to cure the Construction Objections, County may terminate this Agreement or elect to accept the Construction Objections and proceed by giving written notice to Seller within ten (10) days of receiving notice from Seller. If County does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Construction Objections and all of the Construction Objections shall become Permitted Exceptions. County approval shall not be deemed approval by any Clackamas County department or service district. In the event the County terminates this Agreement as provided in this Section 2.6, a portion of the Initial Earnest Money (defined below) shall be refunded to County in accordance with Section 3.2 and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

3. **Amendment to Section 3.1. Section 3.1 of the Disposition Agreement which reads after the First Amendment to Disposition Agreement:**

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Seller agrees to sell to the County, and County agrees to purchase from the Seller, the Maintenance Facility, for an amount not to exceed Thirty-One Million Three Hundred Five Thousand Eight Hundred Ninety-Six and 00/100 Dollars (\$31,305,896.00) (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 as the costs associated with the allowance items identified in the Scope of Development are finalized. All changes to the Purchase Price shall be finalized upon expiration of the Design and Entitlement Due Diligence Period.

Section 3.1 of the Disposition Agreement, as amended by the First Amendment to Disposition Agreement, 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 Million Three Hundred Ninety-Five Thousand One Hundred Thirty-Five and 00/100 Dollars (\$30,395,135.00) (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.

4. **Amendment to Section 3.2. Section 3.2 of the Disposition Agreement which reads, after the First Amendment to Disposition Agreement:**

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 Agreement. If County fails to timely deposit the Initial Earnest Money as provided above, this 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 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 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 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 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 (10) days of County electing to move forward with the 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 Ten Million One Hundred Thousand and 00/100 dollars (\$10,100,000.00) (the "Final Earnest Money Deposit"). Upon receipt, 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.

Section 3.2 of the Disposition Agreement, as amended by the First Amendment to Disposition Agreement, 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 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 ten (10) 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 second 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 Construction Plans, 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 Construction Plans, 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

¹ Eight Million Eight Hundred Fifty Thousand and 00/100 dollars (\$8,850,000.00).

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.

5. **Amendment to Section 3.3. Section 3.3 of the Disposition Agreement which reads:**

This transaction shall close (the “**Closing**”) within One Thousand Forty Nine (1,049) days from the Effective Date of this Agreement (or as may be extended as provided herein, the “**Closing Date**”). If temporary occupancy has not been obtained from the City of Oregon City by the Seller, 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 the then-current expiration date. 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 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 Agreement, including a credit for the Initial Earnest Money and the Final Earnest Money Deposit in a total amount of Eleven Million Six Hundred Thousand Dollars (\$11,600,000.00). The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this 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 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) 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.

6. **Amendment to Section 3.6.2. Section 3.6.2 of the Disposition Agreement which 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 Agreement, including a credit for the Initial Earnest Money and the Final Earnest Money Deposit in a total amount of Eleven Million Six Hundred Thousand Dollars (\$11,600,000.00).

Section 3.6.2 of the Disposition Agreement 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 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).

7. **Amendment to Section 3.6.9. Section 3.6.9 of the Disposition Agreement which reads:**

Escrow Officer establishes an escrow account (the "**Account**") in the total amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) (such sum, together with all interest earned thereon, are collectively referred to herein as the "**Escrow Funds**") from a portion of Seller's net sales proceeds withheld at Closing by the Escrow Officer, as security for completion of the final punchlist items, in accordance with the terms of Section 5.2.

Section 3.6.9 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

Escrow Officer, or its designee, establishes an escrow account (the "**Account**") in the total amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) (such sum, together with all interest earned thereon, are collectively referred to herein as the "**Escrow Funds**") from a portion of Seller's net sales proceeds withheld at Closing by the Escrow Officer, as security for completion of the final punchlist items, in accordance with the terms of Section 5.2.

8. **Amendment to Section 5.2. Section 5.2 of the Disposition Agreement which reads:**

The Seller shall be obligated to complete the Maintenance Facility in accordance with the Construction Plans within one hundred twenty (120) days from the date of Closing. The Escrow Officer may release the Escrow Funds to the Seller after written approval has been provided by either the Owner's Representative or the County that the Maintenance Facility to be constructed on the Subject Property has achieved final completion consistent with the Construction Plans, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Escrow Funds to Seller is the final completion of the Maintenance Facility by the foregoing deadline. Notwithstanding the foregoing, if final completion is not achieved within one hundred twenty (120) days from the date of Closing, all Escrow Funds shall be disbursed to the County, subject to the written approval of Seller, which approval will not be unreasonably withheld, conditioned or delayed. The Escrow Funds shall be disbursed by a single payment and shall not be paid on a pro rata basis or otherwise disbursed in installments. The Account shall be terminated upon disbursement of all Escrow Funds in the Account as provided in this Agreement. This section shall survive Closing and not be merged into any documents delivered at Closing.

Section 5.2 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

The Seller shall be obligated to complete the Maintenance Facility in accordance with the Construction Plans within one hundred twenty (120) days from the date of Closing. The Escrow Officer, or its designee, may release the Escrow Funds, or any portion thereof, to the Seller after written confirmation has been provided by either the Owner's Representative or the County that liens associated with any work remaining to be completed have been released. This written confirmation shall not be unreasonably withheld, conditioned or delayed. The Escrow Funds may be disbursed on a pro rata basis or otherwise disbursed in installments in accordance with the direction provided above, except in no case may the amounts owed to the Seller's contractors, subcontractors, or agents, as evidenced by liens filed against the Subject Property, exceed the amount of Escrow Funds held by the Escrow Officer, or its designee. Notwithstanding the foregoing, if final completion is not achieved within one hundred twenty (120) days from the date of Closing, all remaining Escrow Funds shall be disbursed to the County, subject to the written approval of Seller, which approval will not be unreasonably withheld, conditioned or delayed. The Account shall be terminated upon disbursement of all Escrow Funds in the Account as provided in this Agreement. This section shall survive Closing and not be merged into any documents delivered at Closing

9. **Amendment to Section 7.2. Section 7.2 of the Disposition Agreement which reads:**

If this transaction fails to close because of the Seller's default hereunder, the Initial Earnest Money and the Final Earnest Money Deposit shall be returned, if any, to the County as set forth in and pursuant to Section 3.2 herein. The County shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

In the event that any of the following occur prior to the conveyance of title to the Subject Property, then this Agreement, and any rights of the Seller, or any assignee or transferee, in this

Agreement, or the Property, or any portion thereof, shall, at the option of the County, be terminated by the County, in which event the Initial Earnest Money and the Final Earnest Money Deposit, and any interest earned thereon, shall be returned or retained by the County as set forth and pursuant to Section 3.2 herein, and neither the Seller nor the County shall have further rights against or liability to the other under this Agreement:

7.2.1 Seller, or any successor in interest thereto, assigns this Agreement or any rights therein, or to the Subject Property, in violation of this Agreement;

7.2.2 There is a change in the ownership of the Seller contrary to the provisions of Section 1.6 hereof and as a result Seller fails to materially and substantially fulfill its obligations under the Agreement. The Seller shall not take any action to change its managers without the express written consent of the County; or

7.2.3 The Seller does not construct the improvements on the Subject Property generally consistent with the Construction Plans as approved in accordance with the Agreement as reasonably determined by the Owner's Representative pursuant to Section 5.1 provided County has approved the Construction Plans pursuant to Section 2.6, including acceptance of Seller's proposed cure notification and cure of objections, the County deposits the Final Earnest Money, the building permit associated with the Maintenance Facility has been issued by the city of Oregon City, and all other necessary and required governmental permits have been issued by all governing jurisdictions necessary to commence construction of the Maintenance Facility.

Section 7.2 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

If this transaction fails to close because of the Seller's default hereunder, the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit and the Final Earnest Money Deposit shall be returned, if any, to the County subject to Section 3.2 herein. The County shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

In the event that any of the following occur prior to the conveyance of title to the Subject Property, then this Disposition Agreement, and any rights of the Seller, or any assignee or transferee, in this Disposition Agreement, or the Property, or any portion thereof, shall, at the option of the County, be terminated by the County, in which event the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit, and any interest earned thereon, shall be returned or retained by the County subject to Section 3.2 herein, and neither the Seller nor the County shall have further rights against or liability to the other under this Disposition Agreement:

7.2.1 Seller, or any successor in interest thereto, assigns this Disposition Agreement or any rights therein, or to the Subject Property, in violation of this Disposition Agreement;

7.2.2 There is a change in the ownership of the Seller contrary to the provisions of Section 1.6 hereof and as a result Seller fails to materially and substantially fulfill its obligations under the Disposition Agreement. The Seller shall not take any action to change its managers without the express written consent of the County; or

7.2.3 The Seller does not construct the improvements on the Subject Property generally consistent with the Construction Plans as approved in accordance with the Disposition Agreement as reasonably determined by the Owner's Representative pursuant to Section 5.1 provided County has approved the Construction Plans pursuant to Section 2.6, including acceptance of Seller's proposed cure notification and cure of objections, the County deposits the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit, the building permit associated with the Maintenance Facility has been issued by the city of Oregon City, and all other necessary and required governmental permits have been issued by all governing jurisdictions necessary to commence construction of the Maintenance Facility.

10. **Amendment to Section 8.8. Section 8.8 of the Disposition Agreement which reads:**

Time is of the essence of this Agreement. All obligations of the County and the Seller to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 8.8 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

Time is of the essence of this Agreement. All obligations of the County and the Seller to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing. Notwithstanding the foregoing, the Parties acknowledge that, pursuant to Oregon Local Budget Law (ORS Chapter 294), the County is required to appropriate funds for purposes of fulfilling its monetary obligations under this Disposition Agreement. The County has appropriated an amount equal to the Second Earnest Money Deposit and the Third Earnest Money Deposit² which is eligible for disbursement during the County's fiscal year ending June 30, 2021. The Parties further acknowledge and agree that, in the event that temporary occupancy for the Maintenance Facility is issued by the City of Oregon City on or before June 16, 2021, pursuant to Section 3.3, the Closing Date shall be forty-five (45) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City, which will allow the County sufficient time to process the necessary budget amendment in accordance with Oregon Local Budget Law.

11. **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.**

² The total amount of the Second Earnest Money Deposit and the Third Earnest Money Deposit is Seventeen Million Two Hundred Thousand Dollars (\$17,200,000).

12. **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.

13. **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.

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
a corporate body politic

By: _____

Name: _____

Its: _____

DEVELOPER:

BEAVERCREEK STRUCTURES, LLC,
An Oregon limited liability company

By: _____

Name: _____

Its: Manager _____

Purchase Price - Change Log
Second Amendment to Disposition Agreement (Addition to Exhibit B)

ITEM DESCRIPTION	PURCHASE PRICE CHANGE AMOUNT (\$)	
Mezzanine / Stairs / Roof Access Ladder & Cage // Double Lighting // Power // Electrical	\$	92 970
Enlarged OHDs 1214 to 1614	\$	25 278
Delete Material Lift	\$	(53 500)
Delete Paint Booth / Paint Booth Area	\$	(135 000)
Sheriff Storage Fencing- Approximately 1,000 sf fenced in area with access door	\$	4 950
Increase Structural Capacity for Future Solar Panels // Disconnect	\$	28 000
3 Locker Room Shower Stalls - Framing / Curtain / Tile Walls / Plumbing	\$	18 600
Reduce Total Number of Lockers from 146 to 100	\$	(3 450)
Relite Windows from Hall to Wood and Bridge Areas	\$	3 375
Deletion of CMU partition walls	\$	(16 000)
Metal Fabrication / Welding Area (Mech // Elect)	\$	23 450
Added Demising Wall between Sign and Wood Shop	\$	9 450
Redesign Time // Schematic Layout - Buyer Scope Changes	\$	11 900
Vehicle Scale Equipment	\$	(55 000)
Cost Reduction on Increased Earnest Money	\$	(1 462 900)
Building Area // Type Changes (Enlarge Main Bldg. and Reduce Out Buildings)	\$	597 116
Total Purchase Price Change - Second Amendment	\$	(910 761)

SUMMARY

Purchase Price After First Amendment	Total Purchase Price Change - Second Amendment	Adjusted Purchase Price - Second Amendment
\$31 305 896	-\$910 761	\$30 395 135

Remaining Allowance Items

REMAINING ALLOWANCE ITEMS AFTER SECOND AMENDMENT	ALLOWANCE AMOUNT (\$)
Gas - Fuel Equipment / Containment / Tanks (4 Pump Stations)	\$ 475 000
Decant System / Washout Area / Drive Grates / Separator	\$ 55 000
Propane - Fuel Equipment / 1000 gal Skid Tank & Distribution (1 Pump Station)	\$ 135 000
Water Reservoir & Fill Station	\$ 18 000
Self Service Vehicle Wash - Waste System / Equipment (4 Bays)	\$ 105 000
Special Entry Roadway Entry // Art	\$ 45 000
Door Hardware	\$ 57 923
Beavercreek Intersection (Signalization, Turn Lanes, Pole Burial)	\$ 650 000
Jurisdictional Permits & Fees	\$ 1 900 000
On & Offsite Public Roads & RT. of Way Improvements	\$ 1 597 050
Entry Monuments & Building Signage	\$ 14 500
Bridge Cranes, Bridge Railing & Controls	\$ 250 000
Low Voltage (Data/Telephone/Security)	\$ 350 000

**County Requested Purchase Price Add / Deduct Options
Option Pricing and Consideration prior to the Expiration of the Design
& Entitlement Due Diligence Period**

ITEM DESCRIPTION	PURCHASE PRICE CHANGE AMOUNT (\$)
Containment Area - Magnesium Chloride Tanks	TBD
Hydronic Radiant Floor Heat System (A Portion of Main Building Service Area)	TBD
Ventilation (Parking Area inside Main Building if Required by Code)	TBD
Back up Power / Generator	TBD
Main Building Roofing Upgrade to County Provided Specifications	TBD
Conduits for Potential Future Car Charging Stations	TBD
Special Welding Area Exhaust (Swing Arm)	TBD
Reduce Onsite Pavement Sections	TBD



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with DKS Associates, Inc. for the
Clackamas County Regional Freight Intelligent Transportation System (ITS) Project**

Purpose/Outcomes	This contract will provide design engineering services for Clackamas regional freight related Intelligent Transportation System (ITS) improvements on road infrastructures within Clackamas and Wilsonville industrial areas.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$260,133.97
Funding Source	Federal Funds: \$233,418.21 County Road Funds (10.27% match): \$26,715.76
Duration	December 31, 2021.
Previous Board Action	10/17/19 – BCC Approval of Amendment No. 1 to Supplemental Project Agreement No. 33150 03/28/19 – BCC Approval of Supplemental Project Agreement No. 33150 01/01/17 – BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects. 5/5/2016 – BCC approval of Amendment No. 1 to Agreement No. 29996 10/02/2014 – BCC Approval of Local Agency Agreement No. 29996
Strategic Plan Alignment	1. Grow a vibrant economy 2. Ensure safe, healthy and secure communities
Counsel Review	July 20, 2020 Counsel Initials: AN
Procurement Review	1. Was this item processed through Procurement? YES 2. If no, provide brief explanation:
Contact Person	Bikram Raghubansh, Project Manager 503-742-4706

Background:

The Project will involve design and deployment of Intelligent Transportation System (ITS) technologies on road infrastructures within Clackamas County, ODOT, City of Gladstone, and City of Wilsonville’s jurisdictions. The scope of the Project is to improve the reliability and safety of the regional freight system by managing freight vehicle delay in known congested areas using ITS technologies. This is a federally funded project through Metro’s Regional Flexible Funds allocation with an overall estimated cost of \$2.12 million with 10.27% local (County) match. The initial (Phase 2A) funding of Clackamas Regional Freight ITS Project will deploy selected number of ITS strategies within the Clackamas and Wilsonville industrial areas.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on December 9, 2019. Proposals were opened on January 14, 2020. The County received one (1) Proposal: DKS Associates, Inc. An evaluation committee of four DTD personnel scored DKS Associates, Inc.'s proposal confirmed their capability of performance. Upon Contract award, the final statement of work was negotiated and finalized. Project fees were negotiated and based upon existing Oregon Department of Transportation ("ODOT") Negotiated Billing Rates.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Engineering and Related Services Contract with DKS Associates, Inc. for the Clackamas County Regional Freight ITS Project

Sincerely,



Bikram Raghubansh
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services

ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: 2137

Project Title: Clackamas County Regional Freight ITS Project	Agency Project Number: 22235
Project Location: Clackamas County	Associated RFP Number: 2019-86
Federal Aid Number: 18001	Goal: 8.5% (see Exhibit E)
Total Not-to-Exceed (“NTE”) amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$22,515.94 for contingency tasks, each of which must be separately authorized by Agency.	\$ 260,133.97

This Contract is between Clackamas County, hereafter called “Agency” and **DKS Associates, Inc.**, an Oregon corporation, hereafter called “Consultant.” Agency and Consultant together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this Contract are identified in Exhibit J, Contact Information and Key Persons.

This Contract includes Federal Highway Administration (“FHWA”) funding coordinated through the Oregon Department of Transportation (“ODOT”). See Section 18 - Compliance with Applicable Law.

For purposes of this Contract:

- a) “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) “Engineering” Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110]; and
- d) “Related Services” has the meaning provided in ORS 279C.100.

TERMS AND CONDITIONS

- 1. Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the Agency. Unless otherwise amended or terminated, this Contract shall expire **December 31, 2021**.
- 2. Statement of Work.** Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the “Services”). The required schedule for performance under the Contract is specified in the Statement of Work.
- 3. Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. Agency reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. If this Contract was awarded as a Direct Appointment/Small Purchase, amendments to increase the maximum amount payable are subject to limitations and additional requirements as set forth in applicable Federal, State and local laws. The payment methodology and basis for payment to Consultant is described in

Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.

4. Contract Exhibits. This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

- Exhibit A - Statement of Work
- Exhibit B - Compensation
- Exhibit C - Insurance
- Exhibit D - Title VI Non-Discrimination Provisions
- Exhibit E – Disadvantaged Business Enterprise (“DBE”) Provisions
- Exhibit F - Special Terms & Conditions
- Exhibit G - RESERVED
- Exhibit H - RESERVED
- Exhibit I - Errors & Omissions (“E&O”) Claims Process
- Exhibit J - Contact Information and Key Persons

5. Order of Precedence. Unless a different order is required by law, this Contract shall be interpreted in the following order of precedence: this Contract (including all amendments, if any) less all Exhibits, attachments and other documents/information incorporated into this Contract, then the Statement of Work and Payment Schedule, then all other Exhibits, then any other attachments or documents/information incorporated into this Contract by reference.

6. Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Consultant Oversight.

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to Agency and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to Agency disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to Agency whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed individual.
- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with

Agency, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to Agency any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect Agency or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain Agency's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions Agency may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, Exhibit D - Title VI Nondiscrimination Provisions, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. Agency's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

8. Third Party Beneficiaries. The State of Oregon, the Oregon Transportation Commission (OTC) and ODOT, are intended third-party beneficiaries of the Contract with express independent authority to enforce the terms and conditions of the Contract. Otherwise, there are no third-party beneficiaries of the Contract.

9. Representations and Warranties. Consultant represents and warrants to Agency that (i) Consultant has the power and authority to enter into and perform the Contract, (ii) the Contract, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the Contract will be performed in accordance with the professional standard of care set forth in Section 10 below; (iv) Consultant is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Consultant is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Contract. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

10. Professional Standard of Care; Responsibility of Consultant; Design Within Funding Limit

a. Professional Standard of Care.

Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

b. Responsibility of Consultant.

- (i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Consultant under the Contract. Consultant shall, without additional compensation,

correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.

- (ii) Agency's review, approval or acceptance of, or payment for, the Services required under the Contract shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract, and Consultant shall be and remain liable to Agency in accordance with applicable law for all damages to Agency caused by Consultant's negligent performance of any of the Services furnished under the Contract or negligent failure to perform any of the Services under the Contract.
- (iii) The rights and remedies of Agency provided for under the Contract are in addition to any other rights and remedies provided by law.
- (iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Contract.

c. Design Within Funding Limit.

When the Services under the Contract include preparation of design plans for the project:

- (i) Consultant shall accomplish the design Services required under the Contract so as to permit construction of the project within Agency's budget for construction. **Agency's budget for construction of the project is 1,521,600.00.** Consultant shall promptly advise Agency's Contract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the Contract Administrator will review Consultant's revised estimate of construction cost. Agency may, if it determines that the estimated construction contract price set forth in this Section is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in this Section, or Agency may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, Agency will prepare an estimate of constructing the design submitted. If Agency's estimator(s) determines Consultant's design exceeds Agency's budget for the construction contract as set forth in Section (i) above {and as may be revised per Section (i) above}, then Consultant shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the Contract. However, Consultant shall not be required to perform such additional Services at no cost to Agency if Consultant's design exceeds Agency's budget {as set forth in Section (i) above} as a result of conditions beyond Consultant's reasonable control.

11. Ownership of Work Product

a. Definitions. The following terms have the meanings set forth below:

- (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.
- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Consultant.
- (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to Agency pursuant to the Contract.

b. Work Product. All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Agency. Agency and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon Agency's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest

such rights in Original Work Product in Agency. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.

- c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to Agency under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of Agency to authorize contractors, consultants and others to do the same on Agency's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the Agency. At the request of Consultant, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of Agency to authorize others to do the same on Agency's behalf.
- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Statement of Work, Agency hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Agency-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

12. Confidentiality and Non-Disclosure. Consultant and its subcontractors, and their respective employees and agents, shall keep confidential all information, in whatever form, produced, prepared, observed or received to the extent that such information is designated as confidential by the Agency, by law, or by this Contract. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall immediately notify Agency of such subpoena or other legal process, provide Agency with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with Agency in the event Agency decides to oppose the disclosure of the Confidential Information. In the event Agency decides not to oppose such subpoena or other legal process or Agency's decision to oppose the subpoena or

legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

13. Indemnity

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the Agency, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the Contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the Agency, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the professionally negligent acts, errors or omissions of Consultant or its subcontractors, or their respective agents or employees, in the performance of Consultant's professional services under the Contract.
- c. **Indemnity for Infringement Claims.** Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the Agency, State of Oregon, the OTC and ODOT, and their respective officers, members and their agencies, subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the Agency by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the Agency's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, Agency shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the Agency (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with Agency specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by Agency.
- d. **Defense Qualification.** Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the Agency, the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The Agency, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.
- e. **Agency's Acts or Omissions.** This section 13 does not include indemnification by Consultant of the Agency, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, for the acts or omissions of these entities and their respective officers, members, agents and employees, whether within the scope of the Contract or otherwise.

14. **Insurance.** Consultant shall carry insurance as required on **Exhibit C**.

15. Termination

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **Agency's Right to Terminate for Convenience.** Agency may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar days prior written notice to Consultant.

- c. Agency's Right to Terminate for Cause.** Agency may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
- (i) Agency fails to receive appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services. Payments under this Contract and continuation of this Contract beyond the current biennium are subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available from current funding sources. The Agency may terminate this Contract, and Consultant waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the Agency's funding from local, state and/or federal sources is not appropriated or is withdrawn, limited or impaired;
 - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or Agency is prohibited from paying for such Services from the planned funding source;
 - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice to Consultant, or such longer period as Agency may specify in such notice.
- d. Consultant's Right to Terminate for Cause.**
- (i) Consultant may terminate the Contract by giving written notice to Agency if Agency fails to pay Consultant pursuant to the terms of the Contract and if Agency fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
 - (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 14 calendar days after Consultant's notice to Agency, or such longer period as Consultant may specify in such notice.
- e. Remedies.**
- (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered up to the time of termination, less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to Agency upon demand.
 - (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).
- f. Consultant's Tender Upon Termination/Retained Remedies of Agency.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities

under the Contract, unless Agency expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to Agency all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Agency's request, Consultant shall surrender to anyone Agency designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by Agency to complete the Services.

16. Records Maintenance; Access. Consultant, and its subconsultants, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the Contract and the project and shall do so in such a manner as to clearly document Consultant's performance. The Agency, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States (CGUS) and their respective, duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Any cost data submitted by Consultant pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. Agency, ODOT and FHWA shall have the right to review or examine the work in progress for any Services performed under the Contract.

17. Performance Evaluations. Agency will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by Agency, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). Agency will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. Agency may adjust evaluation score(s) upon Agency's finding of good cause. Agency may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. Agency may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. Agency and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

18. Compliance with Applicable Law. Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C.

7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. Agency's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.505 and 279C.580, which are incorporated by reference herein. All rights and remedies available to Agency under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request Agency to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If Agency concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by Agency shall be final and not subject to further review or challenge.

19. Permits and Licenses

- a. Permits and licenses to conduct business.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold, maintain and fully pay for during the term of the Contract all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Contract.
- b. Permits and licenses required for the project.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold and maintain during the term of the Contract all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but Agency shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Contract. Consultant shall advise Agency throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

20. Foreign Contractor. If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract.

21. Force Majeure. Neither Agency nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Consultant, respectively. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

22. Survival. All rights and obligations shall cease upon termination or expiration of the Contract, except for the rights and obligations set forth in Sections 5, 9, 10, 11, 12, 13, 15(e), 15(f), 16, 22, 23, 26, 27 and 29 and all other rights and obligations which by their context are intended to survive.

23. Time is of the Essence. Consultant agrees that time is of the essence in Consultant's performance of its obligations under the Contract.

24. Notice. Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or Agency at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to Agency's Contract Administrator or Consultant's representative, as applicable.

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

26. Dispute Resolution and Errors & Omissions Claims Process. In the event of a dispute between the Parties regarding any aspect of the Contract or performance under the Contract, the Parties agree to attempt in good faith to investigate and resolve any such dispute through direct communications and negotiations.

- a. **Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit I, Errors & Omissions Claims Process.**
- b. **Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.
- c. **Notification to ODOT.** Agency shall immediately notify ODOT of any disputes that seek resolution with the Errors & Omissions Claims Process or mediation.

27. Governing Law; Venue; Consent to Jurisdiction. The Contract shall be governed by, and construed and enforced 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 agency or department of the State of Oregon) and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; 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 Agency or State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

28. Amendments. Agency may amend the Contract to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by Agency and

Consultant. Agency may agree to appropriate increases in the maximum compensation payable under the Contract, should any Agency-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing, signed by the Parties and all approvals required by applicable law have been obtained.

29. False Claims

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to Agency whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—
 - (i) A violation of the Oregon False Claims Act; or
 - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

30. Certified Small Businesses. Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015 as a material condition of the Contract. If the Consultant or subcontractor was awarded the Contract or subcontract, as applicable, in the course of Agency carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, Agency may terminate the Contract, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the Contract.

31. Merger Clause; Waiver; Interpretation. The Contract, including everything incorporated by reference, 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 the Contract. No waiver, consent, modification or change of terms of the Contract shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the Contract shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

CONSULTANT CERTIFICATIONS

A. Any individual signing on behalf of Consultant hereby certifies under penalty of perjury:

- (1) Consultant has provided its correct TIN to Agency;
- (2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- (3) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is 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, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; and local taxes administered by the Department of Revenue under ORS 305.620.

B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this Contract and that:

- (1) Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to Agency on a properly prepared and submitted form and, if determined necessary by Agency or ODOT, a mitigation plan has been approved by Agency and ODOT.
- (4) (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, 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 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, the undersigned shall complete and submit [Standard Form-LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
(c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
(d) Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- (5) Consultant is an independent contractor as defined in ORS 670.600 and as described in [IRS Publication 1779](#).
- (6) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership

or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by Agency.

Counterparts: The Contract 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 Contract so executed shall constitute an original.

CONSULTANT SIGNATURE(s)

Signature: _____ Date: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Name: _____ Title: _____

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Chair: _____

Date: _____

Recording Secretary: _____

AGENCY LEGAL REVIEW (Approved as to From):

Signature: _____ Date: _____

EXHIBIT A - STATEMENT OF WORK
Clackamas County Regional Freight ITS Project

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Clackamas County (the “County”) is contracting with Consultant for Services in connection with the following project (the “Project”): The purpose of the Clackamas County Regional Freight ITS project is to improve the reliability and safety of the regional freight system by implementing proven ITS strategies within Clackamas County industrial areas. The project will focus in two geographically distinct areas, the Clackamas Industrial Study Area and the Wilsonville Industrial Study Area. While I-205 and I-5 traverse the two areas, respectively, this project focuses on the first and last mile arterial connections. This project will involve design and deployment of ITS technologies on road infrastructures within Clackamas County, ODOT, City of Gladstone, and City of Wilsonville’s road jurisdiction. See Table 1 through Table 2 for a description of the planned improvements on corridors within the two industrial areas. This information is preliminary and subject to change.

The Clackamas Industrial Study Area is defined by SE 82nd Drive, SE Jennifer St, OR 212, OR 2224, and SE Sunnybrook Blvd. The Wilsonville Industrial Study Area is defined by SW 95th Ave, SW Elligsen Rd, SW Kinsman Rd, and SW Wilsonville Rd.

Proposed ITS technology strategies include:

- Truck signal priority - detects freight vehicles and extends the green and/or red signal phase depending on system programming. This will require traffic signal upgrade to ATC controller.
- UPS Battery Backup - provides emergency power to the traffic signal controller when the input power source or main power fails.
- Traffic Surveillance - monitor and respond to traffic conditions in real-time.
- Count Stations (Wavetronix Matrix Units) - monitor system use and analyze data for improved operations
- Travel Time Measurement - monitor travel time throughout the system to improve operations.

Table 1: Project Locations on Clackamas Industrial Area

CORRIDOR/INTERSECTION	AGENCIES	DESCRIPTION
SE 82 ND Drive: SE Sunnybrook Blvd to Oatfield Rd	Clackamas County, ODOT, City of Gladstone	<ul style="list-style-type: none"> • Install Truck Priority: at OR213, OR212, Evelyn St, and Oatfield Rd • Install ATC Controllers: at OR213 and OR 212 • Install UPS Battery Backup System: at OR213, Tolbert St, Fred Meyer Driveway North, Fred Meyer Driveway South, I-205 NB Ramp, I-205 SB Ramp, and Oatfield Rd. • Install Traffic Surveillance: at Tolbert St, Fred Meyer Driveway South, Evelyn St, and Oatfield Rd. • Install Count Station (Wavetronix Matrix Units): at Evelyn St and Oatfield Rd.

SE Jennifer St: at Evelyn St	Clackamas County	<ul style="list-style-type: none"> • Install UPS Battery Backup System
OR 224: I-205 NB Ramp to SE Lake Rd	ODOT	<ul style="list-style-type: none"> • Install Truck Priority: at I-205 NB Ramp, I-205 SB Ramp/SE 82nd Ave NB Ramp, SE 82nd Ave SB Ramp, Johnson Rd, SE Pheasant Ct, and SE Lake Rd. • Install ATC Controller: at I-205 NB Ramp, I-205 SB Ramp/SE 82nd Ave NB Ramp, SE 82nd Ave SB Ramp, SE Johnson Rd, SE Pheasant Ct, SE Lake Rd. •
SE Sunnybrook Blvd: SE Sunnyside Rd to SE 84 th Ave	Clackamas & ODOT	<ul style="list-style-type: none"> • Install Truck Priority: at Mall Entrance and 84th Ave. • Install UPS Battery Backup System: at Sunnyside Rd, SE 97th Ave, I-205 NB Ramp, I-205 SB Ramp, SE 93rd Ave, SE Oak Bluff Blvd, Mall Entrance, and SE 84th Ave. • Install Traffic Surveillance: at SE 97th Ave. • Install Count Station (Wavetronix Matrix Units): at SE 97th Ave, SE 93rd Ave, SE Oak Bluff Blvd, Mall Entrance, and SE 84th Ave. •

Table 2: Project Locations on Wilsonville Industrial Area

CORRIDOR/INTERSECTION	AGENCIES	DESCRIPTION
SW 95 th Ave: SW Boones Ferry Rd to Boeckman Rd	ODOT & City of Wilsonville	<ul style="list-style-type: none"> • Install Truck Priority: at Boones Ferry Rd, Commerce Cir, Ridder Rd, And Boeckman Rd. • Install ATC Controller: at Boones Ferry Rd. • Install UPS Battery Backup System: at Boones Ferry Rd. • Install Traffic Surveillance: at Commerce Cir. • Install Count Station (Wavetronix Matrix Units): at Commerce Cir, Ridder Rd, And Boeckman RD.
SW Day Rd: SW Grahams Ferry Rd to SW Boones Ferry Rd	ODOT & City of Wilsonville	<ul style="list-style-type: none"> • Install ATC Controller: at Boones Ferry Rd.
SW Elligsen Rd: I-5 SB Ramp to Canyon Creek	ODOT & City of Wilsonville	<ul style="list-style-type: none"> • Install Truck Priority: at Parkway Ave and Parkway Center Dr • Install ATC Controller: at I-5 SB Ramp and I-5 NB Ramp. • Install UPS Battery Backup System: at I-5 SB Ramp, I-5 NB Ramp, SW

		Parkway Ave, and SW Parkway Center Dr. <ul style="list-style-type: none"> • Install Traffic Surveillance: at Parkway Ave and Parkway Center Dr. • Install Count Station (Wavetronix Matrix Units): at Parkway Ave.
SW Wilsonville Rd: Willamette Way East to Stafford/Advance/Boeckman	ODOT & City of Wilsonville	<ul style="list-style-type: none"> • Install ATC Controller: at I-5 SB Ramp and I-5 NB Ramp • Install UPS Battery Backup System: at Kinsman Rd, Boones Ferry Rd, I-5 SB Ramp, I-5 NB Ramp, and Town Center Lp • Install Traffic Surveillance: at Wilamette Way East, Brown Rd, Kinsman Rd, and Town Center Lp

General Expectations Consultant commits to oversee and direct the design the Project to obtain the greatest long-term value for the County, and which reflects the prudent expenditure of public funds within the constraints of the Project, program, context and budget. In pursuing this goal, Consultant commits to:

- Develop a design that is appropriate for the context of the Project and the nature of its function, both present and future;
- Avoid expenditures for aesthetic effect which are disproportionate to the Project as a whole;
- Manage and facilitate all facets of the Project that are reasonably within Consultant’s control to ensure the Project is completed on or ahead of time and within budget;
- Strive to reduce the construction cost of the Project while keeping life-cycle costs low;
- Use recycled/recyclable products to the maximum extent economically feasible in the performance of the Contract; and
- Apprise Agency throughout the Project concerning the economic impact of all design decisions; and embody sound and cost-effective sustainability principles in the Services performed under the Contract in accordance with the Department of Administrative Services Sustainable State Facilities Standards and Guidelines.

Project Phasing

This Project is divided into two (2) phases:

- Preliminary Design and Final Design Phase
- Construction Phase with signal timing integration

This statement of work (“SOW”) addresses both phases of the Project.

Agency Responsibilities

- Agency review periods do not exceed three (3) weeks.
- Agency will be primary point of contact with ODOT regarding Contract and design aspects of this Project.

Acronyms and Definitions

AASHTO	American Association of State Highway and Transportation Officials	APM	Agency Project Manager (Clackamas County)
Agency	Clackamas County	APWA	American Public Works Association
		BA	Biological Assessment

BO	Biological Opinion	USFWS	United States Fish and Wildlife Service
CADD	Computer Automated Drafting and Design		
CBR	California Bearing Ratio		
CFR	Code of Federal Regulations		
Consultant...	To be determined		
Corps	US Army Corps of Engineers		
DEQ	Department of Environmental Quality		
DOE	Determination of Eligibility		
DSL	Department of State Lands		
DTM	Digital Terrain Model		
EFH	Essential Fish Habitat		
ESA	Endangered Species Act		
FHWA	Federal Highway Administration		
HAER	Historic American Engineering Record		
HEC	Hydraulic Engineering Circular		
HEC-RAS...	Hydrologic Engineering Center - River Analysis System		
LPA	Local Public Agency (Clackamas County)		
LRFD	Load and Resistance Factor Design		
NE	No Effects		
NEPA	National Environmental Policy Act		
NMFS	National Marine Fisheries Service		
ODA	Oregon Department of Agriculture		
ODFW	Oregon Department of Fish and Wildlife		
ODOT	Oregon Department of Transportation		
OHWM	Ordinary High Water Mark		
ONHD	Oregon Natural Heritage Database		
ORBIC	Oregon Biodiversity Information Center		
SHPO	State Historic Preservation Office		
SLOPES IV	Standard Local Operating Procedures for Endangered Species (SLOPES) IV		
SOW	Statement of Work		
T&E	Threatened & Endangered		
TS&L	Type, Size & Location		
USACE	U.S. Army Corps of Engineers		
USFS	United States Forest Service		

B. STANDARDS and GENERAL REQUIREMENTS

The following standards and general requirements shall apply to this SOW:

1. Standards

General and Administrative

- Oregon Standard Specifications for Construction, ODOT 2018 Standard Specifications
- ODOT Local Agency Guidelines

Environmental

- Wetland Delineation Manual, United States Corp of Engineers/Environmental Protection Agency (USCOE/EPA) 1987

Geotechnical

- Soil and Rock Classification Manual, ODOT 1986
- Geotechnical Design Manual, ODOT April 2011

Hydraulic

- Hydraulic Manual, Part I & II, ODOT 2008
- HEC-18 Evaluating Scour at Bridges, FHWA
- HEC-20 Stream Stability at Highway Bridges, FHWA

Roadway

- Manual of Uniform Traffic Control Devices
- Standards Manual of the Oregon Utilities Coordinating Council

Structural

- ODOT Geotechnical Design Manual

Right-of-Way

- ODOT Right of Way Manual
- ODOT Utility Relocation Manual
- Real Estate Acquisition Guide for Local Public Agencies
- Uniform Standards of Professional Appraisal Practice (USPAP)
- Uniform Appraisal Standards for Federal Land Acquisition

2. Software Requirements

The Contractor shall develop the design utilizing AutoCAD Civil 3D version 2015 or later. Any signal timing conversion and optimization for truck priority shall be based on Intelight Maxtime (controller software).

3. Licenses, Registrations and Qualifications

4. General Requirements

- The APM (or such other individual identified in specific tasks or as designated in writing to Consultant) is the primary contact on behalf of Agency for this Project.
- To the extent possible, all transmittals from Consultant to Agency must include as applicable the Contract#, PA#, Project name and the Project key number.
- Consultant shall represent Project and Agency in an appropriate and professional manner in public.

5. Compliance with Applicable Law

6. ADA Compliance - Assessment, Design, Inspection. When the Services under this WOC include **assessment or design (or both)** for curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), Consultant shall:

- a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (“ADA”), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards; and shall
- b. Follow Clackamas County’s processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, County Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form.

When the Services under this WOC Contract include **inspection** of curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), all such inspections shall include inspection for compliance with the standards and requirements in a. and b. above. In addition, at Project completion, Consultant shall send an ODOT Curb Ramp Inspection Form 734-5020 to the Clackamas County Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets Clackamas County standards and is ADA compliant. ODOT’s fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/Forms/Pages/default.aspx>

Above references to curb ramps, sidewalks or pedestrian-activated signals also include, when applicable, shared use paths, transit stops, park-and-rides and on-street parking.

7. Design Criteria and Project Assumptions/Conditions

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

- Consultant shall submit all deliverables to APM or designee unless otherwise noted in specific tasks.
- Consultant shall make revisions to address Agency review comments and submit revised deliverable(s) to APM within 10 business days of receipt of Agency review comments, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

D. FORMAT REQUIREMENTS

- Consultant shall submit draft deliverables in electronic format via email (and up to three hard copies of deliverables, if requested).
- Consultant shall also submit all graphic files and accompanying reports in PDF.
- Consultant shall provide AutoCAD files of the final design in .dwg format.
- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by Agency.
- Additional format requirements may be listed with specific tasks/deliverables throughout the SOW or in the PA/Contract.

E. TASKS, DELIVERABLES and SCHEDULE

Consultant shall complete all tasks and provide all deliverables (collectively, the “Services”) included in this SOW, unless specifically stated otherwise in a particular task. Consultant shall provide all labor, equipment and materials to manage, coordinate, and complete the work in accordance with the performance and delivery schedules identified in this SOW.

Task Numbering: For purposes of standardization, task numbers in this SOW may be non-sequential and do not necessarily begin with “1” on the first task.

TASK 1 - PROJECT MANAGEMENT

Consultant shall provide management and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

1.1 Administration & Record Keeping

Consultant shall:

- If Consultant does not have a QA/QC plan on file with ODOT, Prepare a Quality Assurance/Quality Control (“QA/QC”) Plan for Agency review and approval. The QA/QC Plan must be developed consistent with requirements of ODOT’s “Guidance/Template for Consultants” available online at: [http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant Quality Plan Model.com](http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant%20Quality%20Plan%20Model.com);
- Prepare a Project design schedule using the Critical Path Method (“CPM”). The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified. For budgeting purposes, it is assumed that up to 3 Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the Contract. Each progress report must:
 - Include a summary of previous period’s activities and the planned activities for the upcoming period;
 - Identify percentage completed of each Task/Deliverable;
 - Reconcile the budget with the actual amount billed to date;
 - Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

For budgeting purposes, it is assumed that up to 12 progress reports will be necessary.

- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda.

1.1 Consultant Deliverables and Schedule

Consultant shall provide:

- QA/QC plan submitted electronically to APM within 7 calendar days of Notice to Proceed (NTP).
- Project Design Schedule submitted within 7 calendar days of NTP. Submit electronically to the APM (PDF) and provide an electronic file MS Project format to the APM.
- Updated Project Design Schedule, as necessary, via timeline agreed to by APM. Submit electronically to the APM (PDF) and provide an electronic file MS Project format to the APM.
- Progress reports and invoices submitted electronically to APM no later than the 20th calendar day of the month following the reporting period.

1.2 Coordination

Consultant shall:

- Coordinate with the APM as the main point of contact for coordination and management of Consultant Services under the WOC;
- Contact other Agency staff, , ODOT staff, and regulatory agency staff, if necessary throughout the WOC, to gather any additional information needed for the Project, Project site, regulations and guidance;
- Provide overall management, direction and coordination of staff (including sub-consultants, if any) to include any necessary internal Consultant staff meetings;

1.2 Consultant Deliverables and Schedule

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this WOC (no tangible deliverables for this task).

1.3 Project Meetings

1.3.1 Project Kickoff Meeting

Consultant shall organize, conduct, prepare for and attend a Project kickoff meeting. The Project kickoff meeting will be held at Agency's office (150 Beaver Creek Road, Oregon City) with Agency, ODOT LAL, ODOT engineering staff, City of Gladstone staff, City of Wilsonville engineering staff, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; utility coordination/design; design criteria; guidance documents and standards, and quality control. Consultant shall schedule Project kickoff meeting within 7 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review. For budgeting purposes, it is assumed that up to 3 Consultant staff shall attend the 1.5 hour Project kickoff meeting.

1.3.2 Project Development Team Meetings

Consultant shall organize, conduct, prepare for and attend up to 3 Project Development Team (PDT) Meetings; 2 via telephone (60% and 90% milestones) and 1 in-person (30% milestone). The in-person PDT meeting will be held at Agency's office (150 Beaver Creek Road, Oregon City) with Agency, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. Consultant shall prepare draft and final meeting minutes to be distributed to Agency and all other meeting participants. For budgeting purposes, it is assumed that up to 3 Consultant staff shall attend each 1.5 hour PDT meeting.

1.3 Consultant Deliverables and Schedule

For each meeting, Consultant shall provide:

- Meeting agenda submitted electronically to APM and all other meeting participants 2 business days prior to meeting.

TASK 2 SURVEY and MAPPING (RESERVED)

TASK 3 ENVIRONMENTAL SERVICES (RESERVED)

TASK 4 PUBLIC INVOLVEMENT SUPPORT (RESERVED)

TASK 5 - UTILITIES COORDINATION

Consultant shall perform the coordination of all utility facilities within the Project limits.

If any utility is nonresponsive or uncooperative, Consultant shall notify Agency, and Agency will communicate with the utility to affect a solution.

5.1 Utility Location and Coordination

Consultant shall perform utility coordination and liaison activities with utility owners/operators for the Project. Consultant shall comply with the current version of the Utility coordination policy requirements as described in the ODOT Utility Relocation Manual. This work includes reviewing utilities that may be in conflict with the Project work and utility relocation coordination with the utility owners to resolve those potential conflicts. For this project, it is assumed that coordination will be required with no more than (25) twenty-five utility owners.

5.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Record of communications with each utility within the Project limits. Copies of communication record must be provided to APM within 3 days of request.

5.2 Utility Report (RESERVED)

5.3 Utility Coordination Meetings (RESERVED)

5.4 Utility Notices

For those Utilities within the project area, Consultant shall provide a Project Notification letter, utilizing an Agency-provided template. The Project Notification letter must include plan sheets indicating location of existing utilities in relationship to proposed project.

Consultant's coordination schedule must allow each utility a 30-day period to respond with a proposal from date of the notice. Multiple notices or revised notices must be created and delivered to a utility owner when additional facility conflicts become apparent and the utility owner's response time may be shortened to 7 calendar days.

5.4 Consultant Deliverables and Schedule

Consultant shall provide:

- Project Notification letter(s) with enclosures to Utilities; due within 10 business days after submittal of Advance plans to Agency.
- 1 *.pdf of Project Notification letters with enclosures to APM, LAPM and, State Utility Liaison (SUL).

5.5 Utility Certification

Consultant shall complete and sign the Utility Certification verifying that all utility work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedule.

5.5 Consultant Deliverables and Schedule

Consultant shall provide:

- 1 *.pdf copy of the Utility Certification sent to SUL for co-signature due 10 business days prior to PS&E.
- 1 hard copy of signed Utility Certification form to be incorporated into PS&E package.

TASK 6 GEOTECHNICAL/GEOLOGIC SERVICES (RESERVED)

TASK 7 HYDRAULICS (RESERVED)

TASK 8 TRAFFIC ENGINEERING & MANAGEMENT

Consultant shall provide traffic analysis and design Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

8.1 Traffic Analysis (RESERVED)

8.2 Traffic Signal & Intelligent Transportation System (ITS) Design

Consultant shall prepare plans, specifications and construction cost estimate ("PS&E") for the installation of ATC controllers, construction of advance detection for truck priority, radar detection (Wavetronix Matrix units) for traffic data collection, CCTV (Traffic Surveillance) cameras, and UPS battery backup system (including length of backup required) at the locations identified previously in Table 1 and Table 2.

All traffic signal and ITS plans and specifications must conform to Manual on Uniform Traffic Control Devices ("MUTCD"), ODOT, Clackamas County, City of Wilsonville, City of Gladstone, and National Electric Code ("NEC") standards as applicable. Advance detection and stop bar detection will be shown in plan view format, while other improvements will be shown in table or typical detail format. Consultant shall develop cabinet prints according to County or ODOT standards, as applicable, for intersections

where advance detection is being added. Existing basemaps will be obtained from the County or ODOT. Where existing basemaps do not exist, as-constructed plans will be used by inserting PDF's into the CAD drawings.

The Consultant shall schedule, at a minimum, one site visit for field verification at each proposed ITS/signal modification location. A representative from the County should accompany each field visit to confirm the locations and assist in signal cabinet access, if necessary.

The County will make available any existing traffic signal as-builts, where traffic signal modification is required, to the Consultant during the design process.

8.2 Consultant Deliverables and Schedule

Consultant shall provide:

- ITS and Traffic signal modification narrative and costs submitted as part of DAP deliverables (Task 13)
- Advance ITS and Traffic signal modification plans, specification, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final ITS and Traffic signal modification plans, specification, and cost estimate included in Final PS&E submittal (Task 15.3)

8.3 Traffic Signal Interconnect (Contingency)

Consultant shall prepare PS&E for the construction of new fiber optic or wireless traffic signal interconnect at the following locations along the alignment:

- SE 82nd Drive between I-205 ITS cabinet to Oatfield Rd
- SW 95th Ave between SW Boones Ferry Rd to Boeckman Rd
- SW Elligsen Rd between I-5 ITS cabinet to Parkway Center Dr

The traffic signal interconnect plans and specifications shall conform to MUTCD, ODOT, Clackamas County, City of Wilsonville, and City of Gladstone and NEC standards as applicable. Consultant shall complete field verification of wireless communication path to evaluate line of sight and viability of path, and evaluate condition and availability of existing conduits for use with fiber optic communications (if viable).

8.3 Consultant Deliverables and Schedule

Consultant shall provide:

- Traffic Signal Interconnect narrative and cost estimate included in DAP (Task 13)
- Advance Traffic Signal Interconnect plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final Traffic Signal Interconnect plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

8.4 Traffic Signal Controller Database Conversion

Consultant shall convert the NWS Voyage signal timing databases operating on the existing Type 2070 controllers to Intelight MaxTime operating on ATC controllers at the 13 ODOT-owned project intersections identified in Table 1 and Table 2 that will have controller upgrades.

Consultant shall conduct the following tasks:

8.4.1 Controller Conversion Training

Consultant shall have one key staff attend one training session provided by ODOT signal operations staff on controller database conversion and ODOT guidelines related to controller conversion guidelines and practice.

8.4.2 Local Signal Timing Conversions

Consultant shall translate the local NWS Voyage signal timing databases operating on the existing Type 2070 controllers to Intelight MaxTime operating on ATC controllers. Guidance document, QAQC checklist, and database template from ODOT Region 1 shall be used as reference. The timings will be entered into intersection databases using Intelight MaxTime software (software version will be agreed upon at time of conversions). All Voyage signal timing sheets will be translated. Data not directly transferable will be identified and discussed with Agency and Local Agency to determine an appropriate response. Consultant shall make signal timing changes to update pedestrian crossing time parameters and update coordination plan numbers per ODOT direction. Consultant shall provide and document QAQC process of database conversion. Consultant shall make updates to draft controller databases based on ODOT comments.

8.4 Consultant Deliverables and Schedule

- Draft electronic Intelight MaxTime database created in MaxTime local software for each intersection listed in Task 8.3 to appropriate Agency personnel.
- Revised electronic Intelight MaxTime database to incorporate Agency comments.

8.7 Temporary Traffic Mobility

Consultant shall prepare a draft Project-level Traffic Management Plan (“TMP”) per the requirements of the ODOT TMP Guidance Document located on the Agency web page. The TMP must include such elements as: anticipated lane closures, construction staging, work zone restrictions, mobility issues, mitigation measures, public involvement program, and concurrence from Motor Carrier Transportation Division (MCTD) on the staging approach and lane restrictions. Consultant will provide lane closure charts or supporting traffic analysis showing recommended lane closure restrictions for Project area roadways using traffic volume information provided by the Agency. Consultant shall coordinate with ODOT’s Region Mobility Liaison for any specific restrictions on lane closures. Consultant shall prepare Project Mobility Consideration checklist and provide to APM for review.

8.7 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft TMP and Project Mobility Consideration checklist submitted as part of Task 13 deliverables
- Final TMP submitted as part of Task 15 deliverables

8.8 Traffic Control Plans (TCPs)

Consultant shall prepare and submit special provisions for temporary traffic control to accommodate the public during construction. Specifications shall be developed to accommodate vehicle, bicycle and pedestrian traffic during construction. Traffic control plans will not be developed as part of this task. ODOT standard drawings will be referenced where possible. If needed, TCPs, will be provided by the Contractor during construction.

8.8 Consultant Deliverables and Schedule

Consultant shall provide:

- 30% TCPs and cost estimate included in DAP (Task 13)
- Advance specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

Task 9 RAILROAD COORDINATION (RESERVED)

Task 10 ROADWAY DESIGN (RESERVED)

Task 11 BRIDGE DESIGN (RESERVED)

TASK 12 LOCAL PERMITS (RESERVED)

TASK 13 - DESIGN ACCEPTANCE PACKAGE (30%)

The objective of the DAP is to identify the size of the Project footprint, required design exceptions and any required environmental permits prior to preparing the Preliminary, Advance and Final Plans.

Consultant shall prepare a DAP that includes design narrative, cost estimate and a design narrative that addresses the following:

- Description of the purpose, need, and design solution for the Project;
- Summary of existing conditions, (i.e., Project location, roadway classification, lanes, ADT, posted speed, and other design standards pertinent to the Project);
- Summary of design exceptions that will be necessary
- Summary of ITS plans including recommendations;
- Outline of Project constraints such as topography, environmental, permits, ROW, utilities and cost (NOTE: these may be executive summaries prepared by Consultant for other deliverables associated with this Project);
- Construction staging and temporary protection and direction of traffic during construction;
- Description of impact to freight mobility
- Design acceptance checklist

Consultant shall summarize and reference in the DAP all of the reports and technical memoranda pertinent to the Project. Consultant shall prepare and submit design concepts (if needed) and a cost estimate as appendices to the DAP. The DAP must bear the responsible engineer’s seal.

Agency and LPA will provide comments on the DAP. Consultant shall address Agency and LPA comments. Consultant shall attend a DAP Plan Review Meeting to communicate and discuss resolution to Agency and LPA review comments. Consultant shall provide written responses to address review comments received from Agency and LPA after attending the DAP Plan Review Meeting.

For budgeting purposes it is assumed that up to 3 Consultant staff shall attend the 2 hour DAP Plan Review Meeting, including travel time.

13 Consultant Deliverables and Schedule:

Consultant shall provide:

- 1 electronic copy of DAP in PDF format to APM within 5 months of NTP.
- 1 electronic copy of written responses to DAP review comments to APM within 1 week of the DAP Plan Review Meeting.

TASK 14 RIGHT OF WAY (RESERVED)

TASK 15 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

Consultants shall prepare plan sheets according to the following table:

Table 15

Name of Sheet	Estimated # of Sheets	Advanced Submittal	Final Submittal
Title sheet	1	x	x
Details	2	x	x

ITS Legend & Symbols	1	x	x
Signal/detector modification, and ITS plans	22	x	x
ITS details	5	x	x

15.1 Preliminary PS&E (60%) (RESERVED)

15.2 Advance PS&E (90%)

This task includes preparation of advance plans, Special Provisions, construction cost estimate, risk assessment, and quality control reviews, as well as incorporating comments from previous reviews.

Advance Plans:

Consultant shall prepare drawings, per Table 15 above and reference Agency standard drawings and details, and other related drawings.

Advance Special Provisions:

Consultant shall update Project Special Provisions based on changes and clarifications to the Project design, as determined at Preliminary plans and in accordance with 2018 *Oregon Standard Specifications for Construction as amended* and *Agency Specification and Writing Style Manual*. Consultant shall prepare the Special Provisions to the 90% level (the "Advance Special Provisions") in MS Word utilizing "Track Changes".

The Advance Special Provisions must incorporate the Agency's boilerplate Special Provisions corresponding with the Project Bid Date. If a bid date has not been identified, Consultant shall use the most current boilerplate Special Provisions. Boilerplates, by bid date, can be found at the following website:

http://www.oregon.gov/ODOT/HWY/SPECS/Pages/Boilerplate_Special_Provisions.aspx

Consultant shall submit the Agency Civil Rights Request for Goals Worksheet to the Agency Office of Civil Rights and incorporate the appropriate Disadvantaged Business Enterprise ("DBE") goals, Minority, Women, and Emerging Small Business ("MWESB") aspirational target values, and On the Job Training (OJT) hours into the Project Special Provisions;

Advance Cost Estimate:

Consultant shall update the construction cost estimate quantities and unit costs utilizing Agency standard bid items to support the Advance Plans (the "Advance Cost Estimate"). Consultant shall prepare the estimate to include mobilization, contingencies, and construction engineering. The estimate must be based on unit prices utilizing Agency and Consultant historic bid information and anticipating a 2020 bid letting.

Construction Schedule:

Consultant shall prepare a construction schedule, using the Critical Path Method (MS Project and PDF format) that outlines a reasonable Project construction sequence and time frames. The schedule must include anticipated material lead times, Project milestones and anticipated construction phasing and staging.

Advance PS&E Revisions/Corrections:

The APM will submit a single electronic file of Advance PS&E Comment Log review comments to Consultant.

Consultant shall address comments received and communicate with the APM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the APM and LAPM on the Advance PS&E.

15.2 Consultant Deliverables and Schedule

Consultant shall submit the following to the APM within 8 weeks of the APM's written approval (e-mail acceptable) of the Preliminary Plans (60%) (Task 15.1):

- Advance Plans (PDF)
- Advance Special Provisions in electronic format (MS Word, utilizing "Track Changes")
- Advance Construction Cost Estimate in electronic format (Excel and PDF)
- Construction schedule in electronic format (MS Project format and PDF)
- Comment response log for plans and specifications (In an Excel document)
- Local agency risk assessment form
- Special Provisions summary form
- Civil Rights request for goals worksheet

Consultant shall submit Advance PS&E Review Comment Log with initial responses to the APM within 2 weeks of receipt of comments.

15.3 Final PS&E Package (100%)

This task includes preparation of the Final PS&E package for bidding purposes. The final plans, Special Provisions, and construction cost estimate must incorporate all revisions agreed to and documented on the Advance PS&E Comment Log (Task 15.2).

Consultant shall coordinate with the APM to ensure all deliverable listed on the most current Final PS&E Submittal and Completeness checklists will be satisfied. Refer to the latest version of the Final PS&E checklists at: http://www.oregon.gov/odot/hwy/opl/pages/manuals_formsetc.aspx

Agency will review final plan sheets and note any final revisions needed prior to preparation and submittal of Professional of Record (POR)-signed Final Plans within 2 weeks of receipt of documents from Consultant. Consultant shall incorporate final revisions into POR-signed Final Plans.

Upon request from Agency, Consultant shall resolve comments from the Office of Pre-letting.

15.3 Consultant Deliverables and Schedule

Consultant shall submit the following to the Agency:

Description	To APM			
	Electronic	Paper		
Un-signed Final Design Plans (11 x 17)	AutoCAD and PDF	X		
Project Special Provisions	Word & PDF	X		
POR Certification with all Special Provisions sections stamped	PDF			
Signed Special Provision Integrity Certification	PDF			
Special Provisions Summary Form	Excel			

Email from Civil Rights noting Applicable DBE goals, MWESB targets and OJT hours		X		
Cost Estimate	PDF and Excel	X		
CPM Construction Schedule (11 x 17 in color)	PDF	X		
Project Mobility Considerations Checklist	PDF			
Utilities Certification (delivered under Task 5)	PDF			
Cabinet Prints (ODOT Intersections)	Microstation and PDF			

Consultant shall submit the following to APM, no later than 1 week prior to the PS&E Due Date to the Agency:

- POR-signed Final Plans printed on 11 x 17 paper, 1 original
- POR-signed Final Plans printed on 11 x 17 paper, 2 copies
- POR-signed Final Plans in PDF format

15.4 LETTER OF PUBLIC INTEREST FINDINGS (LPIF)

Consultant shall prepare up to six Public Interest Finding Letter. Consultant shall perform due diligence to determine if the items to be specified in the Public Interest Finding Letter meet the requirements of the 'Buy America' clause. Consultant shall follow latest LPIF Guidance located at: http://www.oregon.gov/odot/hwy/opl/docs/pdf/lpif_guidance.pdf

APM will route the draft letter for internal review at the Agency and provide the Consultant with one set of non-conflicting review comments.

Consultant shall prepare the final LPIF and submit to APM.

15.4 Consultant Deliverables and Schedule

Consultant shall provide:

- Up to one electronic copy of the draft LPIF with the Preliminary Plans.
- Up to one final LPIF (one pdf file with the engineer's signature and stamp, one original copy for signatures) with the Advance Plan submittal (Task 15.2).

TASK 16 BID AND AWARD ASSISTANCE (CONTINGENCY)

This task includes the preparation of addenda, as needed, and responding to questions during the bidding phase. Consultant shall respond to questions from Agency and Construction Contractors about the plans and specifications during the bidding process.

16.1 Questions During Bidding (CONTINGENCY TASK)

Consultant's Project Manager, or Consultant's designee(s) approved by Agency, shall assist Agency with questions regarding the bid documents and bid process. Consultant shall respond to all questions in writing within 2 day(s) to Agency Project Manager.

Consultant shall, during the bidding process, assist the Agency with the communications with Construction Contractors and suppliers in a manner that assures that no Construction Contractor or supplier is provided with information not in the bidding documents and that could provide a bidding advantage or disadvantage. Consultant shall prepare a written log to document conversations and

questions asked by construction contractors or suppliers and the answers provided to the Agency. Consultant shall maintain the written log in the project file and provide upon request of the APM or Local Agency.

16.1 Consultant Deliverables and Schedule

- Written log of conversations, questions and answers, provided to Agency upon request.

16.2 Addenda to the Bid Documents (*CONTINGENCY TASK*)

This task identifies specific deliverables that the Agency at its discretion may elect to authorize Consultant to produce. Consultant shall only complete this Task 16.2 and the identified deliverables if written (email acceptable) NTP is issued by the Agency. The NTE amount for completing this contingency task is \$22,515.94 and is billable if authorized.

Consultant shall prepare up to 1 bid addenda to provide interpretation of construction documents.

If Agency chooses to authorize this work, Consultant shall submit Addendum documents within 3 calendar days from NTP unless a different timeframe is agreed to and stated in the NTP (prior to expiration of WOC).

Consultant shall prepare and deliver the addenda text in a Microsoft Word file. Consultant shall prepare and deliver stamped drawings in PDF and 11"x17" Mylar. Consultant shall coordinate reviews of addenda by APM or Local Agency prior to submittal. Consultant shall not be responsible for distributing addenda to bidders. Agency will issue and distribute all addenda.

16.2 Consultant Deliverables and Schedule

- Bid document addenda; stamped PDF and Mylar drawings; or special provision revisions

The table below is a summary of contingency tasks that Agency, at its discretion, may authorize Consultant to perform. Details of the contingency tasks and associated deliverables are stated in the Task section of the Statement of Work. Consultant shall complete only the specific contingency task(s) identified and authorized via written (e-mail acceptable) Notice-to-Proceed ("NTP") issued by Agency's Project Manager. If requested by Agency, Consultant shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) in the Contingency Task Summary Table) within the scope of the contingency task.

If Agency chooses to authorize some or all of these tasks, Consultant shall complete the authorized tasks and deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE amount for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. In the table below, the "NTE for Each" amount for a contingency task includes all labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the table below. Each authorized contingency task must be billed as a separate line item on Consultant's invoice.

Contingency Task Summary Table

Contingency Task Description	NTE for Each	Max Quantity	Method of Comp.	Total NTE Amount
C. 8.3 Traffic Signal Interconnect	\$15,733.74	1	T&M NTE	\$ 15,733.74
C. 16.1 Questions During Bidding	\$ 2,854.74	1	T&M NTE	\$ 2,854.74
C. 16.2 Addenda to the Bid Documents	\$ 3,927.46	1	T&M NTE	\$ 3,927.46
Total for contingency tasks:				\$ 22,515.94

EXHIBIT B - COMPENSATION

Definitions:

CPFF – Cost Plus Fixed Fee

FCCM - Facilities Capital Cost of Money

NBR - Negotiated Billing Rates. NBRs are fully loaded billing rates inclusive of direct salary, indirect expenses and profit.

NTE - Not to Exceed Amount

T&M - Time and Materials

A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to Agency's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by Agency or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by Agency or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

{The method(s) of compensation for contingency tasks, if any, is specified in Exhibit A, Contingency Task Summary Table.}

1. Time and Materials with Not-To-Exceed (T&M)

Agency will pay Consultant for completion of Services required under the Contract on the basis of T&M, up to the NTE amount established in the Contract. Billable items include:

- **Loaded Costs**- the NBR (which is inclusive of profit and overhead costs); or the actual direct salary rate paid to the specific employee(s) (up to the maximum rate approved in the Contract for the employee's classification) productively engaged in work to complete the Services required under the Contract, plus profit and the approved overhead.
- **ODCs** (without mark-up) - Approved travel costs (up to the rates allowed in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in overhead.
- **Subcontractor Costs** (without mark-up, unless Agency notifies Consultant otherwise in writing) - the hourly labor rates and ODCs (as described above) that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

The dollar amount for T&M non-contingency Services is: \$ 237,618.03
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B. PAYMENT OPTIONS Payments will occur only after Agency has determined that Consultant has completed, and Agency has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

(For CPFF and T&M) Progress Payments for Acceptable Progress. Agency will pay Consultant monthly progress payments for actual costs, up to the Contract NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

C. TRAVEL

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of Agency's responsibilities and is related to official Agency business. **All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the State.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf> .
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by Agency will be reimbursed according to the rates set forth by the State Controller at <https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf> that are in effect on the date when the travel occurs.
- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to Agency, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

D. INVOICES

Consultant shall submit invoices in the format required by Agency (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and ODCs by task/subtask) no more frequently than once per month. The address for invoice submittal is set forth in Exhibit J. In addition to all other applicable invoice requirements in this section D, each invoice must include the following information:

- The Agency's Contract number
- The Agency's project number

Progress Reports: Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

"Paid Summary Report"

Consultant shall complete and submit to APM [Paid Summary Report\(s\)](#) [form 734-2882] per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal or Certified Small Business Aspirational Target is assigned.**

CPFF and T&M Compensation:

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subconsultants) that performed the Services.
- Consultant shall provide documentation in each invoice to itemize all reimbursable actual labor costs and ODCs for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include receipts for any items purchased or equipment rentals for the Project that exceed \$100. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- Agency will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if Agency has agreed to reimburse Consultant for travel expenses. For travel expense claims include receipts for lodging; rental cars, airfare.

Fixed-Price Compensation. Consultant shall prepare invoice(s) based on the payment option identified in Section B of this Exhibit:

- For Contracts using “Payment upon Full Completion” payment option, Consultant shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by Agency.
- For Contracts using “Progress Payments for Percentage of Services Completed” payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

Agency may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to Agency within 5 business days of Agency’s request. Agency will not make payment to Consultant under the applicable invoice until Agency has received all requested supporting documentation from Consultant and Agency has approved the invoiced amounts. Any overdue payments to Consultant by Agency for an approved invoice are subject to ORS 293.462.

E. PAYMENT TERMS

Payment will be made to Consultant no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. Agency will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

F. CORRECTIVE WORK

Consultant shall complete all Services, including Deliverables, as required in the Contract to Agency’s satisfaction. If Agency, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, Agency shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to Agency outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to Agency’s satisfaction without further compensation. Agency will not unreasonably withhold payment.

G. WITHHOLDING/RETAINAGE

Agency reserves the right to initiate, at any time during the Contract, withholding of payment equal to 5% of the amount of each invoice submitted to Agency under the Contract. Agency will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by Agency and will pay interest as required on retainage.

H. PAYMENT REDUCTION

Agency, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If Agency finds previously undisclosed inaccurate or improper costs have been invoiced and paid, Agency will notify Consultant and seek clarification. Agency, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice Agency only for actual productive time Consultant personnel spend on Services by any level of Consultant's staff (up to the established not-to-exceed amount). Consultant's general supervisors or personnel who are responsible for more than one Agency project shall charge only for actual productive time spent directly on the project identified in the Contract.

Agency will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual performing those Services. However, under no circumstances shall Consultant invoice Agency based on higher direct salary rates than the actual amount paid to its employees.

Discriminatory Pricing. Direct and indirect costs as applied to work performed under Agency contracts and subcontracts may not be discriminatory against the Agency. It is discriminatory against the Agency if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-Agency work under comparable circumstances.

Discriminatory Wage Rates. Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the Agency to terminate the Contract for cause.

Employee Discussions Regarding Compensation. Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

Unallowable Charges

Agency will not pay for direct or indirect costs that are unallowable under the provisions of [48 CFR Part 31](#).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or ODCs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).

- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

1. Approved cost data on file with ODOT - If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or Agency may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Contract.

2. Overhead Schedule - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm>. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, Agency and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

3. Salary and Billing Rate Schedules

Consultant shall, and shall cause all of its subconsultants to submit electronically to Agency the applicable rate schedules described below.

Direct Salary Rate Schedule - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Contract. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Contract but will be retained by Agency.

Negotiated Billing Rate Schedule - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and Agency determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Contract must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

ODC Schedule - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

Approved rate schedules for Consultant and its approved subconsultants/subcontractors are not physically attached but are on file electronically with Agency. The approved rate schedules are incorporated herein by reference and shall apply for cost estimating and invoicing purposes with the same force and effect as though fully set forth herein. Consultant may obtain copies of

currently approved rate schedules on file with Agency by emailing a request to Agency's Contract Administrator for this Contract.

K. RATE REVISIONS

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by Agency. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by Agency on a case by case basis).

L. BREAKDOWN OF COSTS (BOC)

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Contract. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other ODCs; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff and hours per task and sub-task and itemized ODCs. Agency may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.
- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.
- e) **Contingency Tasks.** Amounts for any contingency tasks must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for ODCs applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

Notes:

- Vendors for flagging services, testing services or other items that are not personal services are treated as ODCs. The breakdown of costs for ODCs is entered on Expense sheets for prime and subs, with the total expense for each subtask entered on BOC sheet.
- No mark-up is permitted on subconsultants or ODCs.

The final BOC agreed to by the Parties is incorporated by this reference.

EXHIBIT C - INSURANCE

All insurance required by this Contract shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of this Contract, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2. **Required by Agency** **Not required by Agency.**
Professional Liability insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than **\$1,000,000**, or **\$2,000,000**. Any annual aggregate limits must not be less than **\$1,000,000**, or **\$2,000,000**. This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for **2 years**, **3 years**, or **6 years** after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.
3. **Required by Agency** **Not required by Agency.**
Commercial General Liability insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4. **Required by Agency** **Not required by Agency.**
Automobile Liability insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of Agency provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to Agency. **All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.**
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to Agency prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by Agency, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by Agency's representatives at a location in the State of Oregon that is reasonably convenient for Agency's representatives responsible for verification of the insurance coverages required under the Contract.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the Agency, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members,

agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.

8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.

EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Agency, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Agency, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, Agency shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
 - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Agency, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request Agency, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E – DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROVISIONS (Goal)

The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). As the Agency is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

“Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

- a. Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:
- [ODOT DBE Policy Statement](#)
 - [ODOT DBE Program Plan](#), and
 - Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. DBE Goals:** ODOT’s overall goal for DBE participation is 11.6% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

- **A separate DBE Contract goal, as set forth on page 1 of the Contract, has been assigned for this procurement.**

- c. Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).
- d. Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:
1. **Subcontractor Solicitation and Utilization Report (SSUR)** – submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
 2. **Breakdown of Costs (“BOC”) or (“BOC-NBR”), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC or BOC-NBR must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor’s Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor’s resources that will be provided for the DBE’s use, and identification of any second or lower tier subcontractors with the dollar amounts for each.
 3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the Instructions tab of the form.

4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Report** [form 734-2882] per the instructions on the form.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The Agency (or local agency when applicable) Project Manager (“APM”) may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless the contractor obtains ODOT’s prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. **Commercially Useful Function (“CUF”):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.
- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT’s prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).
- k. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.state.or.us or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

Related Web Sites:

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available on line at:

- **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rqn=div5&view=text&node=49:1.0.1.1.20&idno=49>

Acronyms & Definitions Applicable to Exhibit E

APM	ODOT's or local agency's Project Manager
BOC	Breakdown of Costs
BOC-NBR	Breakdown of Costs for Negotiated Billing Rates
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation

COMMITTED DBE BREAKDOWN and CERTIFICATION FORM(s)

The signed Committed DBE Breakdown and Certification Form(s) is not physically attached but incorporated into this Contract by this reference with the same force and effect as though fully set forth herein. A copy of the signed Committed DBE Breakdown and Certification Form(s) has been provided to the ODOT Office of Civil Rights (for tracking purposes) prior to Contract execution.

EXHIBIT F - SPECIAL TERMS & CONDITIONS

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the Contract.

1. NEPA Decision Documents and Final Design. Agency is not obligated to proceed with final design for any alternative; all reasonable alternatives will be evaluated and given appropriate consideration, and the Consultant under the Contract may not proceed with final design until the relevant NEPA decision documents have been issued.

EXHIBIT G - RESERVED

EXHIBIT H - RESERVED

EXHIBIT I - ERRORS & OMISSIONS (“E&O”) CLAIMS PROCESS

Exhibit I is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. For purposes of this Contract, the term “Agency”, as used in the E&O Claims Process, means “local public agency”. The E&O Claims Process (as may be revised from time to time by ODOT) is available at the following Web address as Exhibit I:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/xbti.pdf>

EXHIBIT J - CONTACT INFORMATION and KEY PERSONS

1. Party Contact Information.

a.1 * Agency's Project Manager (APM) Name:	Bikram Raghubansh
Ph:	503-742-4706
E-mail:	bikramrag@clackamas.us

a.2 Agency's address for invoicing:

Mailing Address:	150 Beaver creek Road Oregon City, Oregon 97045
E-mail:	bikramrag@clackamas.us

b. **Consultant's Project Manager (PM) for this Contract is:

Name:	Jim Peters, PE
Ph:	503-243-3500
E-mail:	Jim.peters@dksassociates.com

c. Consultant's remit address for payments and contact for billings:

Name:	DKS Associates, Inc.
Address:	720 SW Washington Street, Suite 500 Portland, Oregon 97205

* Agency may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant, with a copy to ODOT Procurement Office.

**Any changes to Consultant's Project Manager must be approved in writing (e-mail acceptable) by Agency.

2. Key Persons

Consultant acknowledges and agrees that Agency selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include specific staff agreed to during Contract negotiations. In particular, Agency, through the Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the Contract to another of Consultant's or subconsultant's personnel without first obtaining the written consent of Agency. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide Agency with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining Agency's prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via e-mail or

other form as may be required by Agency.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by Agency) to demonstrate the continuing qualifications of any staff working on Agency projects, including those approved as Key Persons.

In particular, Agency, through the Contract is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

Name	Role
Nate Schroeder, PE	Project Manager
Dennis Mitchell, PE	Senior Advisor
Pam O'Brien, PE	Signal Timing lead
Kevan Kanten	ITS/Signal Design Lead

3. Reassignment or Transfer of Key Person

In the event Consultant requests that Agency approve a reassignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (e-mail acceptable) and shall be deemed to be a Key Person under the Contract.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by Agency and shall not be billed to Agency. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.

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, April 16, 2020 – 10:00 AM

Virtual Meeting via Zoom

Commissioners
encourage public to
attend public meeting
digitally.

PRESENT: Chair Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader
Housing Authority Commissioner Ann Leenstra

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the Citizen Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing ClackCoNews@clackamas.us.
- Be sure to include your name and area when you email.

*****COVID-19 Update**

<https://www.clackamas.us/meetings/bcc/business>

Nancy Bush and Dr. Sarah Present gave a brief update regarding COVID-19.

~Board Discussion~

Gary Schmidt gave an update on the County Building closure.

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

1. Proclaiming April 12-18, 2020 as National Public Safety Telecommunicator Week and Recognizing 9-1-1 Telecommunicators as Emergency Responders in Clackamas County

Cheryl Bledsoe, Central Communications (911) presented the staff report. Cheryl was joined by several C-Com staff who united in support this proclamation.

~Board Discussion~

MOTION:

Commissioner Humberston: I move we approve the Proclamation.
Commissioner Savas: Second.
Chair Bernard: It has been moved and seconded that we Proclaim April 12-18 as National Public Safety Telecommunicator Week and Recognize 911 Telecommunicators as Emergency Responders in Clackamas County

the Clerk called the roll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

Chair Bernard announced the Board will recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item.

II. HOUSING AUTHORITY PUBLIC HEARING

1. Public Hearing on the Proposed 2020-2021 Housing Authority of Clackamas County Annual Plan

Jill Smith, Housing Authority of Clackamas County Director presented the staff report.

~Board Discussion~

Chair Bernard opened the public hearing and asked Dylan Blaylock from PGA to moderate public comments.

1. Cynthia Johnson, Lake Oswego, supports changing the rent vouchers, and partial rent assistance would be helpful.

Chair Bernard closed the public hearing. He announced there is Board Action on this time today. This item will come back before the Board at the April 30, 2020 regular scheduled Business meeting.

III. HOUSING AUTHORITY CONSENT AGENDA

Chair Bernard asked the Clerk to read the Housing Authority consent agenda by title, then asked for a motion.

MOTION:

Commissioner Leenstra: I move we approve the Housing Authority Consent Agenda.

Commissioner Humberston: Second.

Clerk call the poll:

Commissioner Leenstra: Aye.

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

1. Approval of the Hillside Manor Guaranteed Maximum Price Amendment to the CMGC Contract with Walsh Construction
2. Approval of Resolution No 1944 Authorizing the Execution, Acknowledgement and Delivery of Closing Documents for the Hillside Manor Rehabilitation Project

Chair Bernard announced the Board would adjourn as the Housing Authority Board and Convene as Board of County Commissioners for the remainder of the meeting.

IV. PUBLIC HEARING

1. ~~Resolution No. _____~~ to Amend the Transportation System Development Charges Methodology Report, Modifying the TSDC Rate Schedule to Establish New Rates for Single Family Residential Homes and Accessory Dwelling Units – 2nd hearing 5-7-2020

Diedre Landon, Department of Transportation & Development presented the staff report.

~Board Discussion~

Chair Bernard opened the public hearing and asked Dylan Blaylock from PGA to moderate public comments. No public comments.

Chair Bernard closed the public hearing. He announced there is a second hearing on this item where we will have board action on May 7, 2020 at the regular scheduled Business meeting.

V. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title only, then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Savas: Second.
the Clerk called the roll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

A. Finance Department

1. **Board Order No. 2020-28** Authorizing Financings for New Projects and Refinancing

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*

C. Department of Human Resources

1. Approval of the 2020 Agreements with Providence Health Plan for Administrative Services for Clackamas County’s Self-Funded Medical Benefits

D. Business & Community Services

1. **Board Order No. 2020-29** Approval of a Lease Agreement between Clackamas County and River City Boat Sales, LLC to Lease, Manage and Operate the Boones Ferry Marina Facility – *County Parks*
2. Approval of a Contract with Janz Enterprises, Inc. for the Carver Boat Launch Parking Lot Curb Replacement and Asphalt Overlay - *Procurement*

VI. CITIZEN COMMUNICATION

<https://www.clackamas.us/meetings/bcc/business>

1. Elizabeth Frederick, 2020 Census – please complete your 2020 Census.
2. Mac McCarty, West Linn High School – Students against Youth Substance Abuse.
3. Jordan Winthrop, Estacada Chamber – suspending grants for small businesses.
4. Mike Miller, Canby – Social distancing and reopening business.
5. Mary Lundee, Sherwood – why is liquor and marijuana store exempt for closure orders.

~Board Discussion~

VII. COUNTY ADMINISTRATOR UPDATE

<https://www.clackamas.us/meetings/bcc/business>

VIII. COMMISSIONERS COMMUNICATION

<https://www.clackamas.us/meetings/bcc/business>

MEETING ADJOURNED – 12:15 PM



Cheryl Bledsoe, Director

Clackamas 911 (C-COM)
2200 Kaen Road, Oregon City, OR 97045

STAFF REPORT

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement to
Provide Emergency Dispatch Services to the Aurora Fire Department

Purpose/Outcomes	Clackamas County 911 to provide 911 emergency dispatch services to Aurora Fire Department
Dollar Amount and Fiscal Impact	Aurora will pay user fees, consistent with the formula for fire agencies to Clackamas 911, based on 3 years of historic call volume. For FY20-21, this is \$20,990.
Funding Source	Aurora Fire Department
Duration	Effective, until rescinded by notice by Aurora Fire Department
Previous Board Action	Board has previously approved the Clackamas 911 Member Board Charter for user agencies. This is just the dispatch agreement for service to add an agency.
County Counsel Review	Service Level Agreements were originally approved in 1994. This specific agency agreement has been reviewed and approved by County Counsel on 7/22/20.
Strategic Plan Alignment	This item follows the Board's Key Initiatives of providing public safety services to residents within Clackamas County.
Contact Person	Cheryl Bledsoe (971) 284-3091

BACKGROUND:

Per the Clackamas 911 Member Board Charter, agencies may decide to expand dispatch services to agencies who reside within Clackamas County. In Fall 2019, Aurora approached the Clackamas 911 Member Board with a Letter of Intent, requesting a desire to move from receiving dispatch services from METCOM in Marion County to Clackamas 911 to improve mutual aid response and radio services. In December 2019, the Clackamas 911 Member Board voted with 2/3rd majority to add Aurora Fire Department to its member board. Additionally, Aurora Fire Department also became a member of the C800 Radio system.

9-1-1 calls for the Aurora area are not being serviced by Clackamas 911 because 911 calls in Marion County follow the Law Enforcement agency for a service area because, by percentage, more incoming 911 calls require law enforcement response than fire/medical response. For the Aurora service area, Marion County Sheriff's Office (MCSO) is the responding law enforcement agency which means that the 911 calls are directed to Willamette Valley Communications Center (WVCC). Calls from this area which are received by WVCC, but are exclusively a fire response are then transferred to Clackamas 911 for processing and dispatch.



Cheryl Bledsoe, Director

Clackamas 911 (C-COM)
2200 Kaen Road, Oregon City, OR 97045

Transition work to provide dispatch services to Aurora occurred between January-June 2020. The dispatch agreement was signed on June 23, 2020 by Aurora Fire Department so that Clackamas 911 could begin providing dispatching services on July 1st.

RECOMMENDATION:

Staff respectfully requests the Board Chair's signature on the dispatch agreement with Aurora Fire Department.

Sincerely,

Cheryl Bledsoe,
Clackamas 911 Director

INTERGOVERNMENTAL AGREEMENT FOR 9-1-1 ANSWERING AND DISPATCH SERVICES

This Agreement for intergovernmental cooperation is made under authority of ORS Chapter 190 and is effective as of the 1st day of July, 2020, by and between Clackamas County, hereinafter referred to as COUNTY, and each of the following governmental entities: Aurora Fire, City of Canby, City of Gladstone, City of Molalla, City of Oregon City, City of Sandy, Boring Fire District, Canby Fire District, Clackamas County Fire District #1, Colton Fire District, Estacada Fire District, Hoodland Fire District, Molalla Fire District, and Sandy Fire District, each of which is hereinafter referred to individually as the AGENCY (or Member) and collectively as the AGENCIES. This Agreement shall remain in effect until terminated as provided herein.

WITNESSETH:

WHEREAS, COUNTY operates a central 9-1-1 Public Safety Answering Point (PSAP) and a dispatch facility, hereinafter referred to as C-COM, to provide service to various fire and law enforcement agencies within COUNTY, and

WHEREAS, COUNTY and AGENCY are member agencies under the provisions of the Clackamas County Dispatch Center Member Board Charter, and

WHEREAS, the Member Board Charter provides for the appointment of officers, for the establishment of an Executive Board and Service Committees, and for the delegation of certain functions regarding the operations of C-COM;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED, IT IS MUTUALLY AGREED AS FOLLOWS:

1. COUNTY, through C-COM, agrees to provide 9-1-1 public safety answering point services (PSAP services) for the AGENCY in the manner herein set forth in this Agreement and in the Clackamas County Dispatch Center Member Board Charter, hereinafter referred to as "Charter" (Exhibit A). The PSAP services shall include 24-hour-per-day staffing of communications personnel for answering of 9-1-1 telephone calls for fire, law enforcement and medical services. Performance goals for the 9-1-1 PSAP are described in Exhibit B, and are incorporated by reference herein. COUNTY and AGENCY agree that performance goals may be revised as needed by their respective Service Committees.
2. COUNTY, through C-COM, agrees to provide dispatching services for the AGENCY in the manner set forth in this Agreement and the Charter. The dispatching services shall include 24-hour-per-day staffing of dispatch personnel for dispatch of fire, law enforcement and medical services requests; emergency and routine radio communications with law enforcement and fire Member Agencies; communications between members and other resources relating to the functions of Member Agencies;

and other specific functions needed and requested by Member Agencies to aid in the performance of their functions. Performance goals for the dispatch services are described in Exhibit B, and are incorporated by reference herein. County and AGENCY agree that performance goals may be revised as needed by their respective Service Committees.

3. Services shall be rendered as specified in Exhibit B, and in accordance with the provisions of the Charter. Discipline and other matters incident to the control of personnel providing such services shall remain with COUNTY
4. For the purpose of performing the described dispatch functions, COUNTY shall furnish and supply labor, supervision, equipment and supplies necessary to maintain the level of services to be rendered hereunder, as mutually determined by the Member Board and COUNTY.
5. Subject to the limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, where applicable, and Article 11 Section 10 of the Oregon Constitution, COUNTY and the AGENCY hereby covenant and agree to hold and save harmless and defend the other, and all of its officers, agents, and employees, from all liability, loss, costs and claims whatsoever that might arise from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of the indemnifying party and its officers, agents and employees in performance of this Agreement.
6. Costs for answering and dispatch service will be determined on the basis of actual dedicated personnel and materials and services needed to perform the prescribed functions, as follows:
 - A. Operational assessments are to be adjusted annually based on changes in the cost of operations, added service requirements and number of Member Agencies. COUNTY will determine the operational costs for each Member Agency for the succeeding fiscal year and submit them to each AGENCY by February 28. The supplemental budget process shall be used for increased expenditures in the approved budget except in the case of individual agency's or agencies' request for additional services.
 - B. C-COM will maintain a capital reserve fund dedicated to the replacement of C-COM equipment and facilities. C-COM Members will annually contribute their portion to this fund as part of the regular budget. Funding of the capital reserve fund shall be based on the amortization schedule attached as Exhibit C, with the amount being approved by the Member Board during the yearly budget process. C-COM's portion of the cost of replacement of equipment and facilities shall be mutually determined by the Member Board and COUNTY. Infrastructure fees or assessments deposited in the capital reserve fund shall be non-refundable.
 - C. Should a Member or a group of Members require the installation of equipment or performance of special services dedicated to their function, to the exclusion

of others, that Member or group of Members will bear the entire cost of such equipment, installation, maintenance, and operation. Any infrastructure fees or assessments deposited in the capital reserve fund shall be non-refundable.

- D. Agencies may join C-COM at any time with the approval of the Member Board. Agencies that join C-COM during a fiscal year shall have their annual costs prorated according to established formulas.
7. The cost for C-COM service for the AGENCY shall be determined for the fiscal year July 1 to June 30, as set forth in the Member Board Charter, Section IX, "A", Relating to Budget. Incoming agencies shall pay 50% of their established annual cost to cover the cost of technical transition work.
 8. Clackamas County Finance Department shall invoice the AGENCY at the beginning of each month. The monthly charge is determined by dividing the annual dispatch service fee by 12 equal payments. The AGENCY shall pay the monthly charge within 30 days.
 9. The AGENCY's participation in C-COM may be terminated by either party as of the 30th day of June of any year during the term of this Agreement by giving nine (9) months prior, written notice to the other party (by October 1 of the previous year).
 10. The AGENCY understands that Exhibit A (the Member Board Charter), Exhibit B (the performance goals), and Exhibit C (the amortization schedule), may be changed from time to time in accordance with the procedures established in the Member Board Charter, and agrees that such changes will be incorporated into this Agreement by this reference unless the AGENCY, within 60 days of the change, gives notice of termination of the AGENCY'S participation in C-COM as provided above.
 11. COUNTY will sign the original of this Agreement. Each AGENCY will sign a counterpart of the original. The parties intend that each signed counterpart will constitute an Agreement between the COUNTY and the AGENCY.

The signature page for Aurora Fire, City of Canby, City of Gladstone, City of Molalla, City of Oregon City, City of Sandy, Boring Fire District, Canby Fire District, Colton Fire District, Estacada Fire District, Hoodland Fire District, Molalla Fire District and Sandy Fire District are located on succeeding pages.*

CLACKAMAS COUNTY

Jim Bernard, Chair

Date

Mary Raethke, Recording Secretary

Date

AGENCY

Aurora Fire District

Name of Agency

Joshua L. Williams

By

Joshua L. Williams

Signer's Printed Name

6/23/2020
Date



July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Cooperative Agreement between Clackamas County and Portland General Electric Company (PGE)

Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

Purpose/Outcome	The purpose of this Agreement is to provide a cooperative working relationship for the activation of the Clackamas County Emergency Notification System at the request of PGE to inform the public of life-threatening dam inundation and public safety power shutoff due to wildfire danger.
Dollar Amount and Fiscal Impact	Portland General Electric Company (PGE) will pay Clackamas County a \$2,000 annual administrative fee.
Funding Source	N/A
Duration	Agreement automatically renews unless otherwise terminated
Previous Board Action/Review	None
Strategic Plan Alignment	1. Clackamas County employees, residents, visitors and those in need of service(s) will have the information they need to take appropriate action. 2. Ensure safe, healthy and secure communities.
Counsel Review	This Cooperative Agreement has been reviewed and approved by County Counsel on 7/17/20, AN
Procurement Review	N/A
Contact Person	Jamie Poole, Outreach and Technology Coordinator, 503-278-9150
Contract No.	None

BACKGROUND: Clackamas County is a Federal Emergency Management Agency (FEMA) Integrated Public Alert and Warning System (IPAWS) authorized alerting authority. Clackamas County has the authority and ability to issue emergency alerts to the public due to life-safety emergencies. Clackamas County and Portland General Electric (PGE) will work together to ensure alerts go out in a timely manner if there is a PGE related dam inundation emergency or public safety power shut off due to wildfire danger.

This agreement provides a working relationship between Clackamas County and PGE in which PGE will proactively provide the county shape files (mapped areas) of potentially impacted PGE service areas within the county, and Clackamas County will issue alerts as authorized by FEMA.

RECOMMENDATION: Staff respectfully recommends Board approval of the Cooperative Agreement between Clackamas County and Portland General Electric Company (PGE).

Respectfully submitted,

Nancy Bush, Director

**COOPERATIVE AGREEMENT
BETWEEN
CLACKAMAS COUNTY AND PORTLAND GENERAL ELECTRIC**

Purpose

- A. This Agreement is entered into between Clackamas County (County), through its Disaster Management (CCDM) Department and the Communications Department (CCOM) and Portland General Electric Company (PGE).
- B. This Agreement provides the basis for a cooperative working relationship for the activation of the Clackamas County Emergency Notification System at the request of PGE for the use of emergency notifications to their customers and the impacted public regarding dam inundation and fire concerns. The project (hereinafter the "Project") consists of: (1) pre-loading the PGE dam inundation and Wildfire Public Safety Power Shutoff Program notification templates using the mapping feature in Everbridge; (2) the update and/or development of pre-recording messages as determined by PGE on an as needed basis; (3) activating the public notification system as requested by PGE for life-safety situations using mapping, uploaded contacts, Wireless Emergency Alerts, etc., as appropriate; (4) providing activation reports and summaries as requested by PGE; and (5) compensation by PGE of an annual administrative fee to Clackamas County Disaster Management.

Scope of Cooperation

- A. PGE agrees to:
 - 1. Coordinate mapping updates with Disaster Management liaison as needed.
 - 2. Assign a liaison to work with Disaster Management.
 - 3. Provide text for requested pre-recorded messages.
 - 4. Reimburse Clackamas County for an annual administrative fee.
- B. County agrees to:
 - 1. Provide for the administration, coordination and evaluation of the Project.
 - 2. Upload maps and recorded messages in a timely manner.
 - 3. Provide reasonable and necessary staff for administration and activations. If Disaster Management personnel are not available to activate the public notification system, C-COM personnel will perform the activation.

COOPERATIVE AGREEMENT

4. Provide activation reports and summaries during and after activations in a timely manner.
 5. Provide an invoice to PGE annually, beginning on the Effective Date of this Agreement, as defined below.
- C. County and PGE agree to jointly review all issues, design developments, specifications, and documents for the Project.

Compensation

- A. County will be compensated annually for an administrative fee. The administrative fee will be \$2,000.00/year. County will invoice PGE on the anniversary of the Effective Date.
- B. There will be no other terms of compensation.

Liaison Responsibility

Liaison from County for the Project will be:

Jamie Poole
Clackamas County Disaster Management
2200 Kaen Rd.
Oregon City, OR 97045
503-655-8378 jpoole@clackamas.us

Dam Safety Liaison from PGE will be:

Mandy O'Hara
PGE Dam Safety/Emergency Action Plan Coordinator
121 SW Salmon St, 3WTCBR03
Portland, OR 97204
503-464-8774 Mandy.OHara@pgn.com

Wildfire Liaison from PGE will be:

John Plechinger
Business Continuity and Emergency Management (BCEM)
121 SW Salmon St, 3WTCBR08
503-464-7894 John.Plechinger@pgn.com

Indemnification and Insurance

- A. PGE agrees to indemnify, hold harmless and defend County, and its officers, elected officials, agents and employees from and against all claims and actions

COOPERATIVE AGREEMENT

arising out of or based upon PGE's negligent acts or omissions in connection with this Agreement.

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 PGE, its officers, elected officials, agents and employees from and against all claims and actions arising out of or based upon the County's negligent acts or omissions in connection with this Agreement.

- B. The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

Term of Agreement

- A. This Agreement becomes effective June 1, 2020 ("Effective Date") automatically renews annually unless otherwise terminated as provided herein.

Termination

- A. This Agreement may be terminated by either party upon 30 days written notice.
- B. This Agreement may be terminated at any time by either party for nonperformance of any material term of this Agreement.

Liabilities

- A. In no event shall either party be liable to the other or any other person or entity for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract, or otherwise) under or in respect of this Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from a party's sole, joint or concurrent negligence.

ADDITIONAL TERMS AND CONDITIONS

- A. **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.
- B. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and PGE that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively

COOPERATIVE AGREEMENT

within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. PGE, by execution of this Agreement, hereby consents to the in personal jurisdiction of the courts referenced in this section.

- C. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- D. **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.
- E. **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.
- 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.

COOPERATIVE AGREEMENT

- 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. **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.
- K. **Survival.** All provisions herein which by their context are intended to survive shall survive termination of this Agreement.
- L. **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.
- M. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- N. **Force Majeure.** Neither PGE nor County shall be held responsible for delay or default caused by events outside of the PGE or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. Both parties shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

CLACKAMAS COUNTY

By: _____
 Name:
 Title: Clackamas County Board of
 County Commissioners
 Date: _____

PORTLAND GENERAL ELECTRIC COMPANY



By: Kristin Stathis
Kristin Stathis (Jul 14, 2020 16:08 PDT)
 Name: Kristin Stathis
 Title: Vice President Operations
 Services
 Date: Jul 14, 2020









CCENS Cooperative Agreement Final 7.12

Final Audit Report

2020-07-14

Created:	2020-07-14
By:	Kristina Benson (kristina.benson@pgn.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzoMw4AFZX0JmpoKnP5Gos3zl8s-JbYb5

"CCENS Cooperative Agreement Final 7.12" History

-  Document created by Kristina Benson (kristina.benson@pgn.com)
2020-07-14 - 10:41:10 PM GMT- IP address: 147.79.176.155
-  Document emailed to Kristin Ingram (kristin.ingram@pgn.com) for approval
2020-07-14 - 10:42:14 PM GMT
-  Email viewed by Kristin Ingram (kristin.ingram@pgn.com)
2020-07-14 - 10:42:59 PM GMT- IP address: 147.79.176.152
-  Document approved by Kristin Ingram (kristin.ingram@pgn.com)
Approval Date: 2020-07-14 - 10:45:23 PM GMT - Time Source: server- IP address: 147.79.176.152
-  Document emailed to Kristin Stathis (kristin.stathis@pgn.com) for signature
2020-07-14 - 10:45:25 PM GMT
-  Email viewed by Kristin Stathis (kristin.stathis@pgn.com)
2020-07-14 - 11:02:30 PM GMT- IP address: 147.79.176.159
-  Document e-signed by Kristin Stathis (kristin.stathis@pgn.com)
Signature Date: 2020-07-14 - 11:08:09 PM GMT - Time Source: server- IP address: 147.79.176.159
-  Signed document emailed to Kristin Stathis (kristin.stathis@pgn.com), Kristin Ingram (kristin.ingram@pgn.com) and Kristina Benson (kristina.benson@pgn.com)
2020-07-14 - 11:08:09 PM GMT



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

July 30, 2020

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of Amendment No. 4 to the Interagency Agreement between
North Clackamas Parks and Recreation District (NCPRD) and
Health, Housing and Human Services (H3S) Social Services Division

Purpose/ Outcomes	This agreement provides federal and state funding for social services programs delivered by NCPRD to District/County residents ages 60 and older.
Dollar Amount and Fiscal Impact	This amendment adds \$401,367 for FY 20/21 services. This contract is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
Funding Source	Older American Act (OAA) funding secured through the Oregon Department of Human Services-State Unit on Aging and administered by Clackamas County's H3S-Social Services division. Additionally, Families First Coronavirus Response Act Funding and the Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding.
Duration	July 1, 2020 – June 30, 2021
Previous Board Action	<ul style="list-style-type: none"> July 25, 2019 – Business Meeting: Approval of Interagency Agreement for FY 2019-2020 February 13, 2020 – Business Meeting: Approval of Amendment 1 to the Interagency Agreement for FY 2019-2020 May 21, 2020 – Business Meeting: Approval of Amendment 2 to the Interagency Agreement between NCPRD and H3S for Service at the Milwaukie Center FY 2019-2020 June 25, 2020-Business Meeting: Approval of Amendment 3 to the interagency Agreement between NCPRD and H3S for Service at the Milwaukie Center FY 2019-2020
Strategic Plan Alignment	This request for approval of Amendment No. 4 to the Interagency Agreement between NCPRD and H3S ensures a legally compliant and transparent business process, which aligns with the County goal of Building Public Trust through Good Government.
County Counsel Review	Reviewed and approved JM 7/9/2020
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4471 Marty Hanley, <i>Milwaukie Center Supervisor</i> , 503-794-8058
Contract No.	9300, Amendment #4

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) a division of Business & Community Services, requests approval of an amendment to the Interagency Agreement with the County's Health, Housing and Human Services (H3S) Department – Social Services division to provide Older American Act (OAA) funded services for persons living within the District.

The services provided include congregate and home delivered meals, health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

In December 2015, Social Services advertised for a contractor to provide Older American Act services for older persons in Clackamas County during Fiscal Year 2016-17, with an option for renewal for four additional years. NCPRD was the sole proposer and was awarded the contract after negotiations.

RECOMMENDATION:

Staff respectfully recommend the Board approve Amendment No. 4 to the Interagency Agreement between NCPRD and H3S-Social Services division Contract #9300 and authorize the Director or Deputy Director of Business and Community Services to execute all documents necessary to effectuate the same.

ATTACHMENTS:

1. Amendment No.4 to the Interagency Agreement between NCPRD and H3S-Social Services division.

Respectfully submitted,



Laura Zentner, Director
Business and Community Services

Interagency Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 9300

Board Agenda #: 072519-A5, 070920-A

Division: Social Services

Amendment Number: 4

Contractor: North Clackamas Park & Rec. District – Milwaukie Center

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY20-21. This results in an increase to the contract budget of \$401,367.

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.

This Amendment #4, when signed by the North Clackamas Park & Rec. District – Milwaukie Center ("NCPRD-MILWAUKIE") the Health, Housing and Human Services Department, Social Services Division ("H3S-SSD") on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated.

WHEREAS, the NCPRD-MILWAUKIE and H3S-SSD entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2019 as may be amended ("agreement");

WHEREAS, the NCPRD-MILWAUKIE and H3S-SSD desire to amend the in its entirety as of July 1, 2020 and otherwise modify it as set forth herein;

NOW, THEREFORE, the H3S-SSD and NCPRD-MILWAUKIE hereby agree that the Agreement is amended as follows:

Term and Effective Date. This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse NCPRD-MILWAUKIE for expenses approved in writing by H3S-SSD relating to the project incurred no earlier than ***July 1, 2020*** and not later than ***June 30, 2021***, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

III. Compensation and Records

- A. The maximum, not to exceed, compensation H3S-SSD will pay NCPRD-MILWAUKIE for the period of **July 1, 2019** through **June 30, 2020** is \$478,795; for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 6 - Budget and Units of Service - attached hereto.

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$53,377
Older Americans Act III-B CARES Act Funds	93.044	\$26,600
Older Americans Act III-C1	93.045	\$27,434
Older Americans Act III-C1 (Families First & CARES Act Funds)	93.045	\$0
Older Americans Act III-C2	93.045	\$81,867
Older Americans Act III-C2 (Families First & CARES Act Funds)	93.045	\$131,363
CSBG Funds for Meal Service	N/A	\$3,600
Meals on Wheels People (MOWP) Raw Food Reimburse.	N/A	\$25,000
Older Americans Act III-D	93.043	\$715
Older Americans Act III-E	93.052	\$9,228
NSIP Funds	93.053	\$36,601
Low Income Energy Assistance (LIEAP)	N/A	\$3,750
Ride Connection – In District	N/A	\$34,200
STF/Ride Connection – Expanded Service	N/A	\$35,059
STF/Ride Connection: Vehicle Maintenance	20.513	\$8,250
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	\$573
Medicaid Funds: Waivered Non-Medical Transportation	N/A	\$1,177

III. Compensation and Records

- A. Compensation. The maximum, not to exceed, compensation H3S-SSD will pay NCPRD-MILWAUKIE for the period of **July 1, 2020** through **June 30, 2021** is **\$401,367**; for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 6 - Budget and Units of Service - attached hereto.

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$53,377
Older Americans Act III-B CARES Act Funds	93.044	<u>\$0</u>
Older Americans Act III-C1	93.045	<u>\$35,447</u>
<u>Older Americans Act III-C2</u>	93.045	<u>\$122,281</u>
Older Americans Act III-C2 (Families First & CARES Act Funds)	93.045	<u>\$60,310</u>
CSBG Funds for Meal Service	N/A	\$3,600
Older Americans Act III-D	93.043	<u>\$480</u>
Older Americans Act III-E	93.052	\$9,228
NSIP Funds	93.053	<u>\$33,705</u>

NCPRD - Milwaukie Center
 Interagency Agreement #9300, Amendment 4

Low Income Energy Assistance (LIEAP)	N/A	\$3,750
Ride Connection – In District	N/A	\$34,200
STF/Ride Connection – Expanded Service	N/A	\$35,059
STF/Ride Connection: Vehicle Maintenance	20.513	\$8,250
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	<u>\$538</u>
Medicaid Funds: Waivered Non-Medical Transportation	N/A	<u>\$1,142</u>

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TO READ: Exhibit 6 – Budget and Units of Services – Unit Cost Schedule

To Read

Milwaukie Center
 Fiscal Year 2020-21

Federal Award Number	CFDA Number	Service Category	OAA IIB		OAA IIC1		OAA IIC2		OAA IID		OAA IIE		Required Match	NSIP Funds	Other State Funds	Ride Connection			LHAP Funds	MEDICAID Funds	LHAP N/A	Program Income	NO. OF UNITS	TOTAL COST	REIMBURSEMENT RATE
			Funds	(1)	Funds	(2)	Funds	(3)	Funds	(4)	Funds	(5)				Funds	(6)	In Dist							
			27,988										3,013										728	30,111	\$37.24
			5,651										628										185	6,279	\$30.56
			11,829										1,315										648	13,144	\$18.25
			1,000										111										20	1,111	\$50.00
			7,799										867									1,500	1,500	10,166	\$5.00
													10,344									38,400	53,500	208,174	\$2.98
													6,779										53,500	89,342	\$1.54
													417										1,000	10,167	\$9.75
													0										800	3,600	\$4.50
													0										80		
													0										classes	480	\$60.00
													2,307										160	11,535	\$57.50
													0										125	1,680	\$13.44
													0										4,560	36,186	\$7.50
													0										1,943	36,069	\$18.04
													944										N/A	9,194	N/A
													0										150	3,750	\$25.00
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Except as set forth herein, H3S-SSD and NCPRD-MILWAUKIE ratify the remainder of this Agreement and affirm that no other changes are made hereby.

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

CLACKAMAS COUNTY	
Commissioner: Jim Bernard, Chair Commissioner: Ken Humberston	Commissioner: Sonya Fischer Commissioner: Paul Savas Commissioner: Martha Schrader
Signing on Behalf of the Board:	Signing on Behalf of the Board:
	Health, Housing & Human Services Dept.
By: _____ Jim Bernard, Chair	_____ Rodney A. Cook, Deputy Director
_____ Date	_____ Date
Approved as to Program Content:	
_____ Marty Hanley, Human Services Supervisor NCPRD – Milwaukie Center	_____ Date



July 23, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

**Approval of Small Grant Project Agreement 12-20-003 between
 North Clackamas Parks and Recreation District (NCPRD) and Oregon Watershed
 Enhancement Board (OWEB) for the
Boardman & Rinearson Headwaters Enhancement Project**

Purpose/ Outcomes	Approval of a Project Agreement between NCPRD and OWEB in partnership with the local North Clackamas Watershed Council (NCWC) for the Boardman & Rinearson Headwaters Enhancement Project.
Dollar Amount and Fiscal Impact	NCWC will administer the grant funds, \$14,996 from OWEB. NCWC, in partnership with NCPRD, will perform enhancement work on NCPRD property. NCPRD Natural Areas Program is committing staff time as match and agree to long-term maintenance of improvements made on NCPRD property.
Funding Source	OWEB Small Grant- \$14,996
Duration	Grant agreement with OWEB expires June 30, 2022
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This grant funding will help protect our natural resource by reducing negative water quality impacts to our watershed. 2. This grant will further support Good Governance by leveraging state funds and local partnerships with the cost savings being transparent in the budget.
County Counsel Review	County Counsel Review Date: June 24, 2020. Counsel Initials: JDM
Previous Board Action	N/A
Contact Person	Scott Archer, NCPRD Director, 503-742-4421 Tonia Williamson, Trails and Natural Areas, 503-742-4357

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD), a division of Business and Community Services, manages natural areas with a focus on both access for our residents and protection and enhancement of habitat for wildlife. This project will focus on improving riparian and upland habitat within the Rinearson and Boardman Watershed tributaries of the Willamette River in the Jennings Lodge and Gladstone area of Clackamas County. The local Watershed Council NCWC applied for OWEB funds in partnership with NCPRD. NCWC will administer and lead the grant to perform work on NCPRD property. OWEB, NCWC and NCPRD have a mutual interest in controlling invasive plants, replanting natives and improving habitat for Endangered Species Act listed fish species in the lower and upper Willamette River watershed. The Rinearson and

Boardman project will help meet these common goals and improve the health of these watersheds.

RECOMMENDATION:

Staff recommends Board approval of the OWEB Small Project Grant Agreement 12-20-003.

ATTACHMENT:

1. OWEB Small Project Grant Agreement 12-20-003

Respectfully submitted,

Laura Zentner

Laura Zentner, Director Business & Community Services Division

OREGON WATERSHED ENHANCEMENT BOARD SMALL GRANT PROJECT AGREEMENT

Project Name: Boardman & Rinearson Headwaters Enhancement	Grant Number: 12-20-003
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Award Amount: \$14,996	Project Completion Date: June 30, 2022
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Grantee	Project Manager for the Grantee
Organization: North Clackamas Watershed Council	Organization: North Clackamas Watershed Council
Contact: Neil Schulman	Contact: Neil Schulman
Address: 2416 SE Lake Rd.	Address: 2416 SE Lake Rd.
Milwaukie, OR 97222	Milwaukie, OR 97222
Phone: 503-742-4348	Phone: 503-742-4348
Email: neil@ncwatersheds.org	Email: neil@ncwatersheds.org

Payee	Project Manager for the Board
Organization: North Clackamas Watershed Council	OWEB
Contact: Neil Schulman	Kathy Leopold
Address: 2416 SE Lake Rd.	775 Summer St. NE, Ste. 360
Milwaukie, OR 97222	Salem OR 97301-1290
Phone: 503-742-4348	503-986-0187
Email: neil@ncwatersheds.org	kathy.leopold@oregon.gov

This Grant Agreement is between the Oregon Watershed Enhancement Board, hereafter called "Board," and the Grantee as identified above, hereafter called "Grantee," in consideration of the mutual covenants contained herein. This Agreement consists of this signed document, the attached Exhibit A (Schedule for Release of Funds), and Exhibit B (Insurance Requirements) and the grant application as approved by the Small Grant Team and consistent with the program Grant Agreement authorized by the Board.

A. Authorization

This grant is authorized by ORS 541.890 to 541.958, as amended by Oregon Laws 2011, chapter 643, and is subject to Oregon Administrative Rules 695-035-0010 to 695-035-0080, as such rules may periodically be amended by the Board.

B. Grant Award

The Grantee agrees to perform the project described in the Small Grant application and as specified in this Agreement. The Board will disperse Grant Funds in accordance with Exhibit A (Schedule for Release of Funds).

The Grantee agrees that funds provided by the Board will only be used for the Project.

“Payee” designated on page one (1) of this Agreement means the person or entity designated by Grantee to administer grant payments under this agreement.

C. Term of Agreement

This Agreement will become effective upon signature by all parties. Any changes to the Project must be approved before implementation and approved by all parties according to Section F, Amendments. The Project Completion Report is due within 60 days following grant completion. The Grantee will provide at least 25% non-Board match for the total amount of funding from the Board.

D. Funding Conditions

The Board’s obligation to disburse funds to Grantee under this Agreement is subject to the Board having received, on the date of each disbursement, sufficient funding, appropriations, limitations, allotments, or other expenditure authority to allow the Board, in the exercise of its reasonable administrative discretion, to make each disbursement. Nothing in this Agreement entitles Grantee to receive payment under this Agreement from any part of Oregon state government other than the Board, and nothing in this Agreement is to be construed as permitting any violation of Article IX, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

As a condition for the disbursement of any Board funds, the Grantee agrees to do the following:

1. Obtain Necessary Permits and Licenses

- (a) Prior to release of Board funds, submit written evidence that all applicable permits and licenses from local, state, or federal agencies or governing bodies have been obtained or written evidence acceptable to the Board that permits and licenses are not required.

2. Comply With Implementation Conditions

- (a) Submit to the Board’s Project Manager, before release of any Board funds, documentation that non-Board match of at least 25% of the total amount of funding from the Board has been secured as required by OAR 695-005-0060(2) and OAR 695-035-0040(8).
- (b) Notify the Board’s Project Manager of any proposed change or modification of the Project prior to implementation of the change or modification.
- (c) Provide written notice to the Board’s Project Manager of any Grantee address changes, Grantee Project Manager changes, or Payee changes.

3. Document and Report Project Completion; Board Approval

- (a) Submit to the Board’s Project Manager all receipts, expenditure tracking sheets, and other accounting records through the Project Completion Date, to document expenditure of grant fund installments, and to account for all other funding, in-kind contributions and donations in the Project Completion Report.
- (b) Submit online to the Board’s Project Manager within 60 days after the Project Completion Date a Project Completion Report satisfactory to the Board. The report must be submitted electronically through the Board’s Oregon Grant Management System (“OGMS”), and includes a hard copy of the final Request for Release of Funds.
- (c) Upon receipt of a Project Completion Report and the final Request for Release of Funds, the Board’s designee has 90 days to either approve the report and release final funds, or notify Grantee of any concerns or missing information that must be submitted before the report is considered complete. If there are any unresolved issues 90 days after receipt of the Project Completion Report and the final Request for Release of Funds, then the grant will be marked

“outstanding.” New grant agreements will not be released if Grantee has any outstanding reports.

E. Records Maintenance and Access

1. Access to Records and Facilities

The Board, the Secretary of State’s Office of the State of Oregon and their duly authorized representatives will have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the grant moneys provided hereunder, or the Project for the purpose of making audits and examinations. In addition, the Board, the Secretary of State’s Office of the State of Oregon and their duly authorized representatives may make and retain excerpts, copies and transcriptions of the foregoing books, documents, papers and records. Grantee will permit authorized representatives of the Board, the Secretary of State’s Office of the State of Oregon and their duly authorized representatives to perform site reviews of all services delivered as part of the Project.

2. Retention of Records

Grantee will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the grant moneys 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 termination or expiration of this Agreement. If there are unresolved audit questions or litigation at the end of the six-year period, Grantee will retain the records until the questions or litigation is resolved.

3. Expenditure Records

Grantee will document the expenditure of all grant moneys disbursed by the Board under this Agreement. Grantee will create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit the Board to verify how the grant moneys were expended, including without limitation accounting for all other funds expended, as well as in-kind services and donated materials.

F. Amendments; Changes in Project Approved by Board

1. Except as provided in Section F(3), any modifications of this Agreement must be mutually agreed to in writing by all parties.
2. **No time extensions, reinstatements or award amendments will be allowed.**
3. Grantee agrees to complete the Project as approved by the Board unless proposed modifications to the Project are submitted in writing to, and approved in writing by, the Board’s Project Manager or, if required by this Agreement, the Board’s Program Manager, prior to the beginning of any work proposed in the modification. Modifications to the budget categories shown in Exhibit A may be approved for change upon signature of the Board’s Project Manager.

G. Assignment

The Grantee will not assign or transfer its interest in this Agreement without prior written approval from the Board.

H. Permission Required to Access Private Property; Access to Project Sites

In carrying out this Agreement, Grantee will not access any private property without first obtaining written consent from the landowner of the private property. Grantee will direct its contractors not to access private property without first obtaining written consent from the landowner of the private property.

Upon Board request, Grantee will seek the landowner’s permission for mutually convenient access to the project site by Board members and their representatives for the purposes of evaluating Project implementation, completion, post-implementation status or effectiveness.

I. Public Domain Information

Projects funded by this grant may be used in the collection of monitoring information on private lands about the effects of the Project on aquatic or terrestrial conditions. Grantee acknowledges that all monitoring information obtained from private lands may become public information subject to the requirements of ORS 192.311 to 192.478.

J. Post-Implementation Maintenance and Post-Implementation Reports

Projects funded by the Board are intended to provide long-term benefits to the watershed. The Landowner shall provide necessary and normal maintenance to sustain the value of the project once it is completed.

Two years following project completion, Grantee will be required to submit a Year-Two Status report with color photos to the Board’s Project Manager and Small Grant Team Contact using the report form found on the OWEB Small Grant Program webpage.

Reports are not considered complete until Grantee has responded to the Board’s concerns and questions in a manner satisfactory to the Board’s Project Manager. “Board approval” means the report has been approved by the Board’s Project Manager or delegate. A report will show as “outstanding” (i.e., overdue and not approved) on OGMS until the report has been approved by the Board. New Grant Agreements will not be released to Grantee if Grantee has any outstanding reports.

K. Termination of Grant Agreement

1. This Agreement may be terminated:
 - (a) At any time by mutual written consent of all parties;
 - (b) Upon written notice by the Board to Grantee for Grantee's failure to perform any provision of this Agreement;
 - (c) Upon 30 days written notice by the Board to Grantee for any other reason specified in writing; or
 - (d) At any time, upon written notice by the Board, if the Board lacks sufficient funding, appropriations, limitations, allotments, or other expenditure authority to allow the Board, in the exercise of its reasonable administrative discretion, to disburse the grant funds.
2. Within 30 days of termination, Grantee will return to the Board any unspent funds provided by the Board under this Agreement in accordance with Section P, Recovery of Grant Funds. The Board will reimburse the Grantee for authorized services performed and expenses incurred before termination under this Agreement.

L. Compliance With Applicable Law

Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) all regulations and administrative rules established pursuant to the foregoing laws, and (j) 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 the Agreement or the Project and required by law to be so incorporated. Grantee shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, age or citizenship. All employers, including Grantee, 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 state law.

M. Grantee Authority

The individual signing on behalf of the Grantee hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of Grantee, has authority and knowledge regarding Grantee's payment of taxes, and to the best of her/his knowledge, Grantee is not in violation of any Oregon tax laws.

N. Indemnity

Subject to the limitations of the Oregon Tort Claims Act (ORS 30.260 - 30.300), Grantee will defend (subject to any limitation imposed by ORS Chapter 180), save, hold harmless, and indemnify the State of Oregon and the Board and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Grantee or its officers, employees, contractors, or agents under this Agreement or in the implementation of the Project.

O. Designation of Forum

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. 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.

P. Recovery of Grant Funds

Any funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement or that remain unexpended on the earlier termination of this Agreement or grant completion must be returned to the Board not later than 15 days after the Board's written demand.

Q. Counterparts

This Agreement may be executed in several counterparts, including by facsimile or by signature on a portable document format (pdf) delivered by email, 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.

R. Insurance

1. In addition to any insurance specified in Exhibit B, Grantee shall carry the insurance types and amounts described below and will continue this coverage through Project completion. In addition, the Grantee shall require that all contractors or consultants hired for construction, restoration, technical design, assessment or monitoring contracts carry the minimum insurance types and amounts described below. The minimum insurance requirements do not apply to contractors not engaged in these types of activities facilitation, data analysis, web design, etc.. Contractor insurance requirements do not apply to landowners with whom the Grantee is contracting to perform work on the landowner's property.


Insurance Type	Minimum Amount
General liability	\$1,000,000 per occurrence, \$2,000,000 annual aggregate
Auto liability	\$1,000,000 combined single limit

2. If requested by the Board, Grantee shall provide to the Board Certificate(s) of Insurance for all required insurance. As proof of insurance the Board has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.
3. Grantee or the insurer must provide at least 30 days' written notice to the Board before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

THIS AGREEMENT, INCLUDING ALL MATERIALS INCORPORATED BY REFERENCE, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THIS SUBJECT. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HERE 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. 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 THE BOARD TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE BOARD OF THAT OR ANY OTHER PROVISION. GRANTEE, BY EXECUTING THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGREED:

FOR THE GRANTEE:



Grantee

6/17/2020

Date

FOR THE LANDOWNER:

Landowner

Date

FOR THE SMALL GRANT TEAM:

Small Grant Team


Date

FOR THE BOARD:

OWEB Grant Program Manager

Date

FOR THE PAYEE:



Payee

6/17/20

Date

EXHIBIT A
SCHEDULE FOR RELEASE OF FUNDS

All fund requests shall comply with the Board's Billing Instructions and Budget Categories Definitions and Policies, (see OWEB's website <https://www.oregon.gov/OWEB/>). Disbursement of funds is subject to the Board having sufficient funding on the date of each disbursement. The Board will not reimburse the Grantee for any expenditure incurred prior to the award date of the grant agreement except for fees charged by an affected city or county for processing the required Land Use Information Sheet. Payment requests will be processed after approval by the Board's Project and Fiscal Managers or delegates.

Funds are released upon Board approval of receipts or invoices for amounts \$250 or more (excluding indirect cost grant administration) for purchases or work accomplished along with an expense tracking spreadsheet for all Board expenses.

Funds may also be released in advance on the basis of a detailed estimate of expenses. Copies of receipts, invoices or supporting documentation, for amounts \$250 or more (excluding indirect cost grant administration) must be submitted to document OWEB funds previously advanced for this grant within 120 days of the date of the payment. Also, an expense tracking spreadsheet for all OWEB expenses shall be submitted. Failure to comply may delay new grants from being issued, and other grant payment requests and amendments.

Each Small Grant award will be disbursed in no more than two payments, using the Small Grant Request for Release of Funds form signed by the project's payee. OWEB will not pay for activities that were not covered under the project grant agreement or did not receive prior approval from the Board's Project Manager per OAR 695-035-0030(5).

Project Budget

(Amounts should be rounded to the nearest dollar)

Expense Category	Amount
Salaries, Wages and Benefits	\$1,387
Contracted Services	\$11,156
Materials and Supplies	\$0
Travel	\$23
Other	\$0
Subtotal	\$12,566
Indirect Costs	\$1,230
Post-Grant	\$1,200
Grant Total	\$14,996

The final 10% of the grant (\$1,499) will not be released for payment until the Board's approval of the Project Completion Report including all grant expense documentation.
OAR 695-005-0060(7).

Project Completion Date: June 30, 2022

EXHIBIT B INSURANCE REQUIREMENTS

Section R of this Agreement specifies the base insurance requirements. The Board considers some projects and project activities to have an increased risk to the organization, organization’s employees, volunteers, and the community and may require additional insurance. If required for the Project under this Agreement, the additional insurances types required, the amount, and who will carry the insurance are set forth below.

- The work related to this Project **will not** require additional insurance beyond base Agreement requirements.
- The work related to this Project **will** require additional insurance beyond base Agreement requirements.

If Grantee is completing the technical work, they shall carry the insurance types and amounts described below and will continue this coverage through Project completion. If Grantee is contracting out the technical work, they will only be required to meet the minimum OWEB insurance requirements of **Section R** of this Agreement. Additionally, the Grantee shall require that all contractors or consultants hired for construction, restoration, technical design, assessment or monitoring activities carry the minimum insurance types and amounts described below.

Insurance Type	Coverage Amount	Organization carrying insurance