



AGENDA ***Revised**

Added Discussion Item 2.

Thursday, March 7, 2013 - 10:00 AM

Board of County Commissioners Business Meeting

Beginning Board Order No. 2013-12

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance
- Approval of Order of Agenda

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

1. Presentation of the Milwaukie Center's Meals and Wheels Program and March for Meals Event (Dave Miletich, North Clackamas Parks and Recreation District)

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

IV. DISCUSSION ITEM *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

DEVELOPMENT AGENCY

1. Approval of a Disposition Agreement between Clackamas County Development Agency and the City of Happy Valley for the Transfer of Land at the Northeast Corner of SE 122nd and Sunnyside Road (Dan Johnson, Development Agency)

County Administration

- *2. Resolution No. _____ Granting a Right-of-Way Use and Franchise Agreement to Clackamas County to Install Broadband Infrastructure and Provide Dark Fiber Service within the City of Oregon City (Laurel Butman, County Administration)

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

A. Health, Housing & Human Services

1. Approval of a Behavioral Health Service Agreement with Lake Oswego Counseling Center for Outpatient Mental Health Services – *Behavioral Health*

B. Department of Emergency Management

1. Approval of an Intergovernmental Agreement with Portland State University for Strategic Development Services

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

D. Business & Community Services

1. Board Order No. _____ Approval of the Clackamas County Public Oral Auction on May 7, 2013 to Dispenser Tax Foreclosed and Surplus Properties

VI. WATER ENVIRONMENT SERVICES

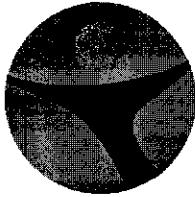
1. Approval of an Agreement between Tri-City Service District and Stettler Supply and Construction for the Digester Maintenance Project
2. Approval of an Agreement for Professional Services between Clackamas County Service District No. 1, Tri-City Service District and Portland Engineering, Inc. for the Instrumentation and Control Systems Integrator of Record

VII. COUNTY ADMINISTRATOR UPDATE

VIII. COMMISSIONERS COMMUNICATION

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

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



**NORTH CLACKAMAS
PARKS & RECREATION DISTRICT**

Administration

150 Beaver Creek Rd.
Oregon City, OR 97045
503.742.4348 phone 503.742.4349 fax
ncprd.com

March 7, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Purpose/Outcomes	Update the Board on North Clackamas Parks and Recreation District's Meals on Wheels Program and the March for Meals fundraising activities. Promote awareness and support for the Meals on Wheels Program to increase funding from individual and business donations.
Dollar Amount and Fiscal Impact	No fiscal impact to the County; the intent is to promote private donations to the Meals on Wheels Program.
Funding Source	N/A
Safety Impact	N/A
Duration	March is the major focus of fundraising for Meals on Wheels, but donations are accepted throughout the year to support this important program.
Previous Board Action	Past Boards have been very supportive of the Meals on Wheels Program and the March for Meals fundraising activities.
Contact Person	Dave Milelich, Deputy Director for North Clackamas Parks and Recreation District: (503)742-4361; and Marty Hanley, Human Services Coordinator for North Clackamas Parks and Recreation District at the Milwaukie Center: (503) 653-8100.
Contract No.	N/A

BACKGROUND:

This is the North Clackamas Parks and Recreation District's March for Meals campaign – our eighth annual fundraiser for the Meals on Wheels Program. With your help, we will raise awareness and support for this essential program which provides more than 60,000 meals annually to older adults and people with disabilities.

In addition to supporting Meals on Wheels throughout the month of March, we would like to invite you to March for Meals Day on March 20 – a day our honored local dignitaries are encouraged to “ride along” to witness the daily operations of this worthwhile program.

More than 100 volunteer drivers deliver meals to the most vulnerable population in North Clackamas County – the fragile, homebound and elderly. The meals are prepared five days a week from the Milwaukie Center (and service is available seven days a week for nearly 200 residents who rely on daily service).

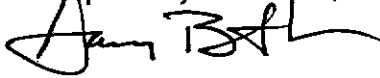
Local businesses from throughout the area have again signed on to help us with the campaign. Dave's Killer Bread has generously awarded the program a \$10,000 Good Seeds Grant in support of the March for Meals drive. Bob's Red Mill is matching all donations up to \$7,500 at their Whole Grain Store. The Happy Valley New Season Market is taking donations at the register, and the McLoughlin branch of Clackamas Federal Credit Union is also taking donations, matching the first \$500. Each dollar raised during this campaign supports the daily operations of the Milwaukie Center's Nutrition Program (Meals on Wheels). Each meal costs \$5.50 to produce, \$2.75 of which is reimbursed through federal funds. The annual March for Meals drive is a crucial fundraising tool to support the program's success.

We invite each of you to support the March for Meals campaign. Fundraising becomes more critical each year as the costs of running the program continue to grow. Last year we raised more than \$25,000. With your help, this year we plan to surpass that number and provide even more meals for older adults and people with disabilities who rely on this essential program.

RECOMMENDATION:

Staff requests your support for the March for Meals campaign and would like you to consider doing a "ride along" on March 20.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Barth". The signature is fluid and cursive, with a large initial "G" and "B".

Gary Barth, Director of Business and Community Services



2

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

March 7, 2013

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

Development Agency Board
Clackamas County

Members of the Board:

Approval of a Disposition Agreement with the City of Happy Valley for the Transfer of Land at the Northeast Corner of SE 122nd and Sunnyside Road between Clackamas County Development Agency and the City of Happy Valley

Purpose/Outcomes	Disposition Agreement to convey real property from the Clackamas County Development Agency to the City of Happy Valley.
Dollar Amount and Fiscal Impact	The Disposition Agreement stipulates an acquisition price of \$62,370.00 supported by appraisal.
Funding Source	Not Applicable: No funding considered as a part of this property transaction.
Safety Impact	None
Duration	Performance Term: 2 years Continued Commitment Term: 20 years
Previous Board Action/Review	Prior Executive Session on Feb. 5, 2013
Contact Person	Dan Johnson, Manager, Development Agency - 503-742-4325 or danjoh@co.clackamas.or.us
Contract No.	Not Applicable

BACKGROUND:

As a result of improvements to Sunnyside Road, the Development Agency owns a remnant of vacant land at the northeast corner of the intersection of Sunnyside Road and 122nd Ave. Its small size, topography, access issues, and zoning all reduce the utility of the parcel.

The City of Happy Valley approached the Development Agency with the proposal that the Agency sell the City the property so the City may develop community open space with monument signage welcoming travelers to the City.

The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition Agreement dictate consistency with the conceptual development proposal, include reversionary elements related to future conveyance of the site for other than the proposed municipal purpose and includes a reservation for land which may later be required for any subsequent expansion of Sunnyside Road.

RECOMMENDATION:

- Approve the Disposition Agreement with the City of Happy Valley.
- Delegate authority to the Chair to execute the Agreement and any other necessary documents on behalf of the Development Agency Board.
- Delegate staff authority to act on behalf of the Agency at closing.
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,

Dan Johnson
Development Agency Manager

AGREEMENT FOR THE TRANSFER OF LAND

AT THE NORTHEAST CORNER OF SE 122ND AND

SUNNYSIDE ROAD

BETWEEN

THE CLACKAMAS COUNTY DEVELOPMENT AGENCY

AND

THE CITY OF HAPPY VALLEY

DISPOSITION AGREEMENT

Dated: February ____, 2013

After Recording, Return To:
Lori Phillips
Clackamas County Development Agency
Development Services Building
Oregon City, OR 97046

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LIST OF EXHIBITS

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B.....Description of the Agency Property.....Section 1.1.1
C.....Title Exceptions to the Agency Property.....Section 1.1.2
D.....Deed.....Section 2.5
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THE DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is an agreement for the transfer of land located at the northeast corner of SE 122nd Avenue and Sunnyside Road. The Agreement is between the CLACKAMAS COUNTY DEVELOPMENT AGENCY as the duly designated urban renewal agency of Clackamas County (the "Agency"), and the CITY OF HAPPY VALLEY (the "City"). The Agreement is entered into as of the ____ day of January, 2013.

RECITALS:

A. The Agency is a corporate body politic of the state of Oregon and the duly designated urban renewal agency of Clackamas County, Oregon exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. As used in this Agreement, the term "Agency" includes the urban renewal agency of Clackamas County and any assignee of, or successor to, its rights, powers, duties, and responsibilities.

B. The City is the City of Happy Valley, a duly chartered municipality of the state of Oregon. Unless specifically permitted under the terms of this agreement, the term "City" as used in this agreement does not include any assignee or successor to the rights, powers, duties, and responsibilities of the City.

C. The Agency is the owner of certain real property (the "Agency Property") at the northeast corner of SE 122nd Avenue and Sunnyside Road which the Agency has acquired as part of its responsibilities as an urban renewal agency. The Agency Property is further described in Exhibit "B" attached hereto. The Agency has decided that the transfer of the ownership of the Agency Property pursuant to this Agreement serves the best interests of the residents of Clackamas County.

D. In order to achieve this transfer, the Agency intends to provide for the disposition of the Agency Property. The Agency is selling the Agency Property to the City and receiving in exchange from the City the purchase price and a commitment to develop the Agency Property according to the terms and conditions as hereinafter set out in this document.

E. The City has determined that acquiring the Agency property is in the best interest of the City and is purchasing the Agency Property from the Agency to acquire the benefits of its ownership. In exchange the City agrees to pay the Agency its purchase price and be bound, for a set period of time, by the terms and conditions of this Agreement as set forth herein.

F. The Agency and the City intend by this Agreement to memorialize their understanding and agreement.

NOW, THEREFORE, in consideration of the premises and promises contained herein, the parties agree that:

1. ASSEMBLY OF THE SITE

1.1. The Agency Property is the site (the "Site") of the improvements required to be constructed by the City pursuant to this Agreement. The Agency Property is shown on the map attached hereto as Exhibit "A" (the "Site Map"). The process of developing the Site according to this Agreement and the right of way reservation is the project (the "Project").

1.1.1. The Agency Property is described in the attached Exhibit "B" which is incorporated by this reference.

1.1.2. The Agency owns fee title to the Agency Property,

subject only to those title exceptions set forth in Exhibit "C".

1.2. The improvements to be built by the City are the City improvements (the "City Improvements").

1.3. The Agency makes no warranties or representations as to the suitability of the soil or other conditions of the Agency Property for any improvements to be constructed by the City, and City warrants that it has not relied on any representations or warranties, if any, made by the Agency with regard to the ability of the Site to support the improvements to be constructed by the City.

2. DISPOSITION OF AGENCY PROPERTY

2.1 Sale and purchase: In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to sell to the City and the City agrees to purchase from the Agency the Agency Property. The purchase price (the "Purchase Price") is \$62,370.00 (sixty two thousand, three hundred and seventy dollars).

2.1.1. The Purchase Price was negotiated between the City and the Agency, each acting on the basis of their respective informed opinions and without compulsion to either buy or sell.

2.1.2. Key elements in the negotiation between the City and the Agency include:

2.1.2.1. Their respective opinions as to the real market value of the Agency Property;

2.1.2.2. The reservation of anticipated future right of way

along Sunnyside Road, as set out in Exhibit A;

2.1.2.3. The City's obligation to develop the Agency property as a public space with monument signage for the period described in Section 4;

2.1.2.4. The City's obligation to maintain the site;

2.1.2.5. The City's obligation to maintain the Agency Property in public ownership for the period described in Section 4; and

2.1.2.6. The sale and purchase of the Agency Property as a parcel consisting of Tax Lots 22E02BB 00700 and 00800.

Special Note: The City and the Agency acknowledge that Tax Lot 22E02BB 00800 may be sold subject to the provisions of Section 6 and removed from the restrictions of public ownership set out in Section 4.

2.2 Conveyance: Conveyance of the Agency Property shall be on or before January 1, 2014.

2.2.1. The City agrees upon satisfaction of the conditions precedent for conveyance of the Agency Property described in Paragraphs 2.3 and 2.4, to accept conveyance of the Agency Property and pay to the Agency the Purchase Price in cash or the equivalent in immediately available funds.

2.2.2. Possession of the Agency Property shall be delivered to the City concurrently with the conveyance of title.

2.2.3. Notwithstanding any other provisions of this Agreement, in the event the City has not acquired and paid for the Agency Property within six (6) months from the date of this Agreement, this Agreement shall terminate

unless it is extended in writing by the parties as provided in according to the provisions for amendment found in Section 9.14.

2.3. Conditions precedent to the City's obligation to purchase: The City's obligation to purchase the Agency Property is subject to the City's reasonable satisfaction or written waiver of each of the following conditions as to the Agency Property.

2.3.1. The City's satisfaction with the Agency's title to the Agency Property and the deed for the transfer of ownership; and

2.3.2. The City's reasonable determination, after its own investigation of the Agency Property, that the Agency Property is in all respects suitable for the construction of the City's Improvements.

2.4. Conditions precedent to the Agency's obligation to convey: The Agency's obligation to convey the Agency Property is subject to the satisfaction or occurrence of the following conditions precedent to the reasonable satisfaction of the Agency:

2.4.1 A request for conveyance of the Agency Property has been made by the City.

2.4.2 The Purchase Price required for conveyance of the Agency Property has been tendered to the Agency's satisfaction.

2.5. Deed form: The Agency shall convey to the City fee simple title to the Agency Property in the condition provided in Section 2.6 of this Agreement by warranty deed, duly executed, acknowledged and delivered in the form of the attached Exhibit "D" which is incorporated by this reference (the "Deed"). Conveyance of title to the Agency Property to the City shall conclusively

establish compliance by the City with all conditions precedent to the conveyance of the Agency Property as contained herein.

2.6. Condition of title: The Agency shall convey to the City fee simple title to the Agency Property free and clear of all liens and encumbrances except:

2.6.1. Matters affecting the Agency Property and shown on the Preliminary Title Report marked Exhibit "C" and attached to this Agreement. These exceptions shall, for purposes of this Agreement, be "Permitted Exceptions"; and

2.6.2. Such regulations and controls, covenants and restrictions as may be imposed on the Agency Property by the City and the Agency pursuant to this Agreement, or land use approvals obtained by the City for development of the Site and the City Improvements.

2.7. Condition of the property: The City acknowledges that it is purchasing the Agency Property "As Is," except as may be expressly provided otherwise herein, and subject to Agency's warranties, representations and covenants as contained herein.

2.8. Preliminary work by the City: Prior to the conveyance of title, the City or its representatives, upon written request to the Agency, shall have the right of access to the Agency Property at all reasonable times for the purpose of obtaining data, making surveys, and performing the tests necessary to carry out this Agreement.

3. DEVELOPMENT OF THE SITE

3.1 The City's intended use of the Agency Property. The City and the Agency acknowledge that the City intends to construct on the Agency Property a

monument denoting the entrance into the City of Happy Valley. The City shall arrange for the design and construction of the monument so as to be consistent with the monument design ("Monument Design") as set out in Exhibit E and ensure compliance with all applicable state and local regulations.

3.2. The monument and the City Improvements shall be developed by the City within two (2) years of the execution of this Agreement.

4. USE OF THE AGENCY PROPERTY: The City covenants and agrees for itself, its successor, its assigns and every successor in interest to the Agency Property or any part thereof that during construction and thereafter the City and its successors and assignees shall devote the Agency Property to uses consistent with this Agreement and shall maintain any and all improvements in the public ownership and in a safe, clean, and attractive condition for a period of twenty (20) years commencing with the completion of the City Improvements.

5. DEFAULTS AND REMEDIES

5.1. Subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement; however, if the party who so fails or delays, commences to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a notice specifying such failure or delay, and thereafter diligently prosecutes such cure, correction or remedy to completion, then such party shall not be deemed to be in default.

5.1.1. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until thirty (30) days after giving such notice. The

Agency shall send copies of any such default notices to such persons and entities as the City may designate and any such party who is entitled to receive notice shall have the right to cure the alleged default.

5.1.2. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.2. Institution of legal and equitable actions: Subject to the provisions of Section 5.1, in addition to its other rights or remedies, either party may institute any legal or equitable action (including, without limitation, an action for specific performance) to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Circuit Court of the State of Oregon, for the County of Clackamas, or in the United States District Court for the District of Oregon.

5.3. Applicable law: The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement.

5.4. Acceptance of service of process: In the event that any legal or equitable action is commenced by the City against the Agency, service of process on the Agency shall be made by personal service on the Manager or Chair of the Agency, or in such other manner as may be provided by law. In the event that any legal or equitable action is commenced by the Agency against the City, service of process on the City shall be made in such manner as may be provided by law.

5.5. Rights and remedies are cumulative: Except as otherwise expressly

stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

5.6. Termination by the City: In the event that the Agency cannot, despite its best efforts, convey title to the Property in the manner, condition, and at the time provided in this Agreement, then this Agreement may, at the option of the City, be terminated by the City without further liability by either party

5.7 Termination by the Agency

5.7.1. Notice of Default: In the event that prior to the conveyance of title to the Agency Property any of the events listed below occurs, then this Agreement, any rights of the City, or any assignee or transferee in the Agreement, or the Agency Property, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event neither the City nor the Agency shall have further rights against or liability to the other under this Agreement.

5.7.1.1. The City (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Agency Property, in violation of this Agreement, or

5.7.1.2. The City does not tender the Purchase Price or take title to the Agency Property on tender of conveyance by the Agency pursuant to this Agreement after the City has satisfied or waived all conditions precedent set forth in Section 2.3.

5.7.2. Termination by the Agency after conveyance and prior to completion of the City Improvements: Subject to the thirty (30) day notice to

cure provision of Section 5.1, the Agency shall have the right at its option to terminate this Agreement and to reenter and take possession of the Agency Property with all improvements thereon and to terminate and revert in the Agency all the rights, titles, and interests the Agency had conveyed to the City.

5.7.2.1. The Agency shall have the right to terminate, if after completion of conveyance of title to the Agency Property the City (or its successors in interest) shall, in violation of the terms of this Agreement:

5.7.2.1.1. Fail, for a period of two years after written notice from the Agency to proceed, to either:

5.7.2.1.1.1. Commence construction on the City Improvements as required by this Agreement, or

5.7.2.1.1.2. Recommence construction following the Agency's decision that the City has abandoned or substantially suspended construction.

5.7.2.1.2. Assign this Agreement, or any rights herein, or, within the period described in Section 4, transfer or suffer any involuntary transfer of Tax Lot 22E02BB00700, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by the Agency to the City; or

5.7.2.1.3. Otherwise default under this Agreement, which default is not cured or efforts undertaken to cure such default within the applicable time frame set forth in this Agreement.

5.7.3. Resale of reacquired properties: disposition of proceeds:
Upon the reversion in the Agency of title to the Agency Property as provided in

Section 5.7.2, the Agency may, at its sole discretion, resell the Agency Property as soon and in such manner as the Agency shall find feasible and consistent with the objectives of state law and municipal ordinances to a qualified, responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the City Improvements or such other improvements in their stead as shall be satisfactory to the Agency. Upon such resale of the Agency Property, the proceeds shall be applied:

5.7.3.1. First, to reimburse the Agency for all reasonable costs and expenses incurred by the Agency, including but not limited to salaries of personnel directly engaged in the recapture, management and resale of the Agency Property but less any income derived by the Agency from the Agency Property in connection with such management and exclusive of any overhead expense of the Agency; all taxes, assessments and charges accruing during the period of ownership by the Agency; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the City Improvements or any part thereof on the Agency Property and any amounts otherwise owed the Agency by the City;

5.7.3.2. Second, to reimburse the City, its successors or transferees, by an amount which may equal, but not exceed, the sum of the Purchase Price paid to the Agency by the City for the Agency Property, the costs incurred for the development of the Agency Property and for the improvements existing thereon at the time of reentry and repossession; and

5.7.3.3. Any balance remaining after such reimbursement shall be retained by the Agency as its property.

6. PROHIBITION AGAINST CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL BY THE CITY AND PROHIBITION AGAINST TRANSFER OF THE SITE AND THE BUILDINGS OR STRUCTURES THEREON.

The qualifications and identity of the City are of particular concern to the Agency and were essential to the selection of the City by the Agency for development of the Property. No voluntary or involuntary successor in interest of the City shall acquire any rights or powers under this Agreement except as expressly set forth herein. The City shall not assign all or any part of this Agreement without the prior written consent of the Agency.

Special Note: The City and the Agency acknowledge that Tax Lot 22E02BB 00800 may be sold subject to the provisions of this Section 6 and removed from the restrictions of Section 4.

7. THE CITY'S OBLIGATION TO INDEMNIFY.

7.1. Subject to the limitations in the Oregon Constitution and ORS 30.260 to 30.300 the City agrees to indemnify, defend and hold the Agency and Clackamas County, its Commissioners, officers, agents and employees harmless from:

7.1.1. All claims or suits which may be caused by any of the City's activities under this Agreement, whether such activities or performance thereof may be by the City or anyone directly or indirectly employed or contracted with by the City and whether such damage shall accrue or be discovered before or after the termination of this Agreement; and/or

7.1.2. All damages to property and injuries to persons, including accidental death (including attorney's fees and costs), and including officers, agents, and employees of the Agency or Clackamas County; and/or

7.1.3. Any and all claims, demands, workers' compensation claims, injuries, or damages arising out of any activity, negligent, wrongful, or otherwise, of the City, its manager, officers, agents, employees, contractors, or subcontractors performed or conducted on the Site.

7.2. The provisions of Section 7.1 in all its parts shall not apply to damage or injury sustained as a result of the gross negligence or wrongful acts or omissions of the Agency, Clackamas County, or their officers, agents, or employees.

7.3. The Agency and Clackamas County shall provide prompt notice to the City of any claim to be asserted against the City under this Section 7.

8. PREVAILING WAGE

The City agrees to indemnify, defend and hold the Agency harmless from all expenses reasonably incurred by it in accordance with any claim regarding prevailing wages relating to the Project. In the event that a judgment is entered against the Agency or Clackamas County for reimbursement of costs related to prevailing wage, the City shall indemnify and hold harmless the Agency and Clackamas County for the amount of such judgment provided, however, that the Agency shall, prior to responding to such claim, notify the City of any such claim made against the Agency or Clackamas County for prevailing wages and the City shall have the option of paying such claim or paying the Agency's or Clackamas County's reasonable costs of contesting such claim.

9. GENERAL PROVISIONS

9.1. Attorneys fees: In the event any action is brought to enforce, modify or interpret the provisions of this Agreement, each Party shall be responsible for its own fees, costs and expenses incurred in connection with such action or on appeal or other review.

9.2. Notice, demands and communications between the parties: Formal notices, demands and communications between the Agency and the City shall be deemed given two (2) business days after being sent by registered or certified mail, postage prepaid, return receipt requested to the principal offices of the Agency and the City as designated herein. Such written notices, demands and communication may be sent in the same manner to such other addresses and to such other persons and entities as either party may from time to time designate by mail as provided in this section. Notices shall be sent to the addresses shown below and to the attention of the person indicated.

9.2.1. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
Attention: Development Agency Manager
Development Services Building
150 Beaver Creek Road
Oregon City, Oregon 97045

9.2.2. The principal office and mailing address of the City for purposes of this Agreement is:

Happy Valley City Manager
City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

9.3. Nonliability of agency officials and employees: No member, official or employee of the Agency or the City shall be personally liable to other Party or any successor-in-interest thereto, in the event of any default or breach of this Agreement.

9.4. Merger: None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

9.5. Headings: Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.6. Time of essence: Time is of the essence of this Agreement. All obligations of the Agency and the City 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.

9.7. Calculation of time: All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon except that if the last day of any period falls on any Saturday, Sunday, or such holiday period, it shall be extended to include the next day which is not a Saturday, Sunday or such a holiday.

9.8. Legal purpose: The parties agree that the property shall be used solely for legal purposes and in accord with the public purposes and provisions of applicable federal, state, and local laws, rules, ordinances, and requirements.

9.9. Severability: If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

9.10. No partnership: Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

9.11. Nonwaiver of government rights: Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, Clackamas County, or any other agency with respect to any discretionary action relating to the acquisition of the Agency Property or development or operation of the improvements to be constructed on the Agency Property, including but not limited to, condemnation, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required.

9.12. Entire agreement: This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof.

9.13. Waivers: No waiver made by either party with respect to the performance, or manner of time hereof, of any obligation of the other party or

any condition of its own obligation shall be considered a waiver of any rights of the other party or condition of its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations of the party. All waivers of the provisions of this Agreement must be in writing and executed by the appropriate authorities of the Agency and the City.

9.14. Amendments: All amendments to the Agreement must be in writing, and executed by the appropriate authorities of the Agency and the City.

9.15. Non-foreign persons: The parties agree to comply with the terms of Internal Revenue Code Section 1445 and upon the conveyance of the Agency Property; the Agency shall execute and deliver to the City a non-foreign person affidavit in form mutually acceptable to the parties. The Agency is not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and the Agency agrees to furnish the City with any necessary documentation to that effect.

9.16. Access: The City covenants and agrees that during the construction of the improvements, and thereafter for the term of this Agreement, the Agency shall have the right, during regular business hours, and upon reasonable prior notice, to access the Site for the purpose of monitoring the construction progress and the subsequent use and maintenance of the improvements.

9.17. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

9.18. Consents: Whenever consent or approval by the Agency or the City is required under the terms of this Agreement, all such consents or

approvals shall be received in writing from the Agency or the City.

9.19. Further assurances: The Agency and the City shall acknowledge, execute, and deliver from time to time such further instruments as the requesting party may reasonably require to accomplish the purposes of this Agreement.

9.20. No third party beneficiaries: While the parties recognize that the benefits of urban renewal are intended to be broad and far reaching, the City and the Agency intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforceable by the City and the Agency. There are no third party beneficiaries to this Agreement.

10. MISCELLANEOUS PROVISIONS

Nothing set forth in this Agreement shall be construed in any way to either limit or extend the City's ability to connect to, install, construct, use, maintain, or replace storm or sanitary sewers, or any other underground utilities, or to construct driveways, walkways and sidewalks in any location on the Agency Property. In addition to other limitations, the aforementioned storm or sanitary sewers; underground utilities; and driveways, walkways, and sidewalks shall at all times be subject to nonwaiver of government rights set out in Section 9.11.

11. ENVIRONMENTAL CONDITIONS

To the best of the Agency's knowledge, the Agency Property is in compliance with all applicable federal, state and local statutes, ordinances, rules and regulations relating to hazardous or toxic materials or substances, including, without limitation, petroleum products, asbestos or underground storage tanks, as those terms are commonly used or defined in any federal, state or local statutes, ordinances, rules or regulations. In addition, the Agency represents

that it has not received any notices of violation or advisory actions by any regulatory agencies regarding the environmental condition of the Agency Property and that Agency personnel and agents directly involved in preparing and administering this Agreement have no knowledge of the presence of hazardous or toxic materials or substances, including, without limitation, petroleum products and asbestos, on, under or about the property.

12. SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. To the extent the City's obligations under this Agreement are assigned (which assignment shall only be done in accordance with this Agreement) then this Agreement shall be deemed to be a covenant running with the land for the benefit of the Agency.

13. STATUTORY DISCLAIMER

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"AGENCY"

Board of County Commissioners Acting
as the Governing Body of the Clackamas
County Development Agency

By: _____
John Ludlow
Chair

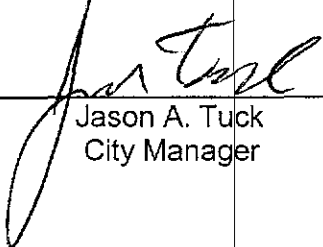
STATE OF OREGON)
) ss.
County of Clackamas)

This document was acknowledged before me on January _____, 2013 by the Chair of the Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County.

NOTARY PUBLIC FOR OREGON

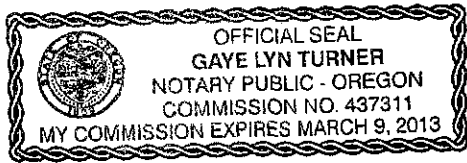
"THE CITY"

City of Happy Valley

By: _____

Jason A. Tuck
City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This document was acknowledged before me on February 2nd, 2013 by Jason A. Tuck as the City Manager of the City of Happy Valley.



Gaye Lyn Turner

NOTARY PUBLIC FOR OREGON

EXHIBIT A: 122ND & SUNNYSIDE WITH CONCEPTUAL EASEMENT DRAWING

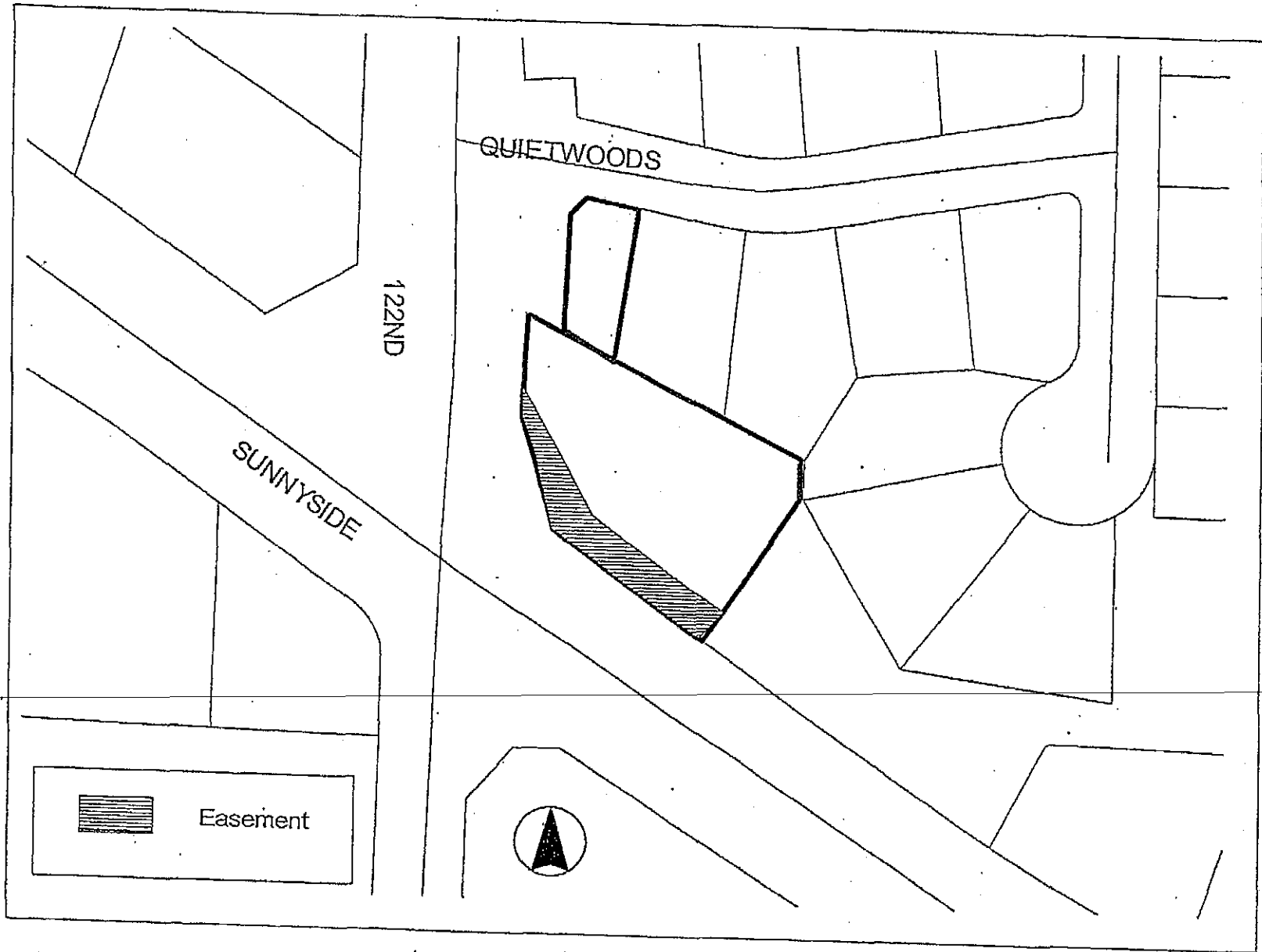


EXHIBIT "B"

RESERVATION FOR FUTURE ROAD DEDICATION AND FUTURE PUBLIC UTILITY EASEMENT

A STRIP OF LAND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN QUITCLAIM DEED DOCUMENT NUMBER 2006-098397, CLACKAMAS COUNTY DEED RECORDS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE WEST ONE QUARTER CORNER, OF SAID SECTION 2, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, SAID POINT BEING ON THE CENTERLINE OF SOUTHEAST 122ND AVENUE (COUNTY ROAD NO. 242); THENCE, TRACING THE WEST LINE OF SAID SECTION 2, NORTH 1°07'32" EAST, 1,445.10 FEET TO THE INTERSECTION OF SAID CENTERLINE OF SOUTHEAST 122ND AVENUE AND THE CENTERLINE OF SOUTHEAST SUNNYSIDE ROAD; THENCE, ALONG THE CENTERLINE OF SAID SOUTHEAST SUNNYSIDE ROAD (COUNTY ROAD NO. 96), SOUTH 55°46'05" EAST, 176.96 FEET; THENCE, LEAVING SAID CENTERLINE OF SOUTHEAST SUNNYSIDE ROAD, NORTH 34°13'55" EAST, 56.80 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID SOUTHEAST SUNNYSIDE ROAD AND THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED STRIP; THENCE, ALONG THE NORTH LINE OF THE RIGHT OF WAY OF SOUTHEAST SUNNYSIDE ROAD AS DEDICATED IN DOCUMENT NUMBER 2007-025073, CLACKAMAS COUNTY DEED RECORDS, NORTH 55°46'05" WEST, 114.83 FEET; THENCE, NORTH 18°49'54" WEST, 78.04 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID SOUTHEAST 122ND AVENUE; THENCE, LEAVING SAID EAST RIGHT OF WAY LINE, SOUTH 29°38'10" EAST, 74.68 FEET; THENCE, SOUTH 55°46'05" EAST, 109.95 FEET TO A POINT ON THE EAST LINE OF SAID DOCUMENT NUMBER 2006-098397 TRACT; THENCE, ALONG SAID EAST LINE, SOUTH 33°25'36" WEST 14.00 FEET TO TRUE POINT OF BEGINNING.

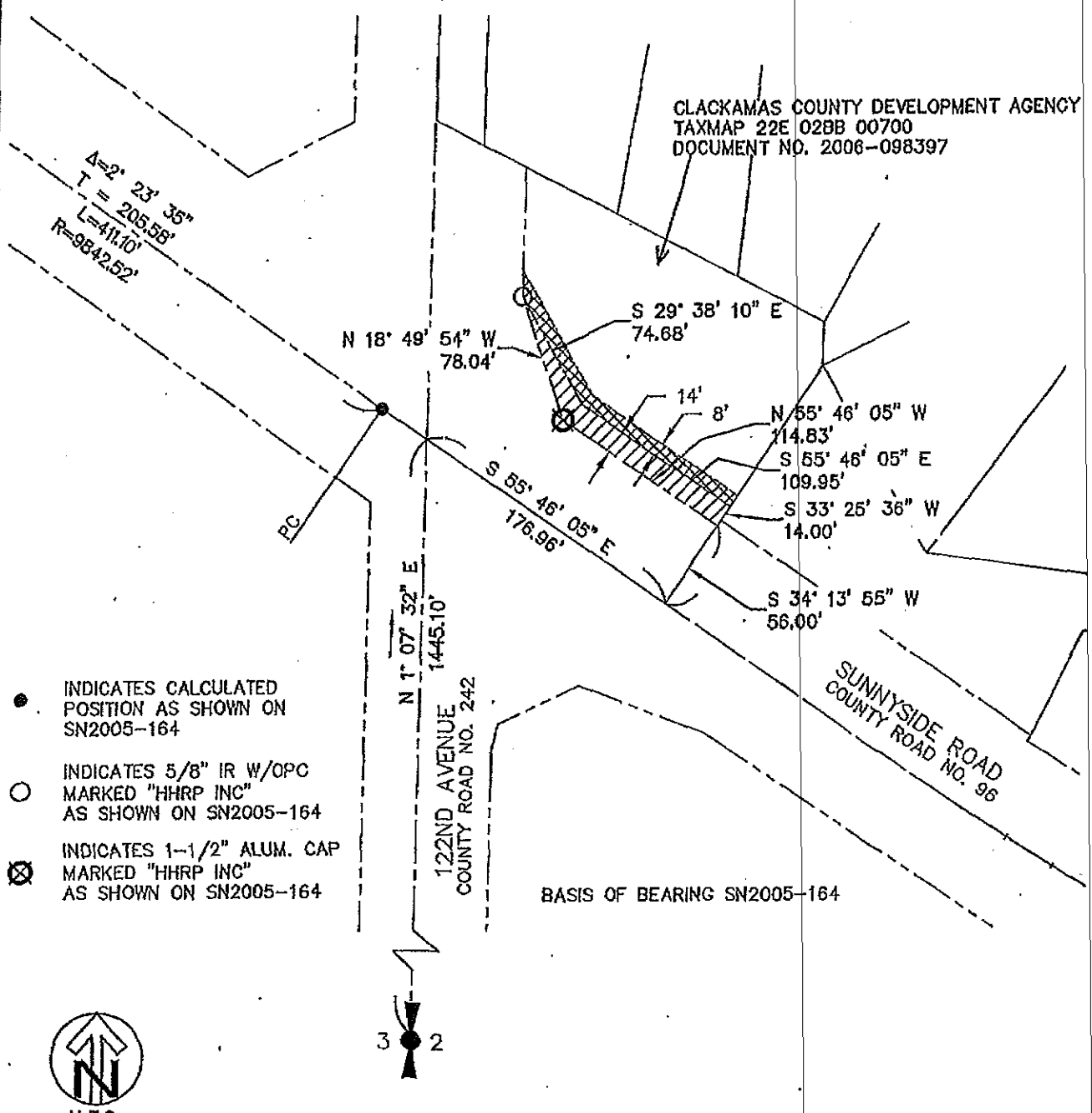
THE STRIP OF LAND HEREIN DESCRIBED CONTAINS 2,120 SQUARE FEET MORE OR LESS.

TOGETHER AND WITH A STRIP OF LAND 8.00 FEET WIDE PARALLEL TO THE NORTH SIDE OF THE ABOVE DESCRIBED FUTURE RIGHT OF WAY, SAID 8.00 FOOT STRIP OF LAND TO BE USED FOR FUTURE PUBLIC UTILITY PURPOSES.

BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION ARE TAKEN FROM SURVEY NUMBER 2005-164, CLACKAMAS COUNTY SURVEYOR'S OFFICE.



LOCATED IN THE NW 1/4 OF SECTION 02 T2S., R2E., W.M. CLACKAMAS COUNTY, OREGON

CLACKAMAS COUNTY DEVELOPMENT AGENCY
TAXMAP 22E 02BB 00700
DOCUMENT NO. 2006-098397



- INDICATES CALCULATED POSITION AS SHOWN ON SN2005-164
- INDICATES 5/8" IR W/OPC MARKED "HHRP INC" AS SHOWN ON SN2005-164
- ⊗ INDICATES 1-1/2" ALUM. CAP MARKED "HHRP INC" AS SHOWN ON SN2005-164



-  PROPOSED FUTURE RIGHT OF WAY EASEMENT
AREA = 2120 Sq.Ft.±
-  PROPOSED FUTURE UTILITY EASEMENT
AREA = 1516 Sq.Ft.±



CLACKAMAS COUNTY
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

EXHIBIT "B"			
SUNNYSIDE ROAD AT 122ND AVENUE			
PAGE 1 OF 1			
RESERVATION FOR FUTURE ROAD DEDICATION AND PUBLIC UTILITY EASEMENT CLACKAMAS COUNTY DEVELOPMENT AGENCY			
FILE NO. RD 12154	DRAWN BY MB	DESIGN BY GA	DATE 12-6-12

EXHIBIT C

TITLE EXCEPTIONS TO THE AGENCY PROPERTY

STANDARD EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easements, or encumbrances not shown by the public records, reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to lien, for unemployment taxes, workmen's compensation, services, labor, equipment rental or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

SPECIAL EXCEPTIONS:

6. The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.
Tax Account No. : 00419960 and 00419951
7. The subject property lies within the boundaries of the Clackamas County Service District No. 1 and is subject to the levies and assessments thereof. None found as of December 6, 2012.
8. Rights of the public to any portion of the Land lying within roads and highways.
9. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose : Utilities
Affects Parcel 1

10. By-laws of Quietwoods Property Owner's Association

Recording Date : July 29, 1977
Recording No. : 77-30133
Affects Parcel I

11. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document
Affects Parcel I

Recording Date : July 29, 1977
Recording No. : 77-30134

Incorporated by Instrument
Recording Date : July 29, 1977
Recording No. 77-30135

12. Liens and assessments, if any, by the Quietwoods Property Owner's Association. (Affects Parcel I)

13. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to : Clackamas County, a political subdivision of the State of Oregon
Purpose : Slopes and utilities
Recording Date : July 31, 1985
Recording No. : 85 31248
Affects : Parcel II

14. Right, title and interest of Clackamas County Development Agency, as disclosed by Quitclaim Deed,
Recording Date : October 24, 2006
Recording No. : 2006098397
Affects Parcels II and III

15. The effect, if any, of the following described instrument:

Entitled : Permanent Right of Way Easement for Road Purposes and Public Utility Easement
Recording Date : March 23, 2007
Recording No. : 2007025073
Affects Parcels II and III

END OF EXCEPTIONS

EXHIBIT D THE DEED

<p>GRANTOR: Clackamas County Development Agency Development Services Building 150 Beaver Creek Road Oregon City, OR 97045</p> <p>GRANTEE: City of Happy Valley 16000 SE Misty Drive Happy Valley, OR 97086</p> <p><i>After Recording Return To:</i> Happy Valley City Manager City of Happy Valley 16000 SE Misty Drive Happy Valley, OR 97086</p> <p>Until a change is requested, all tax statements shall be sent to: Happy Valley City Manager City of Happy Valley 16000 SE Misty Drive Happy Valley, OR 97086</p> <p>Consideration: \$62,370.00 (sixty two thousand, three hundred and seventy dollars) and Grantee's other obligations</p>	<p style="text-align: center;">Agenda No.: INSERT BOARD OF COUNTY COMMISSIONERS PROCEEDING IDENTIFIERS HERE</p>
--	---

WARRANTY DEED

CLACKAMAS COUNTY DEVELOPMENT AGENCY, the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY, a corporate body politic (the "Grantor"), in consideration of the performance of covenants and conditions of the Disposition Agreement between Grantor and the City of Happy Valley (the "Grantee"), dated INSERT DATE OF DISPOSITION AGREEMENT HERE and recorded on INSERT DATE THE DISPOSITION AGREEMENT WAS RECORDED HERE as Recorder's Fee No. INSERT RECORDER'S NUMBER HERE, Clackamas County records, does hereby warrant and convey unto the Grantee and to its successors and assigns, all of the following described real property, with the tenements, hereditaments and appurtenances (the "Property") situated in the County of Clackamas, State of Oregon, to wit:

See Exhibit 1 attached hereto and incorporated herein.

Subject to the following:

See Exhibit 2 attached hereto and incorporated herein.

In the event of a default, failure, violation or other action or inaction by Grantee, its successors or assigns, of the covenants, provisions or agreements of the Disposition Agreement, and failure on the part of the Grantee to remedy, end or abrogate such default, violation, or other action or inaction, within the period and manner specified in the Disposition Agreement, Grantor, at its option, may exercise any of the remedies provided for in the Disposition Agreement, including, but not limited to, that Grantee shall use the Property for the purpose of a monument designating the City of Happy Valley for a period of not less than 20 years.

This Grant is made by Grantor pursuant to powers exercised by it under Oregon Revised Statutes Chapter 457 for the purpose of carrying out an urban renewal plan for the Clackamas Town Center Development

which Plan was approved by the Clackamas County Commission on December 30, 1980 and which Plan has been amended and, as amended of June 16, 2005, is incorporated herein and by this reference made a part hereof.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of the Disposition Agreement which terms are intended to continue after the delivery of this Deed.

TO HAVE AND TO HOLD the same and to the said Grantee and then to its successors and assigns forever.

The true and actual consideration for this conveyance is sixty two thousand three hundred and seventy dollars (\$62,370.00) and Grantee's obligation to construct the City Improvements on the Property and to use the Property in accordance with the terms of the Disposition Agreement for the period provided therein.

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

IN WITNESS WHEREOF, the Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County has caused this instrument to be executed by duly elected officials this _____ day of INSERT MONTH HERE, INSERT YEAR HERE.

Board of County Commissioners Acting as the Governing Body of the Clackamas County Development Agency

By: _____
Chair.

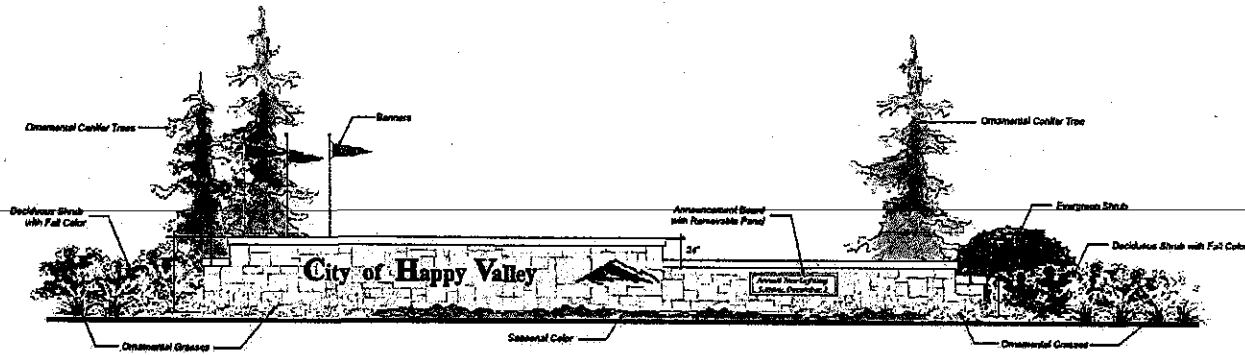
STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on INSERT MONTH HERE _____, INSERT YEAR HERE by INSERT NAME HERE as the Chair of the Board of County Commissioners Acting as the Governing Body of the Clackamas County Development Agency.

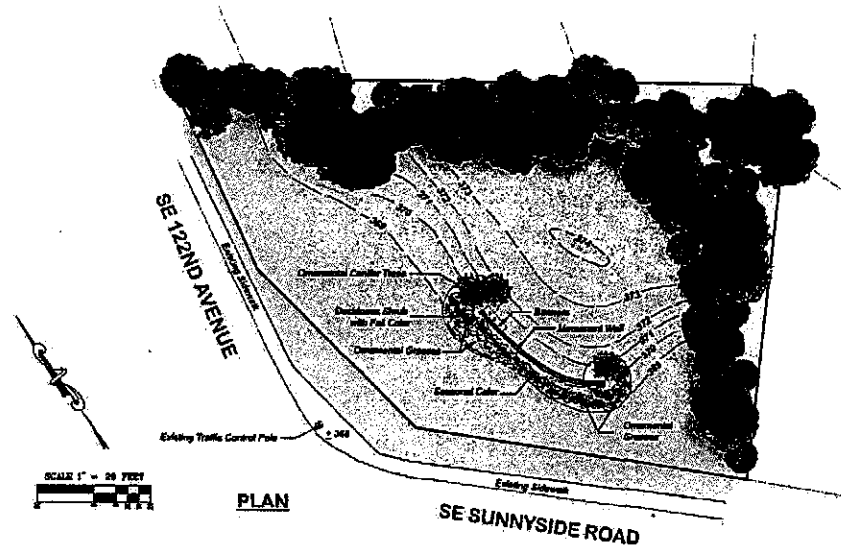
Notary Public for Oregon

EXHIBIT E

Monument Description



ELEVATION
SCALE 1/4" = 1'-0"



PLAN

HAPPY VALLEY MONUMENT SIGN
City of Happy Valley, Oregon

PRELIMINARY PLAN & ELEVATION





STEVE WHEELER
COUNTY ADMINISTRATOR

OFFICE OF THE COUNTY ADMINISTRATOR
PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

March 7, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

A resolution granting a right of way use and franchise agreement to Clackamas County to install broadband infrastructure and provide dark fiber service within Oregon City

Purpose	Memorialize a right of way agreement between Clackamas County and Oregon City; authorize and direct the County Administrator to execute the agreement.
Dollar Amount and Fiscal Impact	\$21,000 one-time right of way usage and application fee and the greater of \$12,000 or 6% of gross revenue in Oregon City in annual franchise fees (adjusted annually for CPI).
Funding Source	Annual franchise fees will be collected from public and private users of the broadband infrastructure to be passed on to Oregon City; the one-time right of way usage and application fee will be paid from the General Fund, the Project, or a combination of both sources.
Safety Impact	The Agreement allows the Project to offer services in Oregon City, including services to the Fire District, City Police, and health care providers.
Duration	The Agreement is for 20 years.
Previous Board Action/Review	The Board has discussed an agreement with Oregon City at numerous Executive Sessions between December 2011 and the present.
Contact Person	Laurel Butman at (503) 655-8893 or Stephen Madkour at (503) 742-5391
Contract No.	None

BACKGROUND: Clackamas County and Oregon City have been negotiating for some time to come to agreement on a mechanism to authorize the County's use of City rights of way for the Clackamas Broadband Express, a project seeking to provide broader public and private access to and use of broadband fiber across the County. City and County representatives have come to agreement on a draft Right of Way Use and Franchise Agreement for consideration by the City and County Commissions. The proposed agreement reflects the unique nature of the project and the services provided by the County. It also recognizes Oregon City's status as the County seat and the presence of a major urban technology hub for this project. The Agreement provides for an annual fee as well as an additional one-time use and application fee which the County will pay to the City. The agreement has a term of twenty years. The attached Resolution authorizes and directs the County Administrator to execute the attached Right of Way Use and Franchise Agreement.

RECOMMENDATION: Staff recommends that the Board approve the attached Resolution and authorize the County Administrator to sign the Right of Way Use and Franchise Agreement on behalf of the County.

Respectfully submitted,

Laurel Butman, Deputy County Administrator
County Administration

Resolution Authorizing Right-of-Way
Use and Franchise Agreement for
Broadband Infrastructure between
Clackamas County and the City of
Oregon City

Resolution No.

WHEREAS, Clackamas County received a \$7.8 million federal grant to construct an open Broadband infrastructure network throughout the County and to connect about 160 public buildings; and

WHEREAS, the County desires to construct the advanced Broadband infrastructure in the form of a dark fiber optic network through the City, and to connect to public buildings in Oregon City including schools, fire stations, medical facilities, social services, and libraries; and

WHEREAS, because the City is the County seat, the County maintains significant fiber and other infrastructure in City rights of way and the presence of County-owned property in the City significantly impacts the City's tax base; and

WHEREAS, the City acknowledges the significant benefits the County's fiber optic communications facilities will bring to the City and its residents, which benefits are unique among entities that own facilities in the City as of the effective date of this Agreement; and

WHEREAS, the City has reviewed Clackamas County's request to construct the dark fiber network in City rights of way and finds that it has the requisite authority to install facilities in the City and that the level of impact on the City's rights of way will be acceptable, and the City therefore agrees to allow the County the right to use and occupy the rights of way within the City of Oregon City.

NOW, THEREFORE, it is hereby resolved:

1. The Clackamas County Board of Commissioners hereby approves entering into an Right-of-Way Use and Franchise Agreement for Broadband Infrastructure between Oregon City and Clackamas County subject to terms equivalent to the draft agreement; and
2. The Board delegates authority to the County Administrator to execute the Agreement, provided that any amendment is consistent with the terms of the draft agreement.

Dated this 7th day of March 2013

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

**Right of Way Use and Franchise Agreement
for
Broadband Infrastructure
between
City of Oregon City and Clackamas County**

This Right of Way Use and Franchise Agreement (“Agreement”) is made and entered into by and between the City of Oregon City, Oregon, an Oregon municipal corporation (“City”), and Clackamas County, Oregon, a political subdivision of the State of Oregon (“County”).

RECITALS

WHEREAS, the County received a \$7.8 million federal grant to construct an open Broadband infrastructure network throughout the County and to connect about 160 public buildings; and

WHEREAS, the County desires to construct the advanced Broadband infrastructure in the form of a dark fiber optic network through the City, and to connect to public buildings in Oregon City including schools, fire stations, medical facilities, social services, and libraries; and

WHEREAS, because the City is the County seat, the County maintains significant fiber and other infrastructure in City rights of way and the presence of County-owned property in the City significantly impacts the City’s tax base; and

WHEREAS, the City acknowledges the significant benefits the County’s fiber optic communications facilities will bring to the City and its residents, which benefits are unique among entities that own facilities in the City as of the effective date of this Agreement; and

WHEREAS, the City has reviewed Clackamas County’s request to construct the dark fiber network in City rights of way and finds that it has the requisite authority to install facilities in the City and that the level of impact on the City’s rights of way will be acceptable, and the City therefore agrees to allow the County the right to use and occupy the rights of way within the City of Oregon City.

NOW THEREFORE, the City and the County agree as follows:

1. Rights Granted

a. Subject to the terms and conditions contained herein, the City authorizes the County to construct, operate, repair, or maintain its fiber optic communications facilities and modify, remove or add additional facilities within the rights of way as defined in Section 13.24.030 of the City Code. For purposes of this Agreement, the fiber optic communications facilities (“Facilities”) means those facilities installed in the City by or on

behalf of the County solely to provide public institutions and private service providers access to and use of dark fiber as set forth in the Financial Assistance Award to the County from the United States Department of Commerce, Award No. NT10BIX5570079, and the documents incorporated therein by reference (“Grant”).

b. The County agrees to comply with all applicable City, state and federal laws, ordinances, rules and regulations in existence as of the effective date of this Agreement or hereafter enacted. Except as expressly set forth herein, the County agrees to comply with the terms and conditions Chapter 13.24 of the Oregon City Municipal Code (“Code”) as though fully set forth herein.

c. This Agreement does not create or vest in the County or any other party any right, title or interest in City easements or rights-of-way, nor does this Agreement create or vest in the City or any other party any right, title or interest in the Facilities.

2. Construction standards

The construction standards of Title 13 of the Oregon City Municipal Code, as well as any other applicable construction standards in existence at the time of this Agreement or hereafter enacted, shall apply to all work performed on or installation of Facilities by or on behalf of the County in City rights of way.

3. Franchise Fees

a. The annual franchise fee payable to the City shall be the greatest of six percent (6%) of the County’s gross revenues earned or derived from the Facilities in the City or a minimum annual fee of twelve thousand dollars (\$12,000.00). “Gross revenues” shall mean any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectible, subject to all applicable limitations imposed by federal or state law. The minimum annual fee set forth herein shall be adjusted annually based on the consumer price index for the Portland Metropolitan Area for January 1st of that year, beginning January 1, 2014.

b. The initial franchise fee due from the effective date of this Agreement through December 31, 2013, shall be paid no later than January 31, 2014, and shall include, in addition to the franchise fee required in section 3a for calendar year 2013, one thousand dollars (\$1,000.00) as the pro rated minimum annual fee for December 2012. Thereafter, the franchise fee required in section 3a shall be paid quarterly, in arrears, for each quarter during the term of the franchise and shall be due and payable within forty-five (45) days of the end of each calendar quarter. Each quarterly payment shall be the greater of 6% of gross revenues from the preceding quarter or one-quarter of the minimum annual fee, except that the County shall adjust its payment for the fourth quarter of the calendar year as necessary to ensure accurate payment of the franchise fee set forth in section 3a.

c. In addition to the fee set forth in section 3a, the County agrees to pay an interim right of way usage fee and application fee of twenty-one thousand dollars (\$21,000.00), paid within fifteen (15) days of the execution of this Agreement by both parties.

4. County's Continuing Obligation

a. The County intends to make the installed Facilities available to other telecommunications carriers. In the event that the County allows another telecommunication carrier to use the Facilities, the County will inform the City of the use and provide assistance to the City in securing any necessary franchise or license from the telecommunications carrier.

b. The County shall instruct all private users of the Facilities to comply with the City's Municipal Code. The County shall provide the City with the names of all private users of the Facilities in the City, subject to any confidentiality or nondisclosure agreement reasonably required by the County.

c. In the event that the County desires to offer telecommunications services other than use of dark fiber as set forth in the Grant or enhancement of existing governmental uses, the County agrees to notify the City and obtain any additional authority, including additional franchises and payment of applicable taxes and fees, as lawfully required by the City.

5. Term and Termination

The term of this Agreement shall be twenty (20) years from the effective date of this Agreement, which shall be as of December 1, 2012. This Agreement may be amended by mutual consent of the parties in writing. The City and County agree to review this Agreement in the 5th, 10th, and 15th year of its term to ensure compliance with applicable law changes and to reaffirm that the Agreement is still mutually beneficial and is not resulting in material loss to either party.

6. Indemnification

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees, arising out of or resulting from the acts of the County, its officers, employees, and agents in the performance of this Agreement or arising out of or resulting from the construction, operation, repair and/or maintenance of the Facilities.

7. Authority

The parties acknowledge that the persons executing this Agreement on behalf of each entity have the legal power, right, and actual authority to bind their respective entities to

the terms and conditions of this Agreement

8. Entire Agreement

The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the Facilities and that it is the entire agreement between them relative to the Facilities, and the City's rights-of-way.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Clackamas County

By: _____
County Administrator

Dated: _____, 2013

City of Oregon City

By: _____
City Manager

Dated: _____, 2013

March 7, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Behavioral Health Services Agreement with Lake Oswego Counseling Center for
Outpatient Mental Health Services

Purpose/Outcomes	This contractor provides outpatient mental health services to Oregon Health Plan members capitated to Clackamas County.
Dollar Amount and Fiscal Impact	The contract has no upper limit; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
Funding Source	Oregon Health Authority - No County General Funds are involved.
Safety Impact	None
Duration	Effective upon signature and terminates on December 31, 2013
Previous Board Action	The original contract was approved by the Board of County Commissioners on March 11, 2011 agenda item 031711-A1. This contract has been renewed annually.
Contact Person	Deborah Friedman, Acting Director—Behavioral Health Division – (503)742-5336
Contract No.	BH-93-12/13

BACKGROUND:

The Behavioral Health Division has contracted with Lake Oswego Counseling Center since 2011 to provide Outpatient Mental Health Services. This contract is a continuation of these services.

This contract is effective upon signature and continues through December 31, 2013. This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,



Cindy Becker, Director

BEHAVIORAL HEALTH SERVICES AGREEMENT

This Behavioral Health Services Agreement is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and LAKE OSWEGO COUNSELING CENTER, hereinafter called "CONTRACTOR".

AGREEMENT

1.0 Engagement

COUNTY hereby engages CONTRACTOR to provide services as described in Exhibit B, Scope of Work, attached hereto and incorporated herein. This agreement sets forth the terms under which CONTRACTOR will contract with COUNTY to provide mental health services to Oregon Health Plan Medicaid recipients enrolled with Health Share of Oregon/Clackamas and residents of Clackamas County who are eligible for services as uninsured, indigent individuals.

2.0 Term

Services provided under the terms of this agreement shall commence **upon signature**. This agreement shall terminate **December 31, 2013** unless terminated by one or both parties as provided for below. This agreement may be renewed annually and amended by mutual written consent of both parties.

3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate CONTRACTOR as specified in Exhibit C, Compensation and Payment, for satisfactorily performing contracted services. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

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

3.3 Financial Records. CONTRACTOR and its subcontractors shall maintain complete and legible financial records pertinent to authorized Covered Services delivered and payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines such as outlined in Office of Management and Budget circulars A-87, A-122 and A-133. Financial records and supporting documents shall be retained for at least five (5) years after final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, CONTRACTOR shall repay the amount of the excess to COUNTY.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CONTRACTOR shall comply with all Federal, State and local laws, rules and regulations applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit F, Compliance with Applicable Law, attached hereto and incorporated herein. CONTRACTOR shall comply with OAR 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127.649, Patient Self-Determination Act.

4.2 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from COUNTY. CONTRACTOR shall not be

relieved of any of CONTRACTOR's obligations hereunder by virtue of any such subcontract, and shall remain directly responsible for compliance with all the terms of this agreement.

4.3 Independent Contractor. CONTRACTOR certifies that it is an independent contractor and not an employee or agent of County, State or Federal government. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the solely the responsibility of CONTRACTOR.

4.4 Workers' Compensation. CONTRACTOR certifies that it is an insured employer for purposes of the Oregon Workers' Compensation law and maintains workers' compensation insurance as required by ORS 656.017, or qualifies for an exemption under ORS 656.126. CONTRACTOR shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.0 General Conditions

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

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

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

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

5.2.1 Commercial General Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall obtain, at CONTRACTOR's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/ \$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall also obtain at CONTRACTOR's expense, and keep in effect during the term of the agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

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

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

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

5.2.7 Certificates of Insurance. As evidence of the insurance coverage required by this agreement, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiring.

5.2.8 Independent Contractor Status. The service or services to be rendered under this agreement are those of an independent contractor. CONTRACTOR is not an officer, employee or agent of COUNTY as those terms are used in ORS 30.265.

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

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

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

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

5.5 Severability. If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and

the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

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

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

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

5.9 Public Contracting Requirements. Pursuant to the requirements of ORS 279B-020 and ORS 279B.220 through 279B.335 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this agreement:

5.9.1 CONTRACTOR shall:

- a. Make payments promptly, as due, to all persons supplying to CONTRACTOR labor or materials for the performance of the work provided for in this agreement.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in performance of this agreement.
- c. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 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 this agreement 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 this agreement.

5.9.3 CONTRACTOR shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

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

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

5.11 Federal Grant Requirements. CONTRACTOR shall comply with all applicable Federal Grant Requirements pursuant to 45 CFR Parts 74, 80, 84, 91, and 95.

5.12 Disclosure. CONTRACTOR shall comply with all disclosure requirements of 42 CFR 1002.3(a); 42 CFR 422 Subpart (B); and 42 CFR 457.900(a)(2).

5.13 Advance Directives. CONTRACTOR shall maintain written notices and procedures respecting Advance Directives in compliance with 42 USC Section 1396.(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 431.107(b)(1) & (2); and 42 CFR Subpart I.

CONTRACTOR shall comply with 42 CFR Part 422.128 for maintaining written policies and procedures for Advance Directives. This includes compliance with OAR 410-120-1380 which establishes, among other requirements the requirements for compliance with Section 4751 of the Omnibus Budget Reconciliation Act of 1991 (OBRA) and ORS 127.649, Patient Self-Determination Act.

6.0 Termination

6.1 Termination Without Cause. This agreement may be terminated by mutual consent of both parties, or by either party upon ninety (90) business days notice, in writing and delivered by certified mail or in person.

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

6.2.1 The terms of the OHP Medicaid Demonstration Project are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding authorized by this agreement.

6.2.2 The termination, suspension or expiration of the Health Share of Oregon Participating agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. Alternatively, the parties may agree to modify the agreement to accommodate a reduction in funding.

6.2.4 COUNTY has evidence that CONTRACTOR has endangered or is endangering the health or safety of clients, staff or the public. CONTRACTOR shall ensure the orderly and reasonable transfer of care in progress with clients and shall work with COUNTY staff to accomplish same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of CONTRACTOR, or the lapse, relinquishment, suspension, expiration, cancellation or termination of CONTRACTOR's insurance as required in this agreement.

6.2.6 CONTRACTOR's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage CONTRACTOR's affairs, or the judicial declaration that CONTRACTOR is insolvent.

6.2.7 If CONTRACTOR fails to perform any of the other provisions of this agreement, or fails to pursue the work of this agreement in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.3 Notice of Default. COUNTY may also issue written notice of default (including breach of contract) to CONTRACTOR and terminate the whole or any part of this agreement if CONTRACTOR substantially fails to perform the following specific provisions: Exhibit D(2)(A) Licenses and, Certification; Exhibit D(2)(C) Quality Assurance and Utilization Review; and Exhibit D(3) Recordkeeping and Reporting. The rights and remedies of COUNTY related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

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

7.0 Notices

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

If to CONTRACTOR:

Lake Oswego Counseling Center
3990 Collins Way, Suite 202
Lake Oswego, OR 97035


If to COUNTY:

Clackamas County Behavioral Health Division
2051 Kaen Road, # 351
Oregon City, OR 97045

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

- Exhibit A Definitions
- Exhibit B Scope of Work
- Exhibit C Compensation and Payment
- Exhibit D Performance Standards
- Exhibit E Fraud and Abuse
- Exhibit F Compliance with Applicable Law

LAKE OSWEGO COUNSELING CENTER

By: 
Linda Estergard, PhD
1-8-13

Date _____
3990 Collins Way, Suite 202
Street Address _____
Lake Oswego, Oregon 97035
City / State / Zip _____
(503)675-2830
Phone _____ / Fax _____

CLACKAMAS COUNTY

- Commissioner: John Ludlow, Chair
- Commissioner: Jim Bernard
- Commissioner: Paul Savas
- Commissioner: Martha Schrader
- Commissioner: Tootie Smith

Signing on Behalf of the Board:

Cindy Becker, Director
Health, Housing and Human Service Department

Date _____

EXHIBIT A
DEFINITIONS

Whenever used in this Behavioral Health Services Agreement, the following terms shall have the meanings set forth below:

"Agreement": this Behavioral Health Services Agreement between COUNTY and CONTRACTOR for the provision of services.

"CCO": means a corporation, governmental agency, public corporation that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.

"Client": an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

"Covered Services": medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

"DMAP": the State of Oregon, acting by and through its Department of Human Services, Division of Medical Assistance Programs.

"Health Share of Oregon": a Coordinated Care Organization (CCO) serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

"OAR": the Oregon Administrative Rules duly promulgated by DMAP and OHA and as amended from time to time.

"OHA": the State of Oregon, acting by and through its Oregon Health Authority.

"OHP Member": an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon / Clackamas.

"Third Party Resources": any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

"Valid Claim": an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 120 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

EXHIBIT B

SCOPE OF WORK

CONTRACTOR agrees to provide medically necessary services as described below when authorized by COUNTY's treatment authorization process. CONTRACTOR shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; OAR 309-032-1500 through 1565 "Integrated Services and Supports Rules", and any other administrative rules to which CONTRACTOR is subject, as such rules may be amended from time to time. Services provided are to be within the scope of CONTRACTOR's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services under this agreement

1. Outpatient Mental Health Services

Treatment services directed toward ameliorating symptoms of a mental health disorder and/or maintaining stability and functional autonomy for individuals with severe and persistent mental illness. Outpatient services are specific in targeting the symptoms or problem being treated. Services may include assessment; treatment and discharge planning; individual, family and group therapy; psychiatric evaluation; medication management; case management; skills training; peer delivered services and supports. Clients may receive an outpatient service while simultaneously participating in a higher level of care. CONTRACTOR shall provide a responsive, 24-hour, seven day per week coverage system to ensure access to services.

2. Determination of Level of Care

CONTRACTOR shall administer the Early Childhood Service Intensity Instrument, the Child and Adolescent Service Intensity Instrument or the Level of Care Utilization System to establish the appropriate level of care and to assist with treatment planning. CONTRACTOR shall maintain the instrument administered as part of the clinical record and shall make the instrument available upon request by COUNTY.

3. Clinical Guidelines

CONTRACTOR shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. CONTRACTOR shall make such guidelines available to COUNTY upon request.

4. Outcome Measure

CONTRACTOR shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. CONTRACTOR shall make information about outcome measures used available to COUNTY upon request.

5. Coordination of Care

- a. CONTRACTOR shall provide coordination and integration of services with physical health care providers and chemical dependency providers as medically appropriate and within the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2 Substance Abuse Confidentiality Regulations.

- b. CONTRACTOR shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
- (1) CONTRACTOR shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. CONTRACTOR shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. CONTRACTOR shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
 - (2) CONTRACTOR shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
 - (3) CONTRACTOR shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
 - (4) CONTRACTOR shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

5. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, CONTRACTOR shall:

- a. Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- b. Accept clients for treatment on the same basis that CONTRACTOR accepts other clients and render services to clients in the same manner as provided to CONTRACTOR's other clients. CONTRACTOR shall not discriminate against clients because of source of payment, race, gender, national origin, ancestry, religion, marital status, sexual orientation, age or diagnosis;
- c. Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- d. Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- e. Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- f. Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. CONTRACTOR shall comply with access standards as set forth in the Health Share of Oregon/Clackamas Participation Agreement and OAR 410-141-3220 "Accessibility;"
- g. Ensure that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. CONTRACTOR shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements; and

Lake Oswego Counseling Center

- h. **Maintain facilities and equipment appropriate for provision of services to clients of a type and quality consistent with administrative rules promulgated by the State of Oregon Department of Human Services and the Americans with Disabilities Act.**

EXHIBIT C

COMPENSATION AND PAYMENT

1. Compensation

CONTRACTOR shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

2. Usual and Customary Charges

CONTRACTOR shall bill COUNTY according to their Usual and Customary fee schedule. CONTRACTOR shall base their Usual and Customary charges on a cost study that is updated annually.

3. Method of Payment

To receive payment CONTRACTOR shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech) within 120 calendar days of the date of service in accordance with OAR 410-141-3420, "Billing and Payment". Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay CONTRACTOR on behalf of COUNTY, by the 45th business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to CONTRACTOR if CONTRACTOR fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if CONTRACTOR fails to submit fee-for-service bills within 120 calendar days of the date of service. The timely filing requirement is extended to 18 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary.

4. Non-Covered Services

CONTRACTOR shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

5. Payment in Full

Except as expressly provided below, payments to CONTRACTOR made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", CONTRACTOR shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted copays, coinsurance, deductibles or any other cost sharing, if any and as applicable. CONTRACTOR may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to CONTRACTOR shall not exceed the reimbursement amount in effect as of the date of service.

6. Overpayments

Any payments made by COUNTY to which CONTRACTOR is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by CONTRACTOR at the

Lake Oswego Counseling Center

request of COUNTY, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds", provided that the request for refund is made within twelve (12) months from the date of payment from COUNTY to CONTRACTOR.

7. Third Party Resources and Coordination of Benefits

Pursuant to the Health Share of Oregon/Clackamas Participation Agreement, COUNTY is the payer of last resort when there is other insurance or Medicare in effect. CONTRACTOR shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse CONTRACTOR for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by CONTRACTOR.

If CONTRACTOR has knowledge that a client has third-party health insurance or health benefits, or that either client or CONTRACTOR is entitled to payment by a third party, CONTRACTOR shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2.. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

8. Pay for Performance

COUNTY may offer to CONTRACTOR the opportunity to participate in a Pay for Performance program. Such a program will be designed to encourage quality improvement and client focused care and may include financial incentives for achievement of performance targets. The Pay for Performance program will be subject to funding availability. CONTRACTOR will not be eligible to receive performance payments during any time period CONTRACTOR is out of compliance with the terms and conditions of this agreement.

EXHIBIT D

PERFORMANCE STANDARDS

1. Interpretation and Administration of Agreement

CONTRACTOR acknowledges that this agreement between COUNTY and CONTRACTOR is subject to the underlying Health Share of Oregon/Clackamas Participation Agreement between COUNTY and Health Share of Oregon, the Intergovernmental Agreement between COUNTY and the Oregon Health Authority, Oregon Administrative Rules related to the Oregon Health Plan Medicaid Demonstration Project and State Children's Health Insurance Program concerning mental health services, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If CONTRACTOR believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, CONTRACTOR shall notify COUNTY in writing immediately.

2. General Performance Standards

COUNTY shall monitor services provided by CONTRACTOR and has the right to require CONTRACTOR's compliance with OHA established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement.

- a. Licenses and Certifications. By signing this agreement, CONTRACTOR assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of CONTRACTOR's employees and independent contractors providing direct service and for all of CONTRACTOR's facilities in which services are provided. CONTRACTOR assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services.
- b. Eligibility and Authorization of Services. CONTRACTOR shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. CONTRACTOR shall participate in the COUNTY concurrent review process. CONTRACTOR understands that authorization for services will be based upon this review process.
- c. Quality Assurance and Utilization Review. CONTRACTOR shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. CONTRACTOR shall also participate in Health Share of Oregon quality initiatives as developed. Further, CONTRACTOR shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients consistent with the requirements of the Health Share of Oregon/Clackamas Participation Agreement and with practice guidelines established by COUNTY.

CONTRACTOR shall work with COUNTY staff to ensure that authorized services provided by CONTRACTOR to clients are the most appropriate and cost efficient, and least restrictive. CONTRACTOR staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

- d. Contractual Compliance. CONTRACTOR shall ensure that all providers and staff employed or contracted by CONTRACTOR who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

- e. Provider Appeal Process. CONTRACTOR shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Participation Agreement as they apply to this agreement. Appeals shall be made in writing.
- (1) Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.
 - (2) If CONTRACTOR disputes a decision by COUNTY that arises from interpretation of the Health Share of Oregon/Clackamas Participation Agreement, COUNTY will submit the facts of the dispute to the OHA Medicaid Policy Unit for determination within fourteen (14) business days of receipt from CONTRACTOR. Administrative review of decisions of the OHA Medicaid Policy Unit may be made as outlined in the Health Share of Oregon/Clackamas Participation Agreement.

3. Recordkeeping

a. Clinical Records, Access and Confidentiality

- (1) **Clinical Records**. CONTRACTOR shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records**. At all reasonable times, CONTRACTOR and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, DMAP, OHA, COUNTY and all their duly authorized representatives the right of access to CONTRACTOR's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of CONTRACTOR to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. CONTRACTOR shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.
- (3) **Confidentiality and Privacy of Records**. The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. CONTRACTOR and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law.

CONTRACTOR shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.

- (4) Release of Information. CONTRACTOR shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. CONTRACTOR shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), CONTRACTOR shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. CONTRACTOR shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement.
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) and (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) CONTRACTOR shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. CONTRACTOR shall make such policies and procedures available to COUNTY upon request.
- (2) CONTRACTOR shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. CONTRACTOR shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of CONTRACTOR as part of compliance monitoring of this agreement. CONTRACTOR agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of CONTRACTOR which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.
- (4) CONTRACTOR may be subject to audit requirements. CONTRACTOR agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over CONTRACTOR.
- (5) CONTRACTOR shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. CONTRACTOR shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of CONTRACTOR's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

c. Consumer Complaints

- (1) CONTRACTOR shall maintain a record of all complaints made to CONTRACTOR by the client related to services provided under this agreement. A complaint means any expression of dissatisfaction, whether oral or written, submitted by a client or representative, related to any aspect of CONTRACTOR's operations, activities or behavior that pertains to availability, delivery or quality of care. The expression may be in whatever form or communication or language that is used by the client.
- (2) CONTRACTOR shall post information on client rights and responsibilities and its consumer complaint process in a visible location in all offices, clinics and other service locations.
- (3) CONTRACTOR shall provide a copy of its consumer complaint policy and procedure to COUNTY upon request.
- (4) COUNTY reserves the right to review, upon reasonable notice and at CONTRACTOR's site, the actual documents of complaints submitted by clients, and the process by which complaints are resolved by CONTRACTOR.

4. Reporting

a. Abuse Reporting

CONTRACTOR shall comply with all processes and procedures of abuse reporting, investigations, and protective services as described in ORS 430.735 through 430.765, Abuse Reporting for Mentally Ill and OAR 407-045-0250 through 407-045-0370, "Abuse Reporting and Protective Services in Community Programs and Community Facilities".

b. Third-Party Resource Information

CONTRACTOR shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. CONTRACTOR shall make these records available for audit and review consistent with the provisions of the Health Share of Oregon/Clackamas Participation Agreement.

c. Encounter Data

CONTRACTOR shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. CONTRACTOR shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client. Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Participation Agreement and meet specifications as a Valid Claim. CONTRACTOR shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity.

d. Client Process Monitoring System (CPMS)

CONTRACTOR shall submit CPMS data for all clients receiving Covered Services under this agreement. CONTRACTOR shall submit all CPMS data to OHA via electronic media in the specific CPMS format. CONTRACTOR shall submit CPMS data within 30 days of initiating Covered Services and within 30 days of terminating Covered Services, reporting the data elements specified in the Health Share of Oregon/Clackamas Participation Agreement.

e. Data Submission Timeliness

CONTRACTOR assures that any and all data used for COUNTY's analysis of access, capacity, quality, consumer satisfaction, financial solvency, encounter data submission, and other data submission shall be submitted to COUNTY within time frames sufficient to allow COUNTY to meet OHA reporting requirements as described in the Health Share of Oregon/Clackamas Participation Agreement.

5. Monitoring

a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. CONTRACTOR shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide CONTRACTOR twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by CONTRACTOR. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should CONTRACTOR found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to CONTRACTOR
- Put CONTRACTOR on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider CONTRACTOR in breach and may terminate this agreement.

b. External Quality Review

CONTRACTOR agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. CONTRACTOR shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

EXHIBIT E
FRAUD AND ABUSE

CONTRACTOR shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse.

1. General

- a. CONTRACTOR, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- b. CONTRACTOR, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.
- c. CONTRACTOR shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- d. CONTRACTOR shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- e. Entities receiving \$5 million or more annually (under this Contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- f. Certify when submitting any Claim for the provision of OHP Services that the information submitted is true, accurate and complete. CONTRACTOR shall acknowledge CONTRACTOR's understanding that payment of the Claim will be from federal and State funds and that any falsification or concealment of a material fact may be prosecuted under federal and State laws.

2. Fraudulent Billing and False Claims

- A. If it is determined that services billed by CONTRACTOR and paid with Medicaid funds were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
 - If Medicaid abuse is determined, consider restitution of funds based on the severity of the abuse identified.

- If fraud is determined or a false claim verified, require restitution of funds.
- If the action identified is determined to be non-intentional, require a corrective action plan
- Put CONTRACTOR on probationary status and suspend billing authority until the issue is resolved
- Termination of this agreement

B. COUNTY shall promptly refer all verified cases of fraud and abuse to the Medicaid Fraud Control Unit, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the Medicaid Fraud Control Unit. COUNTY shall also refer cases of suspected fraud and abuse to the Medicaid Fraud Control Unit prior to verification.

3. Participation of Suspended or Excluded Providers

CONTRACTOR shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

EXHIBIT F

COMPLIANCE WITH APPLICABLE LAW

CONTRACTOR shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions

CONTRACTOR shall comply and cause all Subcontractors to comply with all federal laws, regulations and executive orders applicable to this agreement or to the delivery of Work. Without limiting the generality of the foregoing, CONTRACTOR expressly agrees to comply and cause all Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

2. Equal Employment Opportunity

If this agreement, including amendments, is for more than \$10,000, then CONTRACTOR shall comply and cause all Subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Non-Discrimination

- a. CONTRACTOR shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. CONTRACTOR shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.
- b. CONTRACTOR shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

4. Drug Free Workplace

CONTRACTOR shall maintain and cause all Subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in CONTRACTOR's workplace. CONTRACTOR shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services

under this agreement with information about its drug-free workplace program. CONTRACTOR will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

5. Clinical Laboratory Improvement

If applicable to Scope of Work, CONTRACTOR shall and shall ensure that any Laboratories used by CONTRACTOR shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

6. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then CONTRACTOR shall comply and cause all Subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. CONTRACTOR shall include and cause all Subcontractors to include in all contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.

7. Energy Efficiency

CONTRACTOR shall comply and cause all Subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

8. Resource Conservation and Recovery

CONTRACTOR shall comply and cause all Subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

9. Audits

CONTRACTOR shall comply and, if applicable, cause a Subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

10. Truth in Lobbying

CONTRACTOR certifies, to the best of the CONTRACTOR's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a

member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly. d. This certification is a material representation of fact upon which reliance was placed when this agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11. Conflict of Interest Safeguards

- a. CONTRACTOR and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, CONTRACTOR shall apply the definitions in the State Public Ethics Law as if they applied to CONTRACTOR for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- b. CONTRACTOR shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- c. "CONTRACTOR" for purposes of this section includes all CONTRACTOR's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the CONTRACTOR; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- d. CONTRACTOR shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

12. Protected Health Information

CONTRACTOR is a "covered entity" for the purposes of the provisions of the Health Insurance Portability and Accountability Act (HIPAA), Title II, Subtitle F, Administrative Simplification, or the Federal regulations implementing the Act. CONTRACTOR shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records consistent with HIPAA and/or other Federal, State, and local laws, rules

and regulations applicable to the work performed under this agreement. CONTRACTOR shall ensure that confidential records are secure from unauthorized disclosure. Electronic storage and transmission of confidential client information and records shall assure accuracy, backup for retention and safeguards against tampering, back dating or alteration.

13. HIPAA Compliance

- a. The parties acknowledge and agree that each of OHA and the CONTRACTOR is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and CONTRACTOR shall comply with HIPAA to the extent that any Work or obligations of OHA arising under this agreement are covered by HIPAA.
- b. CONTRACTOR shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. CONTRACTOR shall comply and cause all Subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- c. HIPAA Information Security. CONTRACTOR shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

4

NANCY S. BUSH
DIRECTOR



DEPARTMENT OF EMERGENCY MANAGEMENT

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD | OREGON CITY, OR 97045

March 7, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with
Portland State University (PSU) for Strategic Development Services

Purpose/Outcomes	The Intergovernmental Agreement will allow PSU to provide strategic development services to the Emergency Management Department, resulting in a finalized strategic plan by the end of the current fiscal year. Up to 40 external public safety stakeholders will have an opportunity to provide feedback that will be incorporated into the plan.
Dollar Amount and Fiscal Impact	The cost for the strategic development project including all deliverables is \$25,200. The project will be completed by the end of the fiscal year.
Funding Source	Emergency Management Department budget – General Fund
Safety Impact	The strategic development services being sought with this Intergovernmental Agreement will involve the participation of internal County employees, as well as approximately 40 key external public safety stakeholders who will be interviewed by the PSU team in order to assess their future expectations of the Emergency Management Department and interests in the strategy.
Duration	Effective from date of signing through June 30, 2013
Previous Board Action	The Intergovernmental Agreement was reviewed by the Board in study session on February 26, 2013
Contact Person	Nancy Bush, Emergency Management Director – 503-655-8665
Contract No.	N/A

BACKGROUND:

The Emergency Management Department is seeking strategic development services to assist with updates to its mission and vision statement, collection of stakeholder feedback regarding strategic , focus, goal setting, strategic planning and implementation strategies for the period of 2013 to 2017.

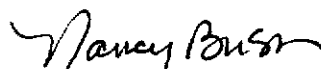
PSU's Center for Public Service has provided a proposal for the strategic development services being sought by the Emergency Management Department. The proposal contains a scope of work that addresses all areas of interest and a six phase project outline that would accomplish all goals and deliverables in four months, with a project end date of June 30, 2013.

The Emergency Management Department requests approval of an Intergovernmental Agreement with PSU so that it can proceed with strategic development services as described above. County Counsel has approved the Intergovernmental Agreement as to form.

RECOMMENDATION:

Staff respectfully recommends Board approval of this Intergovernmental Agreement.

Respectfully submitted,


Nancy Bush, Director

Received

PSU Contract # 21644

FEB 05 2013

Portland State Univ
Purchasing Dept

**Agreement by and between Portland State University
And
Clackamas County**

This Inter-governmental Agreement (this "Agreement") is by and between the **State Board of Higher Education, acting by and through Portland State University on behalf of its Mark O. Hatfield School of Government Center for Public Service ("PSU")** and **Clackamas County ("County")**, individually the "Party", collectively the "Parties", hereinafter.

COUNTY INFORMATION:

Representative: Nancy Bush
Title: Director
Clackamas County
Emergency Management

Address: 2200 Kaen Road
Oregon City, OR 97045

Telephone: 503-655-8665

PSU INFORMATION:

Representative: Jennifer Schmid
Title: Office Administrator
Portland State University
Hatfield School of Government
Center for Public Service

Address: PO Box 751 (PA - ELI)
Portland, Oregon 97207 - 0751

Telephone: 503-725-8261

1. Term and Termination

This Agreement shall become effective on the date of final signing by all parties and shall remain in effect until June 30, 2013 unless otherwise terminated by either party. This Agreement may be terminated with thirty (30) days written notice to the Parties, by either Party. This Agreement may be amended by mutual consent, reduced to writing, and signed by the parties.

2. Cost/Consideration

A. County will pay to PSU an amount not to exceed \$25,200 for services described in section 3. Services will be billed at the following rates:

Faculty rate (Marcus Ingle) \$180/hour
Staff rate (Shannon Grzybowski) \$80/hour
Masters-level graduate student rate (Caroline Zavitkovski) \$32/hour

B. Services are estimated as follows:

Marcus Ingle (76 h * \$180-faculty rate) \$13,680
Shannon Grzybowski (80 h * \$80-staff rate) \$6,400
Caroline Zavitkovski (160 h * \$32-masters student rate) \$5,120

C. PSU will submit invoices quarterly, which will be paid within 30 days of receipt. (During the term of this agreement, PSU fiscal quarters close March 31, 2013 and June 30, 2013.)

D. Payments, payable to PSU-CPS, shall be sent to the following address:

Center for Public Service
Portland State University
PO Box 751 (PA - ELI)
Portland, OR 97207 - 0751
Attn: Office Coordinator
Telephone: 503-725-8261
Facsimile: 503-725-5111
nsavara@pdx.edu

3. Scope of Work

The overall objective of this engagement is to collaborate with the Clackamas County Emergency Management (EM) Department on the development of a specialized and data driven Emergency Management Strategy for the period of 2013 to 2017.

The CPS consultancy will begin in February following the signing of this agreement. All phases of the consultancy are projected to be completed by May 30, 2013. The successful co-production of the EM Strategy will depend upon the availability of internal EM Department staff, external stakeholders and the availability of the CPS team members, so a detailed work plan will be developed in Phase I.

The Center for Public Service strategy development team will carry out their work in a phased manner as follows.

Phase I: Internal EM Assessment

The initial aspect of this phase consists of agreeing on the specifics of the strategy development process and garnering a clear understanding of the roles, responsibilities and duties of the Clackamas County Emergency Management Department. CPS team members will meet with Director Bush and associated internal staff who she deems appropriate to gather relevant documentation for the strategy development process. The CPS team would also be provided with a list of key stakeholders along with scheduling considerations. The interviews during this phase will also focus on collecting information to provide an understanding of the strengths and weaknesses of the department as well as identify potential challenges and opportunities. Concurrently, the CPS team will obtain approvals for a Human Subject waiver from PSU. The deliverable for Phase I will be a detailed work plan for completing the EM Strategy.

Phase II: Mission and Vision

The CPS team will facilitate an internal Clackamas County working group session (members to be selected by Director Bush) to revisit the mission and vision of the EM Department and provide guidance to assist the team in drafting formal statements for the department. The deliverable for Phase II will be draft revisions of the department's mission and vision.

Phase III: External Assessment

Director Bush has identified approximately 40 key stakeholders that she would like to be interviewed by the CPS team in order to assess their interests in the EM Strategy and gain their support and buy-in. During this phase, the CPS team's graduate student will conduct semi-structured telephone interviews with these stakeholders. Quantitative and qualitative data related to three key themes will be collected:

1. External stakeholder expectations of the Clackamas County Emergency Management Department in the future;
2. Proposed strategic and operational directions that these stakeholders would like to see the Department support; and
3. Services that the Department currently offers that key stakeholders would be willing to relinquish.

Other stakeholders (that are not identified as key) will be sent an electronic survey with open-ended questions asking about the aforementioned three themes. A document with a thematic analysis of the data from the interviews and electronic survey will be prepared. This data and subsequent analysis will serve as a basis for obtaining an understanding of the external environmental interests and influences. The deliverable for Phase III will be a completed stakeholder analysis.

Phase IV: Strategic Goal Setting

CPS Staff will work with the Clackamas County Emergency Management Department to identify strategic programmatic goals and milestones that they would like to achieve over the next five years. CPS recommends this be accomplished in a team setting where dialogue is facilitated and agreements are made. These sessions will also identify potential barriers and risks to goal achievement and mitigation tactics related to the risks. Following these meetings, the CPS team will draft an implementation and monitoring plan for the Strategy. The deliverable for Phase IV will be a list of proposed strategy goals, milestones, risks, mitigation tactics and the

implementation/monitoring plan.

Phase V: Draft Strategic Plan

The CPS team staff will draft a comprehensive EM Strategy including the components developed in Phases I to IV. Director Bush will provide CPS with written suggestions on the Strategy draft within two weeks. The CPS team will then provide a Final EM Strategy to the County. Phase V deliverables will include both a Draft Strategy and a Final Strategy.

Phase VI: Implementation

CPS Staff will assist the department in presenting the strategic plan to internal staff as well as other governance bodies (e.g. Board of Commissioners, etc.) identified by the Clackamas County Emergency Management Department. The deliverable for Phase VI will be a draft presentation of the EM Strategy.

4. Additional Terms and Conditions

A. Indemnification

PSU 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 under this contract, or from any act, omission, or neglect of PSU, its subcontractors, or employees. PSU shall save, indemnify, and hold harmless Clackamas County and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of PSU or its subcontractors, officers, agents, or employees acting under this contract. To the extent permitted by Oregon Law (ORS 30.260 through 30.300) and the Oregon Constitution, Article XI, Section 7, PSU shall indemnify Clackamas County against any liability for damage to life or property arising from PSU's actions under this Agreement provided, however, PSU shall not be required to indemnify Clackamas County for any such liability arising out of the wrongful or negligent acts of employees or agents of Clackamas County.

B. Access to Records

The parties shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Agreement. The Oregon Department of Higher Education, Oregon Secretary of State, Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by the parties for six years from the date of contract expiration unless a shorter period is authorized in writing.

C. Amendments

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written Amendment signed by both parties.

D. Assignment

PSU shall not assign or transfer its interest nor delegate its obligation in this Agreement without the express written consent of Clackamas County. PSU shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from Clackamas County.

E. Availability of Funds Clause; Non-appropriations Clause

Clackamas County certifies that sufficient funds are available to finance the County's obligations to PSU under this Agreement within its current biennial appropriation or expenditure limitation, provided, however, that continuation of this Agreement or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of this Agreement. In the event of such Non-Appropriation Clackamas County will notify PSU of its intent to terminate this Agreement.

F. Captions

The captions or headings in this agreement are for convenience only and in no way define, limit, or describe the scope of intent of any provisions of this agreement.

G. Force Majeure

Neither Party shall be held responsible for delay or default caused by fire, riot, weather, labor disputes, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the contract.

H. Governing Law

This Agreement shall be governed construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of law rules and doctrines. Any litigation between the PSU and Clackamas County that arises out of or relates to performance of this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

I. No Third-Party Beneficiaries

The undersigned parties are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third person are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

J. Non-Discrimination.

In their respective performances of this Agreement, no party shall unlawfully discriminate against any person on the basis of race, ancestry, national origin, color, sex, disability, age, religion, marital status or sexual orientation. Moreover, each party shall comport its performance with all applicable Federal and State anti-discrimination acts and associated regulations.

K. 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.

L. Tax Certification

By signature on this Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of each party and that each party is, to the best of the undersigned's knowledge, not in violation of any state or federal tax laws, or any other local taxes.

M. Waiver

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

N. Ownership of Work Product:

All work product of PSU that results from this Contract (the Work Product) is the exclusive property of Clackamas County. PSU and Clackamas County intend that such Work Product be deemed "work made for hire" of which institution shall be deemed the author. If for any reason the work product is not deemed "work made for hire," PSU hereby irrevocably assigns to Clackamas County all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.

O. Merger

This Agreement constitutes the entire agreement between the parties. 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. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Clackamas County and PSU, by the signature of their authorized representatives, hereby acknowledge that they have read this agreement, understand it, and agree to be bound by its terms and conditions.

5. NOTICES

All notices regarding this Agreement should be sent to the parties at the following addresses:

To County: Clackamas County Emergency Management
2200 Kaen Road
Oregon City, OR 97045
Attention: Nancy Bush
Telephone: 503-655-8665
Facsimile: 503-655-8531
Email: nbush@co.clackamas.or.us

To PSU: Center for Public Service
Portland State University
PO Box 751, MC: PA-ELI
Portland, OR 97207
Attn: Fellowship Coordinator
Telephone: 503-725-8261
Facsimile: 503-725-5111
Email: schmidjl@pdx.edu

WITH A COPY TO:

Portland State University
Office of Purchasing & Contracting
PO Box 751, MC: PUR
Attn: Contracts Officer
Portland, OR 97207-0751
Telephone: (503) 725-3441
Facsimile: (503) 725-5594

6. Signatures

County and PSU, by the signature of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions. This agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. COUNTY and PSU agree that they may conduct this transaction by electronic means, including the use of electronic signatures.

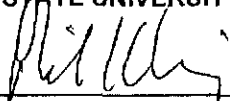
CLACKAMAS COUNTY:

Signature Date

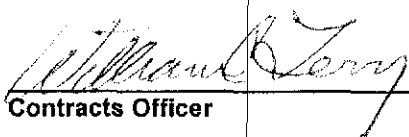
Printed Name

Title

**THE STATE BOARD OF HIGHER
EDUCATION ACTING BY AND THROUGH
PORTLAND
STATE UNIVERSITY:**

 2/5/13

Center for Public Service Date
Phil Keisling, Director

 2-6-13

Contracts Officer Date



6
GARY BARTH
 DIRECTOR

BUSINESS AND COMMUNITY SERVICES

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

March 7, 2013

Board of County Commissioner
 Clackamas County

Members of the Board:

**Board Order Approving the Clackamas County Public Oral Auction
 To Disperse Tax Foreclosed and Surplus Properties
 May 7, 2013.**

Purpose/Outcomes	Public Oral Auction to return tax foreclosed parcels to the tax rolls generating property tax revenue for all taxing jurisdictions within Clackamas County.
Dollar Amount and Fiscal Impact	All proceeds from property sales in excess of the actual expenses incurred by the County to operate the program are distributed by the County Treasurer to all taxing entities within Clackamas County. Dollar amount varies depending on the auction results.
Funding Source	No General Fund resources are currently allocated to this program.
Safety Impact	Limit the County liability on these parcels by returning the properties to the tax rolls.
Duration	The auction is held annually.
Previous Board Action	A Study Session with the Board of County Commissioners was held on February 26, 2013 to discuss these parcels. The Board approved the list of properties for the May 7, 2013 Public Oral Auction.
Contact Person	Jean Athey, Senior Property Agent, 503.742.4384.
Contract No.	N/A

BACKGROUND: Clackamas County's Department of Assessment and Taxation annually forecloses on tax-delinquent properties. The foreclosure process is a six year process – taxes must be delinquent for three years, then a two year judgment is filed and in the sixth year foreclosure occurs and the property is deeded to the County in lieu of uncollected taxes. Following the recording of the deed in the County's name, the management and disposition is then transferred to the Property Resources Division of the Department of Business and Community Services.

Property Resources Division is tasked with managing, administering and dispersing of tax foreclosed real property assets in a cost effective manner that will provide a County public benefit. Oregon Revised Statutes provides for Property Resources Division to recover annual operational expenses. No General Fund resources are currently allocated to this program.

For information on this issue or copies of attachments, please contact Jean Athey @503.742.4384

RECOMMENDATION: Staff recommends the Board approval of the proposed Public Auction sale list including established minimum bids and interest rate of 9 percent on contract sales.

Respectfully submitted,



Laura Zentner,
Deputy Director of Business and Community Services

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

In the Matter of the Sale of Real
Property acquired by Clackamas
County by tax deed, gift or purchase.



ORDER NO.

Page 1 of 3

This matter coming before the Board of County Commissioners at this time, and it appearing to the Board that the real property parcels listed below, having been acquired by Clackamas County by tax deed, gift or purchase, are not currently in use for County purposes; and

IT FURTHER APPEARING a list of the proposed auction properties was circulated and reviewed by County Department Heads and other governmental agencies within Clackamas County and are therefore presumed surplus.

IT FURTHER APPEARING to the Board that the following properties should be offered for public sale for not less than the minimum price specified herein and in compliance with applicable portions of ORS Chapter 275.110;

NOW, THEREFORE, the Board finds that the real property parcels listed below are surplus, and selling them is in the best interest of the citizens of Clackamas County.

IT IS HEREBY ORDERED that the following properties shall be offered for sale for not less than the minimum price specified herein and in compliance with the applicable portions of ORS Chapter 275.110 at 10:00 a.m. on May 7, 2013.

Parcels may be encumbered with restrictions, easements, conditions and covenants.

**Clackamas County Surplus Real Estate Public Oral Auction
Development Services Building
Auditorium
150 Beavercreek Rd., Oregon City, OR 97045
May 7, 2013**

**REGISTRATION begins at 9:00 a.m. / AUCTION begins at 10:00 a.m.
*** Auction will be conducted in English and in U.S. currency only *****

Item #	Map #	Description	Assessor's Real Market Value \$	Minimum Bid \$	20% Deposit Amount \$
1	13E25C00 400	VACANT LAND – off S.E. Eastmont Dr., Boring area, approximately 4.00 acres	117,648	58,824	11,765
2	14E 29B 00109 & 00202	VACANT LAND – on 307th. Ave., Gresham, approximately 0.13 acres	9,441	2,360	472

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

In the Matter of the Sale of Real
Property acquired by Clackamas
County by tax deed, gift or purchase.



ORDER NO.

Page 2 of 3

3	21E24AC 02401	VACANT LAND – off Mapleton Dr., West Linn, approximately 3.07 acres	410,175	160,000	32,000
4	22E29DA 03001	VACANT HOUSE – 16761 Livesay Rd., Oregon City, approximately 0.70 acres.	208,448	77,-61	15,412
5	22E34A 02400	VACANT LAND – off S. Neibur Rd., Redland area, approximately 1.05 acres.	84,663	21,166	4,233
6	27E 30BC 03000, 03100, 03101, 03203	VACANT LAND – off Brightwood Loop Rd., Brightwood area, apx. 1.19 acres.	73,576	18,394	3,679
7	27E32DA 06100	VACANT LAND – on John Paul Jones Ave., Welches area, approximately 0.11 acres.	11,045	2,761	552
8	34E28BC 04200	VACANT LAND – off S.E. Forest Glen Rd, Estacada, approximately 0.34 acres.	75,545	18,886	3,777
9	34E28BC 04300	VACANT LAND – off S.E. Forest Glen Rd, Estacada, approximately 0.58 acres.	75,545	37,773	7,555
10	37E03BA 09600	VACANT LAND – on Old Smokey Rd., Rhododendron area, approximately 0.11 acres.	11,045	2,761	552
11	38Q23AB 08000	VACANT LAND – off Hwy. 26, Government Camp area, approximately 1.02 acres.	157,058	78,529	15,706
12	42E22A 02300	VACANT HOUSE– 15999 S. Howards Mill Rd., Mulino, approximately 2.90 acres with a 27'x 56' manufactured home built in 1998.	174,151	130,613	26,123

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

In the Matter of the Sale of Real
Property acquired by Clackamas
County by tax deed, gift or purchase.



ORDER NO.
Page 3 of 3

IT IS FURTHER ORDERED that the Sheriff of Clackamas County, Oregon be and is hereby directed and authorized to sell the above described properties in the manner provided by law and for not less than the minimum price herein determined; and

IT IS FURTHER ORDERED that the Sheriff of Clackamas County, Oregon is hereby directed to advertise the sale of the above described property in a newspaper of general circulation, circulated and published in Clackamas County, once a week for four consecutive weeks prior to such sale. Such notice shall include the date, time and place of sale, the description of the properties or interests therein to be sold, the market value of the properties or interests as determined by a certified appraiser or the Clackamas County Department of Taxation and Assessment, the minimum price as fixed by the Board at the date of this order. The Sheriff shall further make a proof of publication of such notice in the same manner as proof of publication of summons is made and shall file such proof of publication with the county clerk. Copies of all Sheriff Sale documents shall be forwarded to the Property Resources section upon sale completion; and

IT IS FURTHER ORDERED that the Director or Deputy Director of Business and Community Services, is hereby authorized to act as representative of the Board of County Commissioners in the acceptance and execution of all documents necessary for the sales; and that the Director of Finance for Clackamas County is hereby authorized to execute all necessary documentation for the fulfillment of any contracts of sale associated with these sales at the time of fulfillment, as representative for the Board of County Commissioners; and

IT IS FURTHER ORDERED that the interest rate for any County installment contracts generated by this sale shall be established as 9% and that all proceeds shall be distributed according to ORS 275.275, Tax Title Land Fund.

DATED this 7th day of March, 2013

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



**WATER
ENVIRONMENT
SERVICES**

Beyond clean water.

7

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

March 7, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Agreement Between
Tri-City Service District and Stettler Supply & Construction for the
Digester Maintenance Project

Purpose/Outcomes	Install capability to run existing solids digestion systems in parallel operation expanding existing capacity to accommodate growth and provide operational flexibility. The long term financial benefit of the project is that it enables both districts to delay significant near term financing and associated rate increases in favor of a gradual ramp-up of rates over a longer period of time.
Dollar Amount and Fiscal Impact	The agreement is for an amount not to exceed \$349,700. The project will be funded from the Tri-City Service District FY 2012-13 annual budget.
Funding Source	Tri-City Service District FY 2012-13 Annual Budget
Safety Impact	None
Duration	March 7, 2013 to September 30, 2013
Previous Board Action	None
Contact Person	Michael S. Kuenzi, Director - Water Environment Services – 503-742-4560
Contract No.	To be established

BACKGROUND:

Once wastewater has gone through the mechanical and biological treatment processes, decanted materials referred to as solids, must be processed and disposed of. These solids, consisting primarily of biological cell matter, are normally biologically digested prior to mechanical processed prior to the Districts' land applying the material as a fertilizer. The Tri-City District's solids processing capability is nearing its design limitations. Staff has determined that this capacity can be expanded through employing an alternative operating strategy and re-configuration of our systems; modifying the process to allow Tri-City's two digesters to operate in parallel as opposed to its current series operating scheme. The modification is anticipated to provide the District with an additional 16 to 18 years of growth capacity at a moderate growth rate and enable staff to ramp wholesale rates up at a slower pace in preparation for future investments.

On December 19, 2012, the District publicly advertised this project. In addition, the District held a mandatory pre-bid meeting with bidders, allowing extensive interaction of District personnel with primary bidders. On January 17, 2013, the District received bids and confirmed that the low responsive bidder is eligible to perform work in the State of Oregon and is not on the State's ineligible list. Of the bids received, it has been determined Stettler Supply & Construction is the low responsive bidder.

Stettler was selected to construct this alternative configuration. Specifically, the firm will provide mechanical and electrical systems modifications for the solids processing facilities, eliminating existing process

constraints and providing additional process capacity. The project scope includes replacement of inadequate sludge recirculation pumps to eliminate gas locking, installation of digester level sensing equipment, modifications to the DAFT tankage for process enhancement and odor control and replacement of pneumatic actuated valves and piping for reliability. This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

For these reasons, Staff recommends:

1. The Board of County Commissioners, acting as the governing body of the Tri-City Service District, a county service district ("District"), and as the Local Contract Review Board, make a finding that advertisements for bids were properly published, that written bids were timely received by the District, and that bids were opened publicly at the designated time; and
2. The Board approve the contract for the Digester Maintenance Project between the Tri-City Service District and Stettler Supply & Construction for an amount not to exceed \$349,700.00; and
3. The Director of Water Environment Services be authorized to execute the agreement between Stettler Supply & Construction and the Tri-City Service District without further Board action.

Respectfully submitted,



Michael Kuenzi, PE
Director

SECTION 00500

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20____
by and between Tri-City Service District (hereinafter called OWNER) and
Stettler Supply Company DBA Stettler Supply & Construction, an Oregon Corporation (herein-
after called Contractor).

OWNER and Contractor, in consideration of the mutual covenants hereinafter set forth, agree
as follows:

Article 1. WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Doc-
uments. The Work is generally described as follows:

Tri-City Water Pollution Control Plant – Digester Maintenance Project

Article 2. THE PROJECT

The Project for which the Work is described in the Contract Documents.

Article 3. ENGINEER

- 3.1 The term Engineer is defined in the Supplementary Conditions.
- 3.2 Engineer is to act as OWNER's representative, assume all duties and responsi-
bilities and have the rights and authority assigned to Engineer in the Contract
Documents in connection with completion of the Work in accordance with the
Contract Documents.

Article 4. CONTRACT TIMES

- 4.1 All time limits for milestones, if any, substantial completion, and completion and
readiness for final payment are stated in the Contract Documents and are of the
essence of the Contract.
- 4.2 The Contractor shall commence work within 10 calendar days after receipt of
written Notice-to-Proceed. Contractor shall substantially complete all of the Work
within 165 calendar days of Notice-to-Proceed, and all of the Work shall be com-
pleted and ready for final payment in accordance with Paragraph 14.07 of the
General Conditions within 180 calendar days after Notice-to-Proceed. The written
Notice-to Proceed will be forwarded to the Contractor after the Contractor sub-
mits the signed Agreement, Performance Bond and Payment Bond, and Certifi-
cate of Insurance to the OWNER and these documents have been approved as
to form by the OWNER's attorney, and signed by the OWNER. In addition, the
Contractor shall adhere to timeframes for Interim Milestones, if any are identified

in Section 01313. Interim Milestones identified in Section 01313 (if any) shall be made substantially complete and operational within the times specified in Section 01313.

- 4.3 Contractor and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay OWNER five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until all of the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the days specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, Contractor shall pay OWNER five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for completion and readiness for final payment for all of the Work, plus any fees or penalties imposed by regulators for other violations. In addition, Liquidated Damages for failure to substantially complete Interim Milestone Work identified in Section 01313 (if any) shall be five hundred dollars (\$500.00) for each calendar day that expires after the times specified in Section 01313.

Article 5. CONTRACT PRICE

- 5.1 OWNER shall pay Contractor for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to Article 5.2 below.
- 5.2 For all Work, in accordance with Section 00310 – Bid Form:

A. Total Base Bid Amount: \$ 349,700.00
(in figures)

Article 6. PREVAILING WAGE RATES

- 6.1 CONTRACTOR agrees that the provisions required by ORS 279C.830 pertaining to CONTRACTOR's payment of prevailing wage rates shall be included as part of this Agreement. Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor, or other person doing or contracting for whole or any part of the work on this Contract shall be paid not less than the applicable prevailing wage in effect for this Contract.

Article 7. PAYMENT PROCEDURES

7.1 Progress Payments and Retainage

- A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.
- B. If the Contract is for a public work and the Contract price is \$10,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the OWNER and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, Oregon, 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.
- C. Make progress estimate of work performed in any calendar month and submit to the Engineer for approval by the fifth (5th) day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.
- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the Engineer approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the Engineer provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- E. If the Contract price is determined wholly on a unit basis, Engineer may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the Engineer, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- F. If the OWNER receives written notice of any unsettled claims for damages or other costs due to Contractor's operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of Engineer.
- G. Progress payments will be made by OWNER on a monthly basis within thirty (30) days after receipt of the Contractor's estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the earlier date. Negotiable warrants will be issued by OWNER for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by OWNER until it is included in and paid to Contractor as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if Contractor elects,

retainage as accumulated will be deposited by OWNER in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the OWNER may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.

- H. The Engineer may decline to approve an application for payment and may withhold such approval if, in the Engineer's opinion, the work has not progressed to the point indicated by the Contractor's submittal in paragraph C above. The Engineer may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the OWNER from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the Contractor, (7) claims against the Contractor by the OWNER, (8) failure of Contractor to submit updated project schedules as specified.

When the above grounds are removed, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the Contractor to interest on such withheld payments or partial payments.

- I. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by OWNER.
- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the Engineer.
- L. Contractors are required to provide the OWNER with a list of Contractor's personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the OWNER's office. No payment will be released to an unauthorized person.

7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the Engineer in writing when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.
- B. If the Contractor believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the Engineer to be incorrect, Contractor shall submit to the Engineer within fifteen (15) days of mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the OWNER shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Section 00700, Subsection 10.05, Claims and Disputes.
- C. Upon receipt of the executed Certificate of Completion from the Contractor, and approval by the Engineer, the Engineer will process the final payment.
- D. Provided Contractor submits a claim in the manner and time as required in B. above, the Engineer, as soon as practicable, will consider and investigate the claim or claims of the Contractor for compensation earned under the Contract and not included in the Engineer's final estimate and Certificate of Completion. The Engineer will then promptly advise the Contractor of acceptance or rejection of the claim in full or part. If the Engineer allows the Contractor's claims in full or in part, Engineer will prepare a revised final estimate and Certificate of Completion, including all such items allowed and will submit the same to the Contractor.
- E. The Contractor shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the Engineer rejects the claim or claims, he will issue written notice of rejection mailed to the Contractor's last known address as shown in the records of the OWNER.
- G. The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER. The Engineer's issuance of a revised

final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.

- H. Upon return of the fully executed Certificate of Completion from the Contractor, the Engineer will submit the Certificate of Completion and final estimate to the OWNER for approval. Upon approval and acceptance by the OWNER, Contractor will be paid a total payment equal to the amount due under the Contract including retainage.
- I. Monies earned by the Contractor are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefore, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the Contractor's claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident Contractor will provide OWNER with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to OWNER, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claims against OWNER arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting OWNER, its officers, agents and employees as well as Contractor. This is a condition of final payment and Contractor will not be entitled to final payment on release of retainage nor interest thereon until execution and delivery of said Receipt, Release & Waiver.
- L. If OWNER declares a default of the Contract and Surety completes said Contract, all payments after declaration of default and retainages held by OWNER shall be paid to Surety and not to Contractor in accordance with terms of the Contract.
- M. Acceptance by Contractor of final payment shall release OWNER and Engineer from any and all claims by Contractor whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release Contractor or his Sureties from warranties or other obligations required in the performance of the Contract.

Article 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire agreement between OWNER and Contractor concerning the Work consist of the following:
1. This Agreement
 2. Performance Bond
 3. Payment Bond
 4. General Conditions
 5. Supplementary Conditions
 6. Specifications (including Appendices if any) as listed in Table of Contents of Volume 1 – Contract Specifications, including the referenced Oregon State prevailing hourly wage rates for Public Works Contracts in Oregon requirements.
 7. Drawings consisting of a cover sheet and drawings as listed in Volume 2 and Volume 3.
 8. Exhibits to this Agreement (enumerated as follows):
 - a. Addenda number(s) 1 to 3 included as Exhibit 1.
 - b. Bid Form
 - c. Bid Bond
 - d. Noncollusion Affidavit
 - e. Resident/Nonresident Bidder Status
 - f. First-tier Subcontractor Disclosure Form
 9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Written Amendments.
 - c. Work Change Directives.
 - d. Change Order(s).

- B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and Contractor each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.5 One Year Maintenance and Warranty
- A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the OWNER and at no cost to OWNER, any and all defects, breaks, or failures of the Work occurring within one (1) year following the date of Acceptance of the Work due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The one-year maintenance period required shall, with relation to such required repair, be extended one (1) year from the date of completion of such repair. Where equipment and/or systems are specified to have a longer warranty period, Contractor shall be bound to the longer warranty period for the specific Contractor furnished equipment and/or system.
- B. If Contractor, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, OWNER may have the defects corrected, and Contractor and Contractor's Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the

OWNER, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the OWNER to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

- C. As a means of providing surety during the maintenance period, the Contractor shall provide to the OWNER written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:
1. Continuance of the contract performance bond at the original or a reduced amount.
 2. Maintenance bond in a format and with the conditions acceptable to the OWNER.
 3. Cash deposit to the OWNER's Treasury, with a treasurer's receipt acting as proof of surety.
 4. Other arrangements, as may be proposed by the contractor and accepted by the OWNER.

Article 10. GOVERNING LAW

- 10.1 It is expressly understood that this Agreement in all respects shall be governed by the laws of the State of Oregon and the ordinances of the Clackamas County Service District No.1 and Clackamas County.

Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

- 11.1 By entering into this Agreement, the Contractor irrevocably assigns to OWNER any claim or cause of action which the Contractor now has or which may accrue in the future, including at OWNER's option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person which are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Agreement.
- 11.2 Contractor shall require any subcontractor to irrevocably assign to the OWNER, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the OWNER's option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of this Agreement.

11.3 In connection with this assignment, it is an express obligation of the Contractor that it shall take no action which in any way diminishes the value of the rights conveyed or assigned hereunder to the OWNER. It is an express obligation of the Contractor to advise the OWNER's legal counsel:

- A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the OWNER.

11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to the OWNER its proportionate share thereof, if any, assigned to the OWNER hereunder.

Article 12. RECORDS RETENTION

12.1 Contractor shall maintain all standard records and accounts as required by the Contract Documents throughout the life of the Agreement and for a period of three years after the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives as of the day and year first above written.

WATER ENVIRONMENT SERVICES
for
TRI-CITY SERVICE DISTRICT

CONTRACTOR:

OWNER:

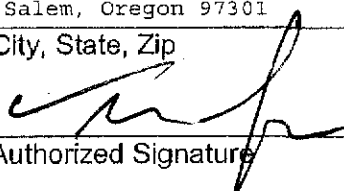
Stettler Supply & Construction
Company

Director: Michael S. Kuenzi, PE

1810 Lana Ave. NE
Address

Date

Salem, Oregon 97301
City, State, Zip


Authorized Signature

Secretary
Title

93-0463205
Federal Tax ID Number

2-4-13
Date

END OF SECTION

JAN 30 2013

BOND NO. 105834576

SECTION 00610
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we STETTLER SUPPLY COMPANY dba
STETTLER SUPPLY & CONSTRUCTION

as PRINCIPAL, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

a corporation, duly authorized to do a general surety business in Oregon, as SURETY, and jointly and severally held and bound unto

TRI-CITY SERVICE DISTRICT

the OBLIGEE herein, in the sum of --THREE HUNDRED FORTY-NINE THOUSAND SEVEN HUNDRED AND
00/100-- (dollars) (\$) 349,700.00

for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS, STETTLER SUPPLY COMPANY dba STETTLER SUPPLY & CONSTRUCTION
(Contractor)

the PRINCIPAL herein, on the _____ day of _____, 2013 entered into a contract with the OBLIGEE which contract documents consist of the "Invitation to Bid"; the "Instructions to Bidders", the "Bid Proposal, Schedule of Prices and Subcontractor Form", the "Bid Bond", the "Performance Bond and the Payment Bond", the "Certificate of Insurance", the "Prevailing Wage Rates for Public Contracts in Oregon" the "Standard Specifications and Special Provisions", " the "Plans and Drawings", and the "Agreement Form" all as hereto attached and made a part hereof, whereby said PRINCIPAL undertakes to do all labor, furnish all plant and equipment, and furnish all material, in accordance with all the terms and conditions set forth in said contract documents; and to save harmless the OBLIGEE from any claim for damages or injury to property or persons arising by reason of said work, as set out more fully in said contract documents; and to do and perform all things in said contract documents required, in the time and manner under the terms and conditions therein set forth; and in conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall commencing with the date hereof and continuing for one year after the complete performance of the contract and the final acceptance of the work in the contract, save harmless the OBLIGEEs, its officers and agents, from all claims therefore, or from any claim for damages or injury to property or persons arising by reason of said work; and shall, in the time and manner, and under the terms and conditions

prescribed, well and faithfully do, perform, and furnish all matters and things as by them in said contract undertaken, and as by law, state and national, prescribed, then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

(a) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.

(b) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(c) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things by him undertaken to be performed under said contract upon the terms proposed therein and shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical and hospital care or other needed care and attention incidental to sickness or injury to the employees of such PRINCIPAL, pursuant to the laws of this state and any contract entered into pursuant thereto or collected or deducted from the wages of said employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services, and shall do all things required of said PRINCIPAL by the laws of this state.

This bond is given and received under the authority of ORS Chapter 279, the provisions of which hereby are incorporated into this bond and made a part hereof.

Provide the following information:

Bond #:	<u>105834576</u>
Agent Contact Name:	<u>A.G. SADOWSKI COMPANY</u>
Agent Address:	<u>1605 LIBERTY ST. SE, SALEM, OR 97302</u>
Agent Phone Number:	<u>503-362-2711</u>

IN WITNESS WHEREOF, the parties hereto have caused this bond to be executed in one original, this 28TH day of JANUARY 2013.

_____(SEAL)

STETTLER SUPPLY COMPANY dba _____(SEAL)

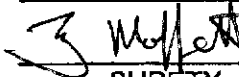
STETTLER SUPPLY & CONSTRUCTION _____(SEAL)


_____(SEAL)
PRINCIPLE

WITNESSES:

TRAVELERS CASUALTY AND SURETY _____(SEAL)

COMPANY OF AMERICA _____(SEAL)


_____(SEAL)
SURETY TY MOFFETT
ATTORNEY-IN-FACT

The attorney-in-fact who executes this bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.

To each executed original of this bond, there must be attached a complete set of the contract documents, as the term is defined in Section 00500 Agreement, Article 8.1.A, with all corrections, interlineations, signatures, etc., completed reproduced therein.

****END OF SECTION****

SECTION 00620
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we STETTLER SUPPLY COMPANY dba

STETTLER SUPPLY COMPANY

as PRINCIPAL, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

a corporation, duly authorized to do a general surety business in Oregon, as SURETY, and jointly and severally held and bound unto

TRI-CITY SERVICE DISTRICT

the OBLIGEE herein, in the sum of --THREE HUNDRED FORTY-NINE THOUSAND SEVEN HUNDRED AND

00/100-- (dollars) (\$)349,700.00

for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS, STETTLER SUPPLY COMPANY dba STETTLER SUPPLY & CONSTRUCTION
(Contractor)

the PRINCIPAL herein, on the _____ day of _____, 2013 entered into a contract with the OBLIGEE which contract documents consist of the "Invitation to Bid"; the "Instructions to Bidders", the "Bid Proposal, Schedule of Prices and Subcontractor Form", the "Bid Bond", the "Performance Bond and the Payment Bond", the "Certificate of Insurance", the "Prevailing Wage Rates for Public Contracts in Oregon" the "Standard Specifications and Special Provisions", " the "Plans and Drawings", and the "Agreement Form" all as hereto attached and made a part hereof, whereby said PRINCIPAL undertakes to promptly make payment for all labor, services, material, and sums due the workmen's compensation board or equivalent, the collector of internal revenue, the unemployment compensation trust fund, and the treasurer of the State of Oregon in conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall promptly pay all persons furnishing labor, services and material, and sums due for workmen's compensation insurance or equivalent, social security and unemployment compensation, sums due to the Department of Revenue, to him and to his subcontractor, or to their assigns, on or about said work then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

(a) All materialmen, and all persons who shall supply such laborers, mechanics, or subcontractors with material, supplies or provisions for carrying on such work, shall have a direct right of action against the PRINCIPAL and SURETY on this bond, second only to the right of the OBLIGEE under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such right of action shall be asserted in a proceeding instituted in the name of the OBLIGEE to the use and benefit of the person, firm, or corporation instituting such action and of all other persons, firms, or corporations having claims hereunder, and any other person, firm or corporation having a claim hereunder shall have the right to be made a party to such proceeding (but not later than one year after the complete performance of said contract and final acceptance of the work in the contract) and to have such claim adjudicated in such action and judgment rendered thereon.

(b) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.

(c) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(d) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for in such contract and shall not permit any lien or claim to be filed or prosecution against the OBLIGEEs, on account of any labor or material furnished, and shall promptly pay all contributions or amount due the workmen's compensation board or equivalent and all contributions or amounts due the state employment compensation trust fund incurred in the performance of said contract, and shall also pay all sums of money withheld from the employees and payable to the state tax commission pursuant to ORS 316.711, and shall do all things required of said PRINCIPAL by the laws of this state.

This bond is given and received under the authority of ORS Chapter 279, the provisions of which hereby are incorporated into this bond and made a part hereof.

Provide the following information:

Bond #:	105834576
Agent Contact Name:	A.G. SADOWSKI COMPANY
Agent Address:	1605 LIBERTY ST. SE, SALEM, OR 97302
Agent Phone Number:	503-362-2711

IN WITNESS WHEREOF, the parties hereto have caused this bond to be executed in one original, this 28TH day of JANUARY, 2013.

_____(SEAL)

STETTLER SUPPLY COMPANY dba _____(SEAL)


STETTLER SUPPLY & CONSTRUCTION _____(SEAL)


_____(SEAL)
PRINCIPLE

WITNESSES:

TRAVELERS CASUALTY AND SURETY _____(SEAL)

COMPANY OF AMERICA _____(SEAL)


_____(SEAL)
SURETY TY MOFFETT
ATTORNEY-IN-FACT

The attorney-in-fact who executes this bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.

To each executed original of this bond, there must be attached a complete set of the contract documents, as the term is defined in Section 00500 Agreement, Article 8.1.A, with all corrections, interlineations, signatures, etc., completed reproduced therein.

END OF SECTION



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 218303

Certificate No. 005028126

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

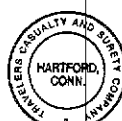
A.G. Sadowski, Derek A. Sadowski, Kathleen M. Sadowski, and Ty Moffett

of the City of Salem, State of Oregon, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 7th day of September, 2012

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this 7th day of September, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2016.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

JAN 30 2013

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
01/28/2013

PRODUCER (503) 362-2711
A. G. Sadowski Company
 1605 Liberty Street S.E.
 (503) 362-2837 FAX
Salem OR 97302-

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
STETTLER SUPPLY COMPANY DBA: STETTLER SUPPLY & CONSTRUCTION CCB # 33228
 1810 LANA AVENUE N.E.
SALEM OR 97301-

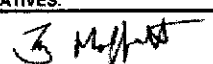
INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: BITUMINOUS CASUALTY CORP.	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CLP 3 570 955	05/28/2012	05/28/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 2,000,000
A	X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CAP 3 570 956	05/28/2012	05/28/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		/ /	/ /	AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	CUP 2 800 512	05/28/2012	05/28/2013	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below		/ /	/ /	<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER		/ /	/ /	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 RE: TRI-CITY WATER POLLUTION CONTROL PLANT DIGESTOR MAINTENANCE. THE OWNER, ENGINEER ENGINEER'S CONSULTANTS, EACH FO THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND OTHER CONSULTANTS AND SUBCONTRACTORS AND ANYONE REQUIRED BY WRITTEN CONTRACT, ARE ADDITIONAL INSURED ON A PRIMARY BASIS PER THE ATTACHED ENDT.

CERTIFICATE HOLDER	CANCELLATION
(503) 353-4567 (503) 353-4565 ATTN: MICHAEL TRENT TRI-CITY SERVICE DISTRICT 9101 SE SUNNYBROOK BLVD. SUITE 441 CLACKAMAS OR 97015-	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

→ **B. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – ONGOING OPERATIONS**

SECTION II – WHO IS AN INSURED is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured(s) at the project(s) designated in the written contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

C. AUTOMATIC WAIVER OF SUBROGATION

Item 8. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

8. Transfer of Rights of Recovery Against Others to Us and Automatic Waiver of Subrogation.

- a. If the insured has rights to recover all or part of any payment we have made under this *Coverage Form*, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If required by a written contract executed prior to loss, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of "your work" for that person or organization.

D. EXTENDED NOTICE OF CANCELLATION, NONRENEWAL

Item **A.2.b.** of the **COMMON POLICY CONDITIONS**, is deleted and replaced with the following:

A.2.b. 60 days before the effective date of the cancellation if we cancel for any other reason.

Item 9. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

9. WHEN WE DO NOT RENEW

"Residential project" means any project where 30% or more of the total square foot area of the structures on the project is used or is intended to be used for human residency. This includes but is not limited to single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments and appurtenant structures (including pools, hot tubs, detached garages, guest houses or any similar structures). A "residential project" does not include military owned housing, college/university owned housing or dormitories, long term care facilities, hotels, motels, hospitals or prisons.

All other terms, provisions, exclusions and limitations of this policy apply.

S. AUTOMATIC ADDITIONAL INSUREDS - MANAGERS OR LESSORS OR PREMISES

SECTION II - WHO IS AN INSURED is amended to include:

Any person or organization with whom you agree in a written contract or written agreement to name as an additional insured but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises, designated in the written contract or written agreement, that is leased to you and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured listed in the written contract or written agreement.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

T. AUTOMATIC ADDITIONAL INSUREDS - STATE OR GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISIONS - PERMITS OR AUTHORIZATIONS

SECTION II - WHO IS AN INSURED is amended to include any state or governmental agency or subdivision or political subdivision with whom you are required by written contract, ordinance, law or building code to name as an additional insured subject to the following provisions:

This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
2. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

U. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE - COMPLETED OPERATIONS

SECTION II – WHO IS AN INSURED is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy for completed operations, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the project designated in the contract, performed for that additional insured and included in the "products-completed operations hazard".

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

V. ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS

SECTION II – WHO IS AN INSURED is amended to include as an additional insured any architect, engineer or surveyor who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations performed by you or on your behalf.

This includes such architect, engineer or surveyor, who may not be engaged by you, but is contractually required to be added as an additional insured to your policy.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
2. Supervisory, inspection or engineering services.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - SPECIFIC ENTITIES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

WHO IS AN INSURED is changed to include as an "insured" the person or organization named in this endorsement. However, the additional insured is an "insured" only for "bodily injury" or "property damage" arising out of work or operations performed by you or on your behalf for the additional insured and resulting from the ownership, maintenance or use of a "covered auto," by:

1. You, or
2. Any of your employees or agents; or
3. Anyone other than the additional insured or any employee or agent of the additional insured, while using with your permission a covered "auto" you own, hire or borrow.

ADDITIONAL INSURED:

ANYONE REQUIRED BY WRITTEN CONTRACT.

SECTION 00301

BID FORM

To: Tri-City Service District

Address: 15941 S. Agnes Avenue, Oregon City, Oregon 97045

Project Title: Tri-City Water Pollution Control Plant – Digester Maintenance Project

1. BIDDER'S DECLARATION:

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. BIDDER ACCEPTS:

BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) consecutive calendar days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Documents within ten (10) consecutive calendar days after the date of OWNER's Notice of Award.

3. BIDDER's REPRESENTATIONS:

In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

- A. BIDDER has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged: (List Addenda by Number and Date):

Addenda Number	Date of Issue
<u>1</u>	<u>1/15/13</u>
<u>2</u>	<u>1/16/13</u>
<u>3</u>	<u>1/17/13</u>
_____	_____
_____	_____

- B. BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance, and furnishing of the Work.
- C. BIDDER's authorized representative attended the mandatory pre-bid conference is hereby acknowledged.

L. Certifies that BIDDER has not discriminated against minority, women, or emerging small business enterprises in obtaining subcontracts.

M. Major Equipment Schedule – Owner Named Items: The Total Base Bid shall include and be based on Bidder providing Owner Named Items identified in the Major Equipment Schedule shown in Paragraph 4. Bidder may propose Or-Equal alternatives to Owner Named Items for Owner consideration after Contract Award in the blank spaces provided for that purpose in the Major Equipment Schedule. See Instruction to Bidders, Article 23 for requirements associated with proposing Or-Equal alternatives. Bidder further agrees to accept as payment for the Work proposed within the Bid Documents for Owner-Named Items at the sum of the Bid prices for the actual items selected and approved. Cost savings associated with Owner acceptance of Bidder proposed Or-Equal manufactures products, systems, materials shall acrew to the Owner and shall be formalized in a Change Order.

4. TOTAL BASE BID:

a. Total Base Bid Amount: OWNER will pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following:

b. The Total Base Bid Amount will be the sum of the Lump Sum Amount for all Work (excluding the amount of OWNER Select items identified in the Major Equipment Schedule and excluding the Owner Contingency Allowance), plus the amount for OWNER Select items identified in the Major Equipment Schedule, plus the Owner Contingency Allowance amount specified below.

1. **Lump Sum Amount** – All Work except Major Equipment Schedule amount and except Owner Contingency Allowance:

\$ One hundred eighty four thousand one hundred
(words)

\$ 184,100.00
(figures)

2. **Major Equipment Schedule** Amount – Based on Owner Named Items only (“A” designated rows.) Bidder proposed Or-Equal item price information is for OWNER consideration after Contract Award.

\$ One hundred forty five thousand six hundred
(words)

\$ 145,600.00
(figures)

3. Owner Contingency Allowance (OCA):

An allowance designated by the OWNER in the amount identified below is to be included in Contract Price. The OCA may only be used if and when authorized by the OWNER. The OCA may be used in part, in full or not at all. Use of the OCA shall only be through the Change Order process if and when authorized by the OWNER. Any or all of the OCA that remains unused shall be deducted from the Contract Amount at the time of final Payment.

Owner Contingency Allowance: \$20,000.00

4. **Total Base Bid Amount:** The sum of Lump Sum Amount plus Major Equipment Schedule Amount, plus the Owner Contingency Allowance:

\$ Three hundred forty nine thousand seven hundred
(words)

\$ 349,700.00
(figures)

5. Completion.

BIDDER agrees that the Work will be substantially completed and finally completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement. BIDDER agrees that Work associated with all defined interim milestones will be completed on or before the dates or within the number of calendar days indicated in the Agreement.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to achieve substantial completion, and make the Work finally complete and ready for final payment, and for completion of all defined interim milestones, within the Contract Times specified in the Agreement.

6. Attached Documents.

The following documents are attached to and made an integral part of this Bid. Failure to submit any of these documents shall render the bid non-responsive. Error in completing these documents may render the bid non-responsive.

- a. Required Bid Security in the amount of five (5) percent of the Bid amount in the form of a certified or bank check, or Bid Bond per Section 00310 – Bid Bond.
- b. Required BIDDER's Noncollusion Affidavit form per Section 00320.

10. BIDDER.

SUBMITTED on January 17th, 20 13.

Oregon State CONTRACTOR License No. 33228

If BIDDER is:

An Individual:

By _____
(Individual's Signature)

(Printed Name)

doing business as _____

Business address: _____

Phone and facsimile no.: _____

A Partnership:

By _____
(Firm name)

(General Partner's Signature)

(Printed Name)

Business address: _____

Phone and facsimile no.: _____

CONSENT RESOLUTION

WHEREAS, the undersigned are all of the Directors and Shareholders of *Stettler Supply Co.*, an Oregon corporation (the "*Corporation*"); and

WHEREAS, the undersigned wish to take the action as hereinafter set forth pursuant to the Oregon Business Corporation Act; and

WHEREAS, the undersigned Shareholders and Directors of the Corporation wish to take the following actions.

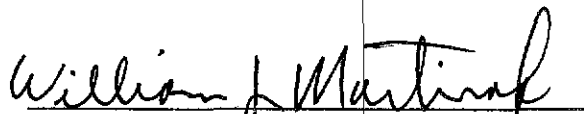
NOW, THEREFORE, the following resolutions are unanimously adopted:

RESOLVED, that the following individuals shall serve as Directors of Corporation during the fiscal year ending December 31, 2013 or until their successors are duly elected and qualified to serve: William J. Martinak and Trevor W. Spires.

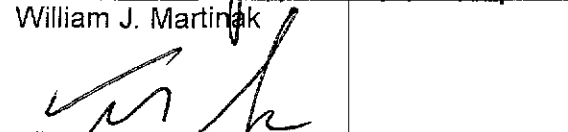
BE IT FURTHER RESOLVED, that the following individuals shall serve as Officers of the Corporation during the fiscal year ending December 31, 2013, or until their successors are duly appointed and qualified to serve.

President: William J. Martinak
Secretary/Treasurer Trevor W. Spires

IN WITNESS WHEREOF, the undersigned have hereunto set their hands effective as of December 28, 2012.



William J. Martinak



Trevor W. Spires

SECTION 00320

NONCOLLUSION AFFIDAVIT

State of Oregon)
County of Marion) ss.

Contract Bid Name Tri City WTP
Digester Maint.

I state that I am Secretary (Title)

of Stetter Supply & Construction (Name of Firm) and that I am authorized to make this affidavit on behalf of this firm and its owners, directors, and officers. I am the person responsible in this firm for the price(s) and the amount of this Bid.

I state that:

(1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other Contractor, Bidder, or potential Bidder, except as disclosed on the attached appendix.

(2) That neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before Bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a Bid higher than this Bid, or to submit any intentionally high or noncompetitive Bid or other form of complementary Bid.

(4) The Bid of this firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Bid.

(5) Stetter Supply & Construction (name of this firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached appendix.

SECTION 00330

RESIDENT/NONRESIDENT BIDDER STATUS

Oregon law requires that the OWNER, in determining the lowest responsive bidder, must add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which that bidder resides.

Consequently, each bidder must indicate whether it is a resident or nonresident bidder. A resident bidder is a bidder that has paid unemployment taxes or income taxes in the State of Oregon during the 12 calendar months immediately preceding submission of this bid, has a business address in Oregon, and has stated in its bid whether the bidder is a "resident bidder." A "nonresident bidder" is a bidder who is not a resident bidder.

The undersigned bidder states that it is: (check one)

1. A resident bidder: X
2. A nonresident bidder: _____

Indicate state in which bidder resides: Oregon

CONSTRUCTION CONTRACTORS REGISTRATION

Oregon law requires that all contractors must be registered with the Construction Contractors Board in order to submit a bid to do work and to do work as a contractor. The undersigned bidder states that it is now registered with the Oregon Construction Contractors Board.

Indicate the Bidder's Registration No. 33228

[Handwritten Signature]
Signature

Stettler Supply + Construction
Name of Company

END OF SECTION

JAN 08 2013

SECTION 00310

BID BOND

Bond No.: N/A

Amount: \$ --10%--

KNOW ALL MEN BY THESE PRESENTS, that STETTLER SUPPLY COMPANY dba STETTLER

SUPPLY & CONSTRUCTION

As BIDDER (PRINCIPAL), and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

a corporation duly organized under the laws of the State of CONNECTICUT

having its principal place of business at ONE TOWER SQUARE, HARTFORD, CT 06183

in the State of CONNECTICUT

and authorized to do business in the State of Oregon, hereinafter "Surety," are jointly and severally held and firmly bound unto the Tri-City Service District, a county service district formed pursuant to ORS Chapter 451, and public contracting agency, as OWNER (OBLIGEE), in the sum of FIVE PERCENT (5%) of the total amount of the bid of the

Principal, in the sum of --TEN PERCENT OF TOTAL AMOUNT BID-- DOLLARS

(\$--10%--), for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns.

The BIDDER is herewith submitting its offer for the fulfillment of the OWNER's contract for construction of the Tri-City Water Pollution Control Plant – Digester Maintenance Project.

NOW THEREFORE, if the bid proposal submitted by the BIDDER is accepted and the contract awarded to the BIDDER, and if the BIDDER shall execute the proposed Agreement and shall furnish such insurance certificates and performance and payment bonds as required by the Contract Documents within the time fixed by the documents, then this obligation shall be void; if the BIDDER shall fail to execute the proposed contract and furnish the bonds, Surety hereby agrees to pay to the OWNER the above sum within ten (10) days of such failure. The surety and OWNER agree that failure or neglect of the BIDDER to furnish, execute and deliver to the OWNER the required performance bond and payment bond and evidence of insurance, and to enter into, execute and deliver to the OWNER the Agreement of the form provided within ten calendar days after receiving written notice from the OWNER that the award has been made and the Agreement is ready for execution will cause damage to the OWNER; that the calculation of the damages is very difficult and therefore the amount payable to the OWNER under the bid guaranty bond, or cash or certified cashier's check shall be paid to OWNER as liquidated damages; that this is a reasonable estimate of the damages the OWNER will suffer; that this is not a penalty.

SIGNED AND SEALED this 7TH day of JANUARY, 2013.

STETTLER SUPPLY COMPANY dba
STETTLER SUPPLY & CONSTRUCTION (SEAL) TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA (SEAL)

By: [Signature] By: [Signature]

Its: SECRETARY Its: ATTORNEY-IN-FACT
"BIDDER" "SURETY"

If the BIDDER is operating under an assumed business name, there must also be set forth in the first paragraph of the bond the names of all the partners or the individual owning the business, and the bond must be executed by one of them.

If the BIDDER is a corporation or a Limited Liability Company, the bond must be executed by one of the officers authorized to execute bonds, showing his official title and the seal of the corporation.

The bond must be executed by an attorney-in-fact for the surety company, shown on the face thereof the Oregon agent for service, and bear the seal for the surety company. Where the bond is executed by an agent, there must be included a copy of the authority of the agent to act for the surety company at the time of the execution of the bond.

To each executed original of this bond, there must be attached a complete set of Contract Documents, with all corrections, interlineations, signatures, etc., completely reproduced therein.

****END OF SECTION****



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 218303

Certificate No. 005028088

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

A.G. Sadowski, Derek A. Sadowski, Kathleen M. Sadowski, and Ty Moffett

of the City of Salem, State of Oregon, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 7th day of September, 2012

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 7th day of September, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

SECTION 00340

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Project Name: Tri-City Water Pollution Control Plant – Digester Maintenance Project

Bid #: _____ **Bid Closing: Date:** 1/17/13 **Time:** 2pm

Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award.

INSTRUCTIONS:

The bidder will check the box below stating "Not Applicable" if the bid value of the designated project is less than \$100,000. This form must be submitted either with the bid or within two (2) working hours after the advertised bid closing date and time, but no later than the submittal date and time stated in this bid packet.

Unless otherwise stated in the solicitation, this document shall not be submitted by facsimile. It is the responsibility of bidders to submit this disclosure form and any additional sheets with the project name clearly marked, at the location indicated by the specified disclosure deadline. See "Instructions to Bidders".

List below the Name, Dollar Value, and Category of Work for each first-tier subcontractor that would be furnishing labor, or labor and materials, for which disclosure is required. Check the box stating "No First-Tier Subcontractors" if there are no first-tier subcontractors subject to disclosure. ATTACH ADDITIONAL SHEETS IF NECESSARY.

BIDDER DISCLOSURE:

NOT APPLICABLE – Amount bid for this project is less than \$100,000.

NO FIRST-TIER SUBCONTRACTORS – No first-tier subcontractors will be furnishing labor or labor and materials in connection with this project.

SUBCONTRACTOR NAME	DOLLAR VALUE	CATEGORY OF WORK
1. <u>Benton Electric</u>	<u>29,000.00</u>	<u>Electrical</u>
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

The above listed first-tier subcontractor(s) are providing labor, or labor and material, with a Dollar Value equal to or greater than:

a) 5% of the total Contract Price or \$15,000, whichever is greater. [If the Dollar Value is less than \$15,000 do not list the subcontractor above.]

or

b) \$350,000 regardless of the percentage of the total Contract Price.

Form Submitted By (Bidder Name): Stettler Supply Company DBA Stettler Supply & Construction
Contact Name: Trevor Spires Phone # 503-585-5550

END OF SECTION



**WATER
ENVIRONMENT
SERVICES**

Beyond clean water.

8

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

March 7, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Agreement for Professional Services Between Clackamas County Service District No. 1, Tri-City Service District and Portland Engineering, Inc. for the Instrumentation and Control Systems Integrator of Record

Purpose/Outcomes	Standardize and maintain the telemetry system for both Districts.
Dollar Amount and Fiscal Impact	Funds for professional integrator services are budgeted in the FY2012-13 budget for each District and will be allocated as specific needs are identified. The agreement is for an amount not to exceed \$300,000 within any given fiscal year.
Funding Source	Clackamas County Service District No.1 and Tri-City Service District FY 2012-13 Annual Budgets
Safety Impact	None
Duration	March 7, 2013 to June 30, 2013, with an option to renew annually for a period of five (5) annual terms.
Previous Board Action	None
Contact Person	Michael S. Kuenzi, Director – Water Environment Services – 503-742-4560
Contract No.	To be established

BACKGROUND:

The telemetry systems for the two districts' sewage treatment plants help monitor and control plant operations. The systems for each district's treatment facility have been developed, upgraded, and added to over a thirty year period independent of each other. Now that the two districts systems have been physically tied together, operating decisions made in one district potentially impact operations in the other. Therefore, in order to gain greater operational efficiencies staff has determined that it would be in the best interest of both CCSD #1 and Tri-City to work towards standardizing our monitoring and control systems.

Staff prequalified a short list of firms with a track record of telemetry and control work. The intent is that each firm will be solicited for prices on future work order tasks. In addition, it was determined that one of these firms would be selected to act as the overall system integrator of record. The system integrator will create a new standard for all telemetry systems used by both districts and will insure the successful integration of all future telemetry system improvements using the new standard.

Professional firms were invited to submit their qualifications demonstrating both their ability to work on telemetry systems and to qualify as the system integrator of record, in accordance with local contract review board rules.

Of the four proposals received, the selection committee qualified three firms to compete for and work on future telemetry projects over the next five years. The qualified firms include: CH2M Hill, Harris Group Inc. and Portland Engineering Inc. The committee identified Portland Engineering, Inc. as the most qualified to serve as the Integrator-of-Record for both districts.

It is imperative an integrator of record provide consistency to the development project over a series of budgetary cycles and multiple project tasks performed by various contractors. Therefore, the contract was designed as single year award with the option to renew annually for up to five years based on the successful performance of the contractor and available funding. And, while the annual maximum-not-to-exceed contract capacity was established at \$300,000 per year, that maximum is not guaranteed per year. i.e. expenditures and awards under this contract will instead be developed through the Districts' budget process where staff will balance and prioritize telemetry and control projects with other District capital demands. Both district advisory and budget committees will be involved in this priority process during the annual budgetary process.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATIONS:

For these reasons, Staff recommends:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 1 and the Tri-City Service District, both ("Districts"), approve the selected firms as qualified to work on the Districts' instrumentation and control projects or telemetry systems for the next five years; and
2. Approve the agreement between Clackamas County Service District No. 1, Tri-City Service District and Portland Engineering Inc. for professional services as the Districts' Integrator of Record for an amount not to exceed \$300,000. The integrator of record agreement will be reviewed and renewed on a yearly basis for a period of five years. The Districts have reserved the right to negotiate with other qualified integrators at the end of each fiscal year if they so desire.
3. The Director of Water Environment Services be authorized to execute the agreement between Portland Engineering, Inc. and the Districts without further Board action.

Respectfully submitted,



Michael Kuenzi, PE
Director

**AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
and the
TRI-CITY SERVICE DISTRICT**

THIS AGREEMENT TO FURNISH PROFESSIONAL SERVICES (this "Agreement"), made and entered into on this _____ day of _____ in the year 2013 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, TRI-CITY SERVICE DISTRICT, both county service districts formed under Oregon Revised Statutes ("ORS") 451 (together the "DISTRICTS") and PORTLAND ENGINEERING, INC., an Oregon corporation (the "CONSULTANT").

RECITALS

WITNESSETH: That whereas the DISTRICTS intend to engage the CONSULTANT to perform the professional services described on Exhibit A, on the schedule and fee schedule as set forth on Exhibit B, each as attached hereto and incorporated by reference, hereinafter called the "PROJECT", and

WHEREAS the DISTRICTS desire the CONSULTANT'S assistance in providing engineering services for PLC and HMI programming, instrumentation, hardware, software, telemetry and other services related to wastewater treatment and conveyance operations;

NOW, THEREFORE, the DISTRICTS and the CONSULTANT for the considerations hereinafter set forth agree as follows:

ARTICLE 1 - SERVICES OF THE CONSULTANT

The CONSULTANT agrees to perform, in accordance with applicable District, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the PROJECT as stated and defined in Exhibit A (the "Services").

ARTICLE 2 – DISTRICTS' RESPONSIBILITIES

Unless otherwise specifically modified in Exhibit A the DISTRICTS will:

- 2.1 Provide adequate information to the CONSULTANT regarding the DISTRICTS requirements for the PROJECT.
- 2.2 Assist the CONSULTANT by making available all reasonably available information and technical data pertinent to the PROJECT.

2.3 Obtain approvals and permits from governmental authorities having jurisdiction over the PROJECT, and such approvals and consents from others as may be necessary for completion of the PROJECT (excepting any personal qualifications or certifications required for CONSULTANT to perform the work contemplated hereunder).

ARTICLE 3 – CONSULTANT’S RESPONSIBILITIES

3.1 The CONSULTANT agrees to complete the Services according to the schedule set forth in Exhibit B (the “Schedule”). If the DISTRICTS have requested significant modifications or changes in the scope of the PROJECT pursuant to Section 3.3, the time of performance of the CONSULTANT's services shall be adjusted accordingly.

3.2 Standards of Performance

3.2.1 The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by a competent member of CONSULTANT’s profession.

3.2.2 CONSULTANT shall be responsible for the accuracy of its services and documents resulting there from, and DISTRICTS shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation, except to the extent such action is solely attributable to deficiencies in DISTRICTS-furnished information.

3.2.3 CONSULTANT and DISTRICTS shall comply with applicable Laws or Regulations and DISTRICTS-mandated standards. Any changes to these requirements during the term of this Agreement shall not be the basis for any modifications to CONSULTANT’s scope of services, times of performance, or compensation.

3.3 Notice of Changes

In the normal course of administering the work under this Agreement, the DISTRICTS may give directives to the CONSULTANT, either written or verbal, which may constitute a change to the Services or Schedule. If an instruction, directive or decision is given that the CONSULTANT believes is a change in scope or schedule, the CONSULTANT shall notify the DISTRICTS within seven (7) calendar days of receiving such directive or instruction. The notice shall state the general nature of the change, but need not include a detailed cost or impact estimate. Failure to give timely written notice relieves the DISTRICTS from any obligation to adjust the contract amount, scope or schedule as an amendment to the Agreement. To the extent Districts agrees that a change in the Services required or the Schedule has occurred, the parties shall agree to an amendment to this Agreement pursuant to the process set forth in Paragraph 6.24 hereof.

3.5 CONSULTANT's Project Manager

The CONSULTANT shall assign personnel to do the work in the capacities and amounts

designated in Exhibit A. The CONSULTANT shall not change these personnel assignments without the prior written consent of the DISTRICTS' Project Manager (as defined in Paragraph 4.3), which consent shall not be unreasonably withheld.

ARTICLE 4 - AUTHORIZATION AND PROJECT MANAGER

4.1 Specific authorization to proceed with the Services shall be granted in writing by the DISTRICTS within a reasonable time after the execution of this Agreement. The CONSULTANT shall not proceed with the work without such authorization. The DISTRICTS' Project Manager shall have authority to give such authorizations.

4.2 This Agreement shall be effective as of the CONSULTANT's receipt of the written authorization to proceed and shall be completed as set forth in the Schedule.

4.3 DISTRICTS Project Manager

The DISTRICTS Project Manager is authorized to approve work and billings hereunder, approve subconsultants, give notices referred to herein, terminate this Agreement as provided herein and carry out any other DISTRICT actions referred to herein. The DISTRICTS' Project Manager shall be Randy Rosane, PE.

ARTICLE 5 - PAYMENTS TO CONSULTANT

In accordance with the terms and conditions of this Agreement, the DISTRICTS shall compensate the CONSULTANT as follows:

5.1 Compensation

5.1.1 The DISTRICTS agree to pay the CONSULTANT an amount equal to billable rate of Consultant's Services per Exhibit B for the Services as billed monthly. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00) without prior written approval of the DISTRICTS.

5.1.2 The CONSULTANT is entitled to no compensation for the correction or revision of any errors or deficiencies in the services provided.

5.1.3 The DISTRICTS may withhold from payments due the CONSULTANT such sums as are necessary, in the DISTRICTS' sole and absolute discretion, to protect the DISTRICTS against any loss or damage which may result from negligence or unsatisfactory work by the CONSULTANT, the failure of the CONSULTANT to perform as required under this Agreement, or claims filed against the CONSULTANT or the DISTRICTS relating to the CONSULTANT's services or work under this Agreement.

5.2 Billing and Payment Procedure

- 5.2.1 The CONSULTANT will provide monthly percentage complete invoices to the DISTRICTS for work performed during the preceding month. The percentage complete invoices will be accompanied with a summary cost itemization and supported by a monthly progress report tied to the milestones indicated in the Schedule. The CONSULTANT shall maintain detailed records to support these charges and such records shall be available to the DISTRICT for audit and copying. The DISTRICTS shall pay monthly payments to the CONSULTANT within 30 days of the DISTRICTS' receipt of the CONSULTANT's monthly statement. Interest on unpaid payments due shall accrue at the rate of 1% per month beginning the 60th day after the DISTRICTS' receipt of the CONSULTANT's statement. No interest shall be paid on disputed amounts.

ARTICLE 6 - GENERAL CONDITIONS

6.1 Early Termination of Agreement

- 6.1.1 The DISTRICTS and the CONSULTANT, by mutual written agreement, may terminate this Agreement at any time.
- 6.1.2 The DISTRICTS, on thirty (30) days' prior written notice to the CONSULTANT, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.1.3 Either the DISTRICTS or the CONSULTANT may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving a written notice of termination stating the effective date of the termination.

6.2 Payment on Early Termination

- 6.2.1 In the event of termination under Paragraphs 6.1.1 or 6.1.2, hereof, the DISTRICTS shall pay the CONSULTANT for work performed in accordance with the Agreement prior to the termination date.
- 6.2.2 In the event of termination under Paragraph 6.1.3 hereof by the CONSULTANT due to a breach by the DISTRICTS, then the DISTRICTS shall pay the CONSULTANT as provided in Paragraph 6.3.1.
- 6.2.3 In the event of termination under Paragraph 6.1.3 hereof by the DISTRICTS due to a breach by the CONSULTANT, then the DISTRICTS shall pay the CONSULTANT as provided in Paragraph 6.3.1, subject to set off of excess costs,

as provided for in Paragraphs 5.1.3 and 6.3.

6.2.4 In the event of early termination, all of the CONSULTANT's work product will become and remain property of the DISTRICTS.

6.3 Remedies

6.3.1 In the event of termination under Paragraph 6.1.3 by the DISTRICTS due to a breach by the CONSULTANT, then the DISTRICTS may complete the work either itself, or by agreement with another consultant or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under Paragraph 5.1.1 hereof, then the CONSULTANT shall promptly pay to the DISTRICTS the amount of the excess.

6.3.2 The remedies provided to the DISTRICTS under Paragraph, 6.1, 6.2, and 6.3 hereof for a breach by the CONSULTANT shall not be exclusive. The DISTRICTS also shall be entitled to any other equitable and legal remedies that may be available.

6.3.3 In the event of breach of this Agreement by the DISTRICTS, then the CONSULTANT's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraphs 6.1 and 6.2 hereof.

6.4 Indemnification and Insurance

6.4.1 The CONSULTANT agrees to indemnify, save harmless and defend the DISTRICTS, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, errors, or omissions of the CONSULTANT or CONSULTANT's officers, owners, employees, agents, or its subcontractors or anyone over which CONSULTANT has a right to control.

6.4.2 The CONSULTANT agrees to furnish the DISTRICTS evidence of comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for personal injury and property damage for the protection of the DISTRICTS, its officers, commissioners, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the CONSULTANT's, or any subcontractors, in the performance of this Agreement. The insurance shall include the DISTRICTS, its officers, commissioners, agents and employees, as additional insured's and refer to and support the CONSULTANT's obligation to hold harmless the DISTRICTS, its officers, commissioners, agents, and employees.

6.4.3 The CONSULTANT agrees to furnish the DISTRICTS evidence of professional liability insurance coverage (errors and omissions, on a claims-made basis) in the amount of not less than \$1,000,000 because of personal injury, bodily injury, death or damage to property.

6.5 Oregon Law and Forum

6.5.1 This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

6.5.2 Any litigation between the DISTRICTS and the CONSULTANT 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 District of Oregon. The parties agree, however, to resolve any disputes between the parties in the manner described in Paragraph 6.23.

6.6 Workers' Compensation Coverage Requirements

The CONSULTANT is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any workers' compensation coverage under this Agreement. If the CONSULTANT hires subconsultants for the performance of this Agreement, the CONSULTANT agrees to require that the subconsultant(s) shall comply with ORS Chapter 656. The signing of this Agreement shall constitute the declaration of independent contractor status by the CONSULTANT.

6.6.1 The CONSULTANT will be solely responsible for payment of any local, state or federal taxes required as a result of this Agreement.

6.6.2 This Agreement is not intended to entitle the CONSULTANT to any benefits generally granted to DISTRICTS, officers, or employees. Without limitation, but by way of illustration, the benefits not intended to be extended by this contract to the CONSULTANT are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment compensation, or retirement benefits (except so far as benefits are required by law if the CONSULTANT is presently a member of the Public Employees Retirement System).

6.7 Subcontracts

The CONSULTANT shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the DISTRICTS. The CONSULTANT shall require subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CONSULTANT as specified in this Agreement. Notwithstanding DISTRICT approval of a subcontractor, the CONSULTANT shall remain obligated for full performance hereunder, and the DISTRICT shall incur no obligation other than its obligations to the CONSULTANT hereunder. The CONSULTANT agrees that if subcontractors are employed in the performance of this Agreement, the CONSULTANT and its subcontractors are subject to the requirements of the Workers' Comp Law.

6.8 Assignment

The CONSULTANT shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the DISTRICTS which may be granted or withheld in its sole and absolute discretion. The DISTRICTS may assign this Agreement at any time and shall provide CONSULTANT with notice of such assignment within thirty (30) days of such assignment.

6.9 Notice

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the DISTRICTS: Clackamas County Service District No. 1 and
Tri-City Service District
c/o Water Environment Services
150 Beaver Creek Road
Oregon City, Oregon 97045
ATTN: Randy Rosane, PE

Copy to: County Counsel
c/o Water Environment Services
150 Beaver Creek Road, Suite 430
Oregon City, Oregon 97045
ATTN: Chris Storey

If to the CONSULTANT: Portland Engineering, Inc.
ATTN: Carl Serpa
2020 SE 7th Avenue
Suite 200
Portland, OR 97214

6.10 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.

6.11 Integration

This Agreement contains the entire agreement between the DISTRICTS and the CONSULTANT and supersedes all prior written or oral discussions or agreements.

6.12 Funds

The DISTRICTS certifies that sufficient funds are available and authorized for expenditure pursuant to this Agreement in Fiscal Year 2012-13. The funds needed for the balance of the Agreement are subject to appropriation by the Board of County Commissioners, acting as the governing body of the DISTRICTS (the "Board"), during budget processes. If the Board does not appropriate funds for subsequent fiscal years for the balance of this contract, the DISTRICTS may immediately terminate this Agreement by giving written notice of termination to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any work performed after the date of such written termination notice. The DISTRICTS shall also have the right to accelerate or decelerate the work to match funding limitations. Any termination for lack of funds shall not constitute an "Early Termination" as such term is used in Paragraph 6.1.

6.13 Estimates of Cost

The estimates of cost for a PROJECT provided for herein are to be prepared by the CONSULTANT through exercise of experience and judgment in applying currently available cost data. The CONSULTANT will keep the DISTRICTS apprised of changes throughout the PROJECT that significantly impact the estimated costs provided.

6.14 Ownership of Documents

- 6.14.1 All work the CONSULTANT performs under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the DISTRICTS. The DISTRICTS shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the CONSULTANT produces in connection with this Agreement. On completion or termination of the Agreement the CONSULTANT shall promptly deliver these materials to the Project Manager.
- 6.14.2 The CONSULTANT may retain for its own records and at its own cost copies of the materials referred to in Paragraph 6.14.1 hereof.

6.14.3 Any use the DISTRICTS makes of the materials referred to in Paragraph 6.14.1 hereof, except for purposes of the work contemplated by this Agreement, shall be at the DISTRICTS' risk.

6.15 Commencement of Work

The CONSULTANT agrees that work being done pursuant to this Agreement will not be commenced until after:

- 6.15.1 Workers' compensation insurance is obtained, as specified in Paragraph 6.6.
- 6.15.2 This Agreement is fully executed by all parties and approved by the Board and/or Director when applicable.
- 6.15.3 The receipt of a written authorization to proceed from the Project Manager.

6.16 Release of Information

No information relative to the PROJECT shall be released by the CONSULTANT for publication, advertising, communication with the media, the public, other clients of the CONSULTANT, or any other person for any other purpose, without prior written approval of the DISTRICTS.

6.17 Maintenance of Records

The CONSULTANT shall maintain books and accounts of payroll costs, travel, subsistence, field contracted services of others and reimbursable expenses pertaining to each PROJECT in accordance with generally accepted professional practices, appropriate accounting procedures and applicable local, state or federal laws, statutes, ordinances, or rules and regulations. The DISTRICTS or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the CONSULTANT regarding its billings or any record arising from or related to this Agreement. Records shall be maintained and available until three (3) years after the date of final PROJECT billing or until three (3) years after the date of resolution of any litigation or claim.

6.18 Audit of Payments

- 6.18.1 The DISTRICTS, either directly or through a designated representative, may audit the records of the CONSULTANT at any time during the three (3) year period established by Paragraph 6.17.
- 6.18.2 If an audit discloses that payments to the CONSULTANT were in excess of the amount to which the CONSULTANT was entitled, then the CONSULTANT shall immediately repay the amount of the excess to the DISTRICTS.

6.19 Public Contracting Law

Pursuant to the requirements of ORS Chapters 279A and 279C, the following terms and conditions are made a part of this Agreement:

- 6.19.1 The CONSULTANT agrees that it shall:
 - 6.19.1.1 Make payments promptly, as due, to all persons supplying to CONSULTANT labor or materials for the performance of work contemplated by this Agreement.
 - 6.19.1.2 Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.
 - 6.19.1.3 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167 or its successor statutes.
 - 6.19.1.4 Not permit any lien or claim to be filed or prosecuted against the State of Oregon, Clackamas County, the DISTRICTS, any municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished for the performance of work contemplated by this Agreement.
- 6.19.2 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement, as such claim becomes due, the proper office representing DISTRICTS may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONSULTANT by reason of this Agreement. Further, the CONSULTANT or any first-tier subcontractor under this Agreement fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement within thirty (30) days after receipt of payment from DISTRICT or the CONSULTANT, as applicable, then such person shall owe the unpaid person the amount due plus interest charges commencing at the end of the ten (10) day period under ORS 279C.580(4) and ending upon final payment unless subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be as set forth in ORS 279C.515(2).
- 6.19.3 No person shall be employed for more than eight (8) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100(5) or as defined in the DISTRICTS' Contract Review Board Rules, the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday, as specified in ORS 279C.
- 6.19.4 If this Agreement is for personal services as defined in ORS 279C or as defined in

the DISTRICTS' Contract Review Board Rules, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

- 6.19.5 The CONSULTANT shall promptly, as due, make payment to any person, partnership, association, corporation, or other entity furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 6.19.6 The CONSULTANT and all employers working under this Agreement are subject employers under ORS 656.017.
- 6.19.7 The CONSULTANT shall demonstrate that an employee drug testing program is in place before commencing work on the Project.

6.20 Equal Employment Opportunity

During the performance of this Agreement, the CONSULTANT agrees as follows:

- 6.20.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap or a national origin. The CONSULTANT agrees that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, age, mental or physical handicap, or national origin. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.
- 6.20.2 The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, marital status, age, physical or mental handicap or national origin.
- 6.20.3 The CONSULTANT will send to each labor union or representative of workers with which CONSULTANT has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the CONSULTANT's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.21 Survival

All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion and/or termination for any reason.

6.22 Headings

The headings used in this Agreement are for general reference only and are not part of the contract language. This Agreement should be construed without giving any meaning to any headings included herein.

6.23 Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration in accordance with the following provisions:

6.23.1 Disputes Covered. The parties agree to arbitrate all disputes of every kind relating to or arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based upon tort or any other causes of action relating to the Agreement or the PROJECT, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties.

6.23.2 Forum. The forum for the arbitration shall be Clackamas County, Oregon.

6.23.3 Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of laws provisions.

6.23.4 Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, DISTRICTS shall select one arbitrator and CONSULTANT shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the American Arbitration Association. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties.

6.23.5 Administration. The arbitration shall be administered by the American Arbitration Association.

6.23.6 Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the

provisions of this section, the provisions of this section shall prevail.

6.23.7 Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

6.23.8 Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages.

6.23.9 Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators.

6.23.10 Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

6.24 Amendments

The DISTRICTS and the CONSULTANT may amend this Agreement at any time only by written amendment executed by the DISTRICTS and the CONSULTANT. Any amendment that increases the amount of compensation payable to the CONSULTANT in excess of the amounts authorized in prior Board approvals shall be subject to approval by the Board. The Director or person designated by Board order may execute amendments to the Agreement to increase compensation within the limits of the authority established by the DISTRICTS' Contract Review Board Rules and within the limits authorized by prior Board approvals. The Project Manager may agree to and execute any other amendment on behalf of the DISTRICTS.

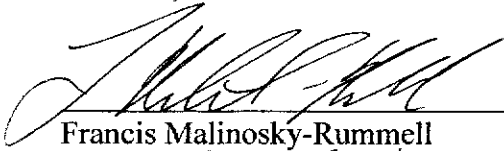
6.25 Waiver

The DISTRICTS and the CONSULTANT shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

6.26 Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

CONSULTANT:
PORTLAND ENGINEERING, INC.
2020 SE 7th Ave
Portland, OR 97219



Francis Malinosky-Rummell
Vice-President

Title

2/21/2013

Date

93-1090278

Federal Tax ID Number

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1

Michael S. Kuenzi, Director

Date

TRI- CITY SERVICE DISTRICT

Michael S. Kuenzi, Director

Date

Exhibit A

Task Order Contract: I & C Engineering Services - Program, Design and Service Work

Portland Engineering, Inc ("Consultant") will provide engineering services to District per Task Order allocation. Task Orders will be issued by the District upon mutual agreement of scope of services, schedule of delivery and fee agreement. Scope of Services provided by Consultant will be associated with Instrumentation and Control Engineering Services. These services may include Program and Project Management, Project Scope Development, Engineering and Design Services, Programming, Instrumentation, General Contracting Services and On-Site Service Work. Such Services are directed by the District and issued on a Task Order basis.

Consultant fees for services shall be based on the Exhibit B rate sheet (attached) or as otherwise agreed by District and Consultant. The contract amount of aggregated Task Orders within each year shall be limited to a maximum of Three Hundred Thousand Dollars (\$300,000.00).

Consultant shall track Task Order services and report to Districts total hours, parts and expenses within monthly billing report(s). Monthly billing report(s) will be issued with associated open Task Orders only.

Consultant has assigned Project Management responsibilities for this contract with the Districts to Carl Serpa.

Exhibit B

Contract Period

The term of this Task Order Contract is annual with renewals required by or before July 1st each year.

Task Order Schedule

Each Task Order will be issued by the Districts with a written Scope of Work, which shall include a Schedule of Completion and Fee Schedule agreed by the parties. The Consultant will proceed with the work upon a Notice to Proceed issued by the Districts. Consultant shall make all reasonable effort to achieve agreed schedule associated with each Task Order. Consultant shall advise Districts of schedule delays upon its earliest knowledge of said delay.

Portland Engineering Inc. 2013 Billing Rate Schedule

<u>Title</u>	<u>Straight Time</u>
Design Engineer	\$138.00/hour
Project Manager	\$128.00/hour
Controls Engineer/Programmer	\$128.00/hour
Field Service Engineer	\$128.00/hour
Construction Manager	\$128.00/hour
Instrumentation Technician	\$120.00/hour
Mark-up on sub-contracting services:	10%
Mark up on equipment procurement:	10%

Normal business hours 8:00 AM to 5:00 PM, Monday through Friday, or as arranged per contract.

Travel time, portal to portal, is billed at above rates with a mileage charge of \$0.565/mile from the local office of Portland Engineering, Inc. Travel expenses are billed at actual cost.

All standard rates are subject to change without notice.
