



AGENDA *Revised

Added Presentation 1.

Thursday, September 14, 2017 - 10:00 AM **BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2017-105

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

- *1. Proclaiming the New Rhododendron Foot Bridge to be Dedicated to the Communities of Rhododendron, the Hoodland Area and the Mt. Hood Territory (Chair Bernard)
2. Presentation for September as Suicide Prevention Awareness Month (Mary Rumbaugh & Galli Murray, Health, Housing & Human Services)

II. 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 meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

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

1. Board Order No. _____ for Boundary Change Proposal CL 17-009 for Annexation to Sunrise Water Authority (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)
2. Board Order No. _____ for Boundary Change Proposal CL 17-010 for Annexation to Clackamas County Service District No. 1 (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)
3. Board Order No. _____ for Boundary Change Proposal CL 17-011 for Annexation to Clackamas County Service District No. 1 (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)
4. Board Order No. _____ for Boundary Change Proposal CL 17-012 for Annexation to Clackamas County Service District No. 1 (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)
5. Board Order No. _____ for Boundary Change Proposal CL 17-013 for Annexation to Sunrise Water Authority (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)

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

A. Health, Housing & Human Services

1. Approval to Apply for a Capital Grant for the Federal Transit Administration Bus and Bus Infrastructure Investment Program Funds through Oregon Department of Transportation for Mt Hood Express Vehicle Replacements – *Social Services*
2. Approval of an Agency Service Contract with Cascadia Behavioral Healthcare for Residential Treatment Services – *Behavioral Health*
3. Approval of an Agency Service Contract with Northwest Housing Alternatives, Inc. for Supported Housing Services – *Behavioral Health*
4. Approval of an Agency Service Contract with Oregon Health & Sciences University to Provide Cultural Specific Mental Health Services – *Behavioral Health*
5. Approval of Amendment No.1 of the Intergovernmental Sub-recipient Agreement with Oregon Trail School District (OTSD) for Preschool Promise Services – *Children, Youth & Families*
6. Approval of a Sub-recipient Agreement with Northwest Family Services for Evidence-based Parenting Education Classes – *Children, Youth & Families*
7. Approval of a Sub-recipient Agreement with Clackamas County Children’s Commission Head Start for Evidence-based Parenting Education Classes – *Children, Youth & Families*
8. Approval of an Intergovernmental Revenue Agreement with Oregon Health Authority for Drug and Alcohol Prevention Education and Programming – *Children, Youth & Families*
9. Approval of a Sub-recipient Agreement with Todos Juntos for PreventNet Community Schools – Molalla-Canby, Rural – *Children, Youth & Families*
10. Approval of a Sub-recipient Agreement with Northwest Family Services for PreventNet Community Schools – Urban, Milwaukie, Gladstone, and Oregon City – *Children, Youth & Families*

B. Department of Transportation & Development

1. Approval of the Metro Grant Agreement No. 934631 for the Clackamas County Active Transportation County Devices Project

C. Elected Officials

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

D. County Counsel

1. Approval of an Intergovernmental Agreement with Multnomah County for HIPAA Compliance Officer

E. Juvenile Department

1. Approval and Acceptance of the Grant Agreement for the Oregon Criminal Justice Commission Specialty Court Grant Program

F. Technology Services

1. Approval of a Service Level Agreements between Clackamas Broadband eXchange and the City of Lake Oswego for Dark Fiber Networks

V. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Resolution No. _____ to Establish the Water Environment Services Advisory Committee and Adopt the Bylaws
2. Approval of Amendment No. 1 to the Contract Documents between Water Environment Services and CH2M Hill Engineers, Inc. for Tri-City Water Resource Recovery Facilities Solids Handling Improvements Project - *Procurement*
3. Approval of Amendment No. 1 to the Contract Documents between Service District No. 1 and CH2M Hill Engineers, Inc. for Tri-City Water Resource Recovery Facilities Solids Handling Improvements Project - *Procurement*

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

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

www.clackamas.us/bcc/business.html

Proclaiming the new Rhododendron Foot Bridge to be dedicated to the communities of Rhododendron, the Hoodland Area and the Mt. Hood Territory

WHEREAS, the community of Rhododendron falls within the jurisdiction of Clackamas County; and

WHEREAS, portions of the Old Mt. Hood Loop Highway and the historic Barlow Road run through the community of Rhododendron; and

WHEREAS, after the historic Christmas flood of 1964, Clackamas County bridge workers designed and constructed a replacement pedestrian bridge across the Zigzag River in Rhododendron along the right-of-way of the the Old Mt. Hood Loop Highway; and

WHEREAS, in 2017 the Clackamas County bridge crew rebuilt and refabricated almost every portion of the pedestrian bridge to strengthen its structural integrity and allow it to remain a safe, attractive and significant landmark in the Rhododendron community; and

WHEREAS, the community of Rhododendron wishes to recognize the importance of this bridge as a symbol of its resolve to remain connected, and

WHEREAS, this bridge unites and brings together the community both literally and figuratively; and

WHEREAS, this bridge will be celebrated by the community at a ceremony planned for 4 p.m., Saturday, September 16, 2017;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that the Clackamas County Board of Commissioners dedicates the Rhododendron Foot Bridge over the Zigzag River to the residents of the Mt. Hood Territory, the Hoodland area and the Rhododendron community.

Dated this 14th day of September, 2017.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Jim Bernard
Chair

Sonya Fischer
Commissioner

Ken Humberston
Commissioner

Paul Savas
Commissioner

Martha Schrader
Commissioner

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Presentation of
September – Suicide Prevention Awareness Month

Purpose/Outcomes	In honor of Suicide Prevention Awareness in September, the Behavioral Health Division has prepared a presentation to the Board and citizens of Clackamas County in hopes of increasing awareness around the prevalence of suicide and, more importantly, the intentional work being done to decrease rates.
Dollar Amount and Fiscal Impact	No fiscal impact to the County
Funding Source	N/A
Duration	The month of September is dedicated to Suicide Prevention Awareness, but programming occurs throughout the year.
Previous Board Action	The Board has been very supportive of addressing mental health and suicide prevention awareness in our community as well as supporting and participating in strategies that increase awareness of mental health, such as Mental Health First Aid.
Strategic Plan Alignment	Individuals and families in need are healthy and safe Ensure safe, healthy and secure communities
Contact Person	Mary Rumbaugh, Behavioral Health Division Director, 503.742.5305
Contract No.	N/A

BACKGROUND:

The Behavioral Health Division (BHD), a division of the Health, Housing and Human Services department is presenting on the prevalence of suicide and the role that H3S is playing to reduce these numbers. In 2015, H3S committed to the Zero Suicide initiative and, as a result, is being intentional and strategic about how to provide care for those we serve that is suicide safe.

This presentation will highlight the prevalence of suicide on national, state and local levels as well as efforts being undertaken by H3S staff and leadership to decrease these rates.

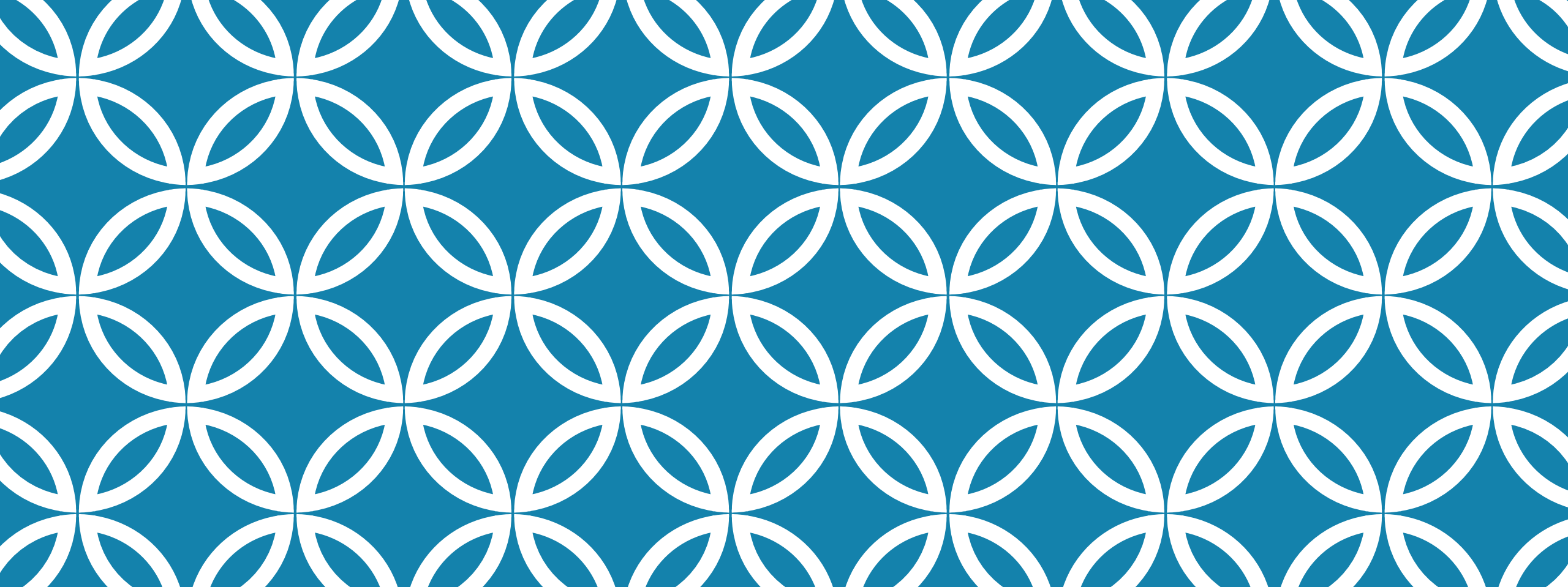
The presentation will include:

- National Suicide Prevention Awareness Month - September 2017 by Galli Murray, Suicide Prevention Coordinator with Clackamas County Behavioral Health Division

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.



**NATIONAL
SUICIDE PREVENTION AWARENESS MONTH
SEPTEMBER 2017**

Clackamas County
and the
Pathway to Suicide Safer Care

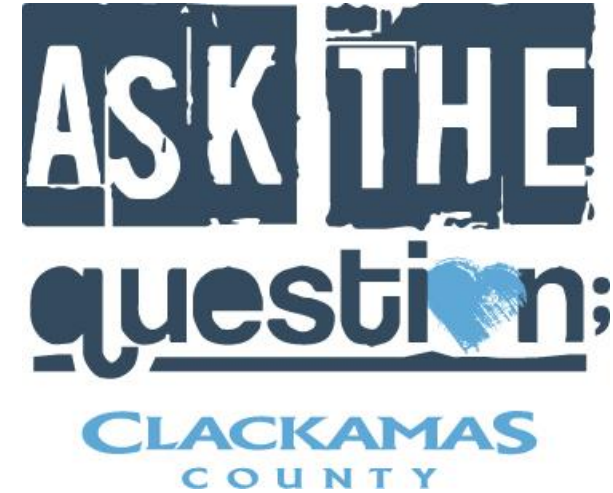
HAVE YOU HEARD?

Something amazing is happening in Clackamas County.

We are starting the conversation.

We are being intentional about the work of suicide prevention.

We are making a difference.



WE ARE WALKING THE WALK

Richard Swift, Director of Health, Housing & Human Services in Clackamas County, has set out several bold and visionary initiatives to:

- Break down mental health stigma by changing workplace culture
- Promote suicide prevention and;
- Empower H3S Department employees.

In May of 2016, Director Swift committed to training all 586 H3S employees in Mental Health First Aid.

More than 530 Health Housing & Human Service employees are now Mental Health First Aid certified.

WE ARE PROVIDING SUICIDE SAFER CARE

Attempting to reduce suicides for people in our care to zero may seem scary or even impossible but what other number should we strive for?

We have agreed that ZERO deaths to suicide is the only acceptable number.

Health, Housing and Human Services has:

- Created Zero Suicide Implementation Teams at the Division and Department levels to operationalize the work of providing suicide safer care
- Determined that suicide prevention training is essential for all H3S staff
- Discovered where H3S might be more intentional about decreasing suicide risk for those we serve by inviting teams across the Department to process map
- Increased the amount of community members that are intentionally screened for risk of suicide using a standardized tool. In some places, this screening is happening with every client who walks in the door.

WE STILL HAVE WORK TO DO

History has shown that action by organizations can eventually make a large and life saving difference, even for issues that at first seem impossible.

Stroke, AIDS, heart disease have dropped dramatically.

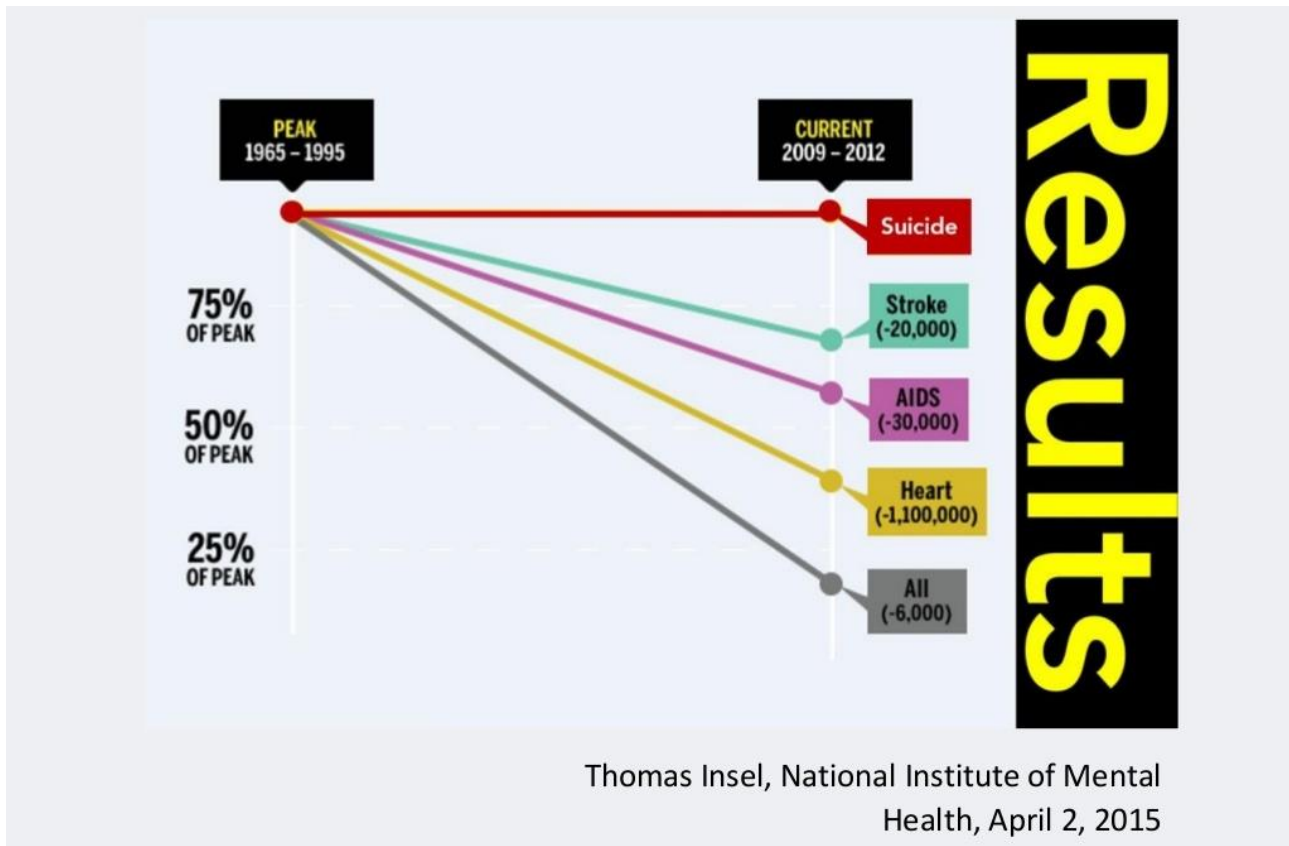
Not for suicide. Not yet.

The national suicide rate:

2003 = 10.8

2013 = 12.6

2015 = 13.26



NATIONAL SUICIDE STATISTICS

- Suicide is the 10th leading cause of death in the US
- For every death by suicide, 25 suicide attempts occur
- Annual age-adjusted suicide rate is 13.26 per 100,000 individuals (2015) and continues to go up.
- Men die by suicide 3.5x more often than women.
- Firearms account for almost 50% of all deaths by suicide.

American Foundation For Suicide Prevention, <https://afsp.org/about-suicide/suicide-statistics/>

OREGON SUICIDE STATISTICS

- Higher than the national average for the past three decades.
- Suicide is the second leading cause of death among Oregonians aged 15 to 34 years of age, and the eighth leading cause of death among all ages in Oregon.
- Firearms accounted for 55% of deaths by suicide.

Oregon Health Authority

<http://geo.maps.arcgis.com/apps/MapSeries/index.html?appid=9c59be59ef7142dfad40d95e3b36f588>

Suicide Death Rates

	Number of Deaths by Suicide	Rate per 100,000 Population	State Rank
Oregon	762	17.77	13
Nationally	44,193	13.26	



On average, one person dies by suicide **every 12 hours** in the state.

American Foundation for Suicide Prevention
<https://afsp.org/about-suicide/suicide-statistics/>

CLACKAMAS COUNTY STATISTICS

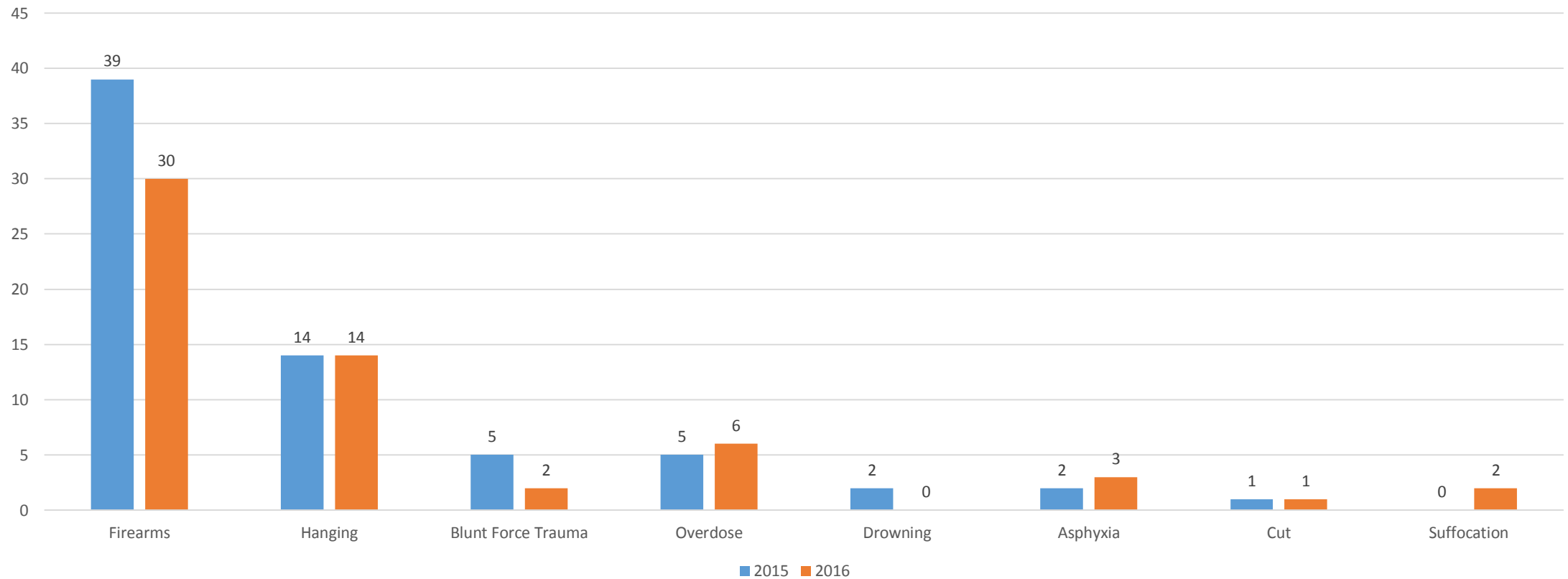
- Clackamas County now has a higher rate than Washington and Multnomah counties with a 17.4 suicide death rate per 100,000 (Oregon Health Authority, 2015)
- Our County has a 16% higher rate of suicide than that of the national rate.
- One death by suicide every five days in our county
- Death by firearm accounts for over half of Clackamas County's deaths by suicide

Oregon Suicide Dashboard,

<https://public.tableau.com/profile/oregon.injury.and.violence.prevention#!/vizhome/ORVDRSDashboardDraftJan2017/TableofContents>

2015-2016 Clackamas County Deaths from Suicide: Cause of Death

2015-2016 Clackamas County Deaths from Suicide: Cause of Death



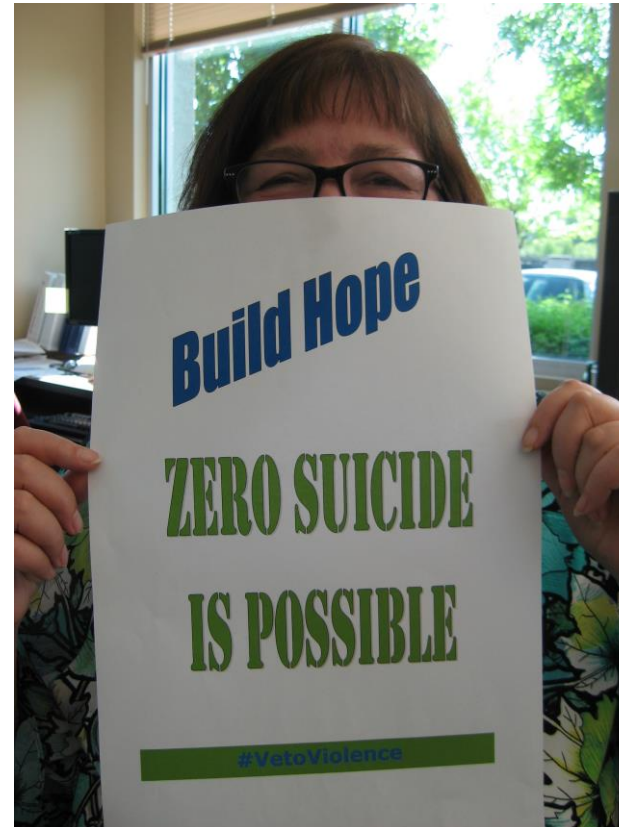
WE HAVE AGREED THAT ZERO DEATHS TO SUICIDE IS THE ONLY ACCEPTABLE NUMBER

Attempting to reduce suicides for people in our care to zero may seem scary or even impossible but what other number should we strive for?

62 deaths is TOO MANY.

“It is critically important to design for zero even when it may not be theoretically possible. It’s about purposefully aiming for a higher level of performance.”

-- Thomas Priselac,
President and CEO of
Cedars-Sinai Medical Center



WE ARE JOINING OUR COMMUNITY



On Saturday, Oct. 7, the Clackamas H3S Team will walk with thousands for the American Foundation for Suicide Prevention's annual Out of the Darkness Community Walk.

Will you join us in walking to create awareness?

THANK YOU

Questions? Comments?

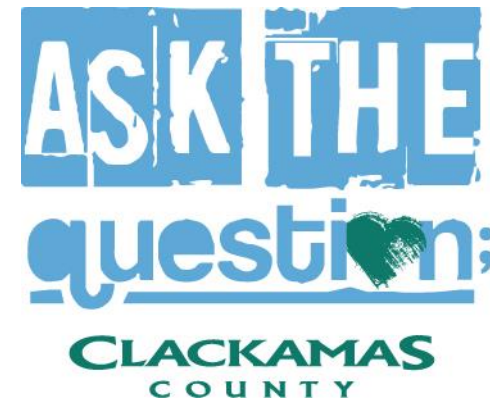
Galli Murray

Suicide Prevention Coordinator

Clackamas County Behavioral Health

gallimur@clackamas.us

Phone: 503-742-5373





WHAT IS ZERO SUICIDE?

Zero Suicide is a commitment to suicide prevention in health and behavioral health care systems, and also a specific set of tools and strategies. It is both a concept and a practice.

» LEAD

» TRAIN

» IDENTIFY

» ENGAGE

» TREAT

» TRANSITION

» IMPROVE

Its core propositions are that suicide deaths for people under care are preventable, and that the bold goal of zero suicides among persons receiving care is an aspirational challenge that health systems should accept. The Zero Suicide approach aims to improve care and outcomes for individuals at risk of suicide in health care systems. It represents a commitment to patient safety—the most fundamental responsibility of health care—and also to the safety and support of clinical staff, who do the demanding work of treating and supporting suicidal patients.

The challenge of Zero Suicide is not one to be borne solely by those providing clinical care. Zero Suicide relies on a system-wide approach to improve outcomes and close gaps rather than on the heroic efforts of individual practitioners. This initiative in health care systems also requires the engagement of the broader community, especially suicide attempt survivors, family members, policymakers, and researchers. Thus, Zero Suicide is a call to relentlessly pursue a reduction in suicide for those who come to us for care.

The programmatic approach of Zero Suicide is based on the realization that suicidal individuals often fall through multiple cracks in a fragmented and sometimes distracted health care system, and on the premise that a systematic approach to quality improvement is necessary. The approach builds on work done in several health care organizations, including the Henry Ford Health System (HFHS) in Michigan. Like other leading health care systems, HFHS applied a rigorous quality improvement process to problems such as inpatient falls and medication errors. HFHS realized that mental and behavioral health care could be similarly improved. This insight led to the development of HFHS's Perfect Depression Care model, a comprehensive approach that includes suicide prevention as an explicit goal. The approach incorporates both best and promising practices in quality improvement and evidence-based care and has demonstrated stunning results—an 80 percent reduction in the suicide rate among health plan members.

Using these successful approaches as the basis for its recommendations, the Clinical Care and Intervention Task Force of the National Action Alliance for Suicide Prevention identified essential elements of suicide prevention for health care systems (i.e., health care plans or care organizations serving a defined population of consumers, such as behavioral health programs, integrated delivery systems, and comprehensive primary care programs). These elements include:

- 1 LEAD** » Create a leadership-driven, safety-oriented culture committed to dramatically reducing suicide among people under care. Include suicide attempt and loss survivors in leadership and planning roles.
- 2 TRAIN** » Develop a competent, confident, and caring workforce.
- 3 IDENTIFY** » Systematically identify and assess suicide risk among people receiving care.
- 4 ENGAGE** » Ensure every person has a suicide care management plan, or pathway to care, that is both timely and adequate to meet his or her needs. Include collaborative safety planning and restriction of lethal means.
- 5 TREAT** » Use effective, evidence-based treatments that directly target suicidality.
- 6 TRANSITION** » Provide continuous contact and support, especially after acute care.
- 7 IMPROVE** » Apply a data-driven quality improvement approach to inform system changes that will lead to improved patient outcomes and better care for those at risk.

If we do not set big goals, we will never achieve them. In the words of Thomas Priselac, president and CEO of Cedars-Sinai Medical Center:

“It is critically important to design for zero even when it may not be theoretically possible. When you design for zero, you surface different ideas and approaches that if you’re only designing for 90 percent may not materialize. It’s about purposefully aiming for a higher level of performance.”

Better performance and accountability for suicide prevention and care should be core expectations of health care programs and systems. While we do not yet have proof that suicide can be eliminated in health systems, we do have strong evidence that system-wide approaches are more effective.

To assist health and behavioral health plans and organizations, the Suicide Prevention Resource Center (SPRC) offers an evolving online toolkit that includes modules and resources to address each of the elements listed above. SPRC also provides technical assistance for organizations actively implementing this approach.

Learn more at www.zerosuicide.com.



FOR MORE INFORMATION, PLEASE CONTACT:

Julie Goldstein Grumet, PhD

Director of Prevention and Practice
Suicide Prevention Resource Center

Education Development Center, Inc.

1025 Thomas Jefferson Street, NW
Suite 700W
Washington, DC 20007

Phone: 202.572.3721

Email: jgoldstein@edc.org

A photograph of three women smiling and posing for a photo. The woman on the left has blonde hair in a bun, wears sunglasses, a dark hoodie, and a colorful beaded necklace. The woman in the middle has dark curly hair, wears sunglasses, a pink hoodie with a heart on the chest, and a colorful beaded necklace. The woman on the right has blonde hair, wears a dark blue jacket over a blue shirt. The background is a blurred outdoor setting with buildings.

WALK TO FIGHT SUICIDE

PORTLAND

OUT OF THE DARKNESS Community Walk

OCTOBER 7, 2017

VETERANS MEMORIAL COLISEUM

Register today at
afsp.org/Portland



AMERICAN FOUNDATION FOR
Suicide Prevention



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Approving Boundary Proposal CL 17-009
For Annexation to Sunrise Water Authority

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Purpose/Outcomes	Conduct Public Hearing/Approve Order
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Contact Person	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND:

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a water authority. Sunrise Water Authority is such a district.

Proposal No. CL 17-009 is a proposed annexation to Sunrise Water Authority (the "District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of the owners of all of the property to be annexed. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District within the City of Happy Valley. The territory contains 4.11 acres, is vacant and is valued at \$326,345.

REASON FOR ANNEXATION

The property owners desire annexation to provide water service to facilitate commercial development consisting of three new buildings and associated parking lot.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Sunrise Water Authority is the provider of water service to the City of Happy Valley.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings attached to the proposed order. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached to the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration.

RECOMMENDATION:

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-17-009, annexation to Sunrise Water Authority.

Respectfully submitted,


Chris Storey
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 17-009



ORDER NO.

WHEREAS, this matter coming before the Board at this time, and it appearing that all of the owners of the land in the territory to be annexed have petitioned to annex the territory to Sunrise Water Authority; and

WHEREAS, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

WHEREAS, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

WHEREAS, it further appearing that this matter came before the Board for public hearing on September 14, 2017 and that a decision of approval was made on September 14, 2017;

NOW THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 17-009 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Sunrise Water Authority as of September 14, 2017.

ADOPTED this 14th day of September, 2017

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 4.11 acres, is vacant and is valued at \$326,345.
2. The property owners desire annexation to provide water service to facilitate commercial development consisting of three new buildings and a parking lot.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Sunrise Water Authority is the provider of water service to the City of Happy Valley.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan; and
 - (F) Any applicable concept plan.
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in Finding No. 6. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary ("UGB").

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Water

* * *

- 15.0 Require water purveyors in urban areas to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers, and storm drainage facilities, necessary to serve additional lands.
6. Following Comprehensive Plan amendments, zone changes and Environmental Permit approvals the City of Happy Valley has zoned the area Mixed Use Commercial ("MUC"). The proposed development can be accomplished under this designation.
7. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to water service in this area of Clackamas County.
8. Water Environment Services serves this area. According to the application the Service District has an 8-inch sanitary sewer line in SE 162nd Avenue adjacent to the site.
9. The territory to be annexed is adjacent to the Sunrise Water Authority and the Authority has an 8-inch water line in SE 162nd Avenue just to the west of the site.
10. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff's Department.
11. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the Water Authority.
12. The area to be annexed is within the North Clackamas County Parks & Recreation District, with a withdrawal to be effective as of December 31, 2017 per City of Happy Valley ordinance.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 7 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.

2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes that the balance of the City of Happy Valley is served by the Sunrise Water Authority and no other entity has the capability of serving this site.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County's Comprehensive Plan and Happy Valley's Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

EXHIBIT B

Metes and Bounds Description of the Exterior Boundary of Christilla Commons

Parcels 3 and 4, Partition Plat No. 2015-017, City of Happy Valley, Clackamas County, Oregon, the exterior boundary of which is:

Beginning at the Initial Point, a 5/8 inch iron rod with yellow plastic cap marked "Compass Engineering", being the southeast corner of Parcel 4, Partition Plat 2015-017, Plat Records of Clackamas County; thence along the exterior boundary of said Partition Plat 2015-017, South 89°13'52" West, 441.76 feet to a 5/8 inch iron rod; thence North 0°00'33" East, 165.48 feet to a 5/8 inch iron rod; thence South 89°20'27" West, 3.00 feet to a 5/8 inch iron rod; thence North 0°00'48" East, 139.96 feet to a brass screw and 3/4 inch brass washer; thence North 88°38'51" East, 3.00 feet to a 5/8 inch iron rod; thence North 89°14'45" East, 157.96 feet to a 5/8 inch iron rod; thence North 0°00'44" East, 153.45 feet to a 5/8 inch iron rod; thence North 89°18'13" East, 117.82 feet to a 3/4 inch iron pipe; thence North 89°13'12" East, 165.89 feet to a 5/8 inch iron rod; thence South 0°00'00" East, 458.77 feet to the Point of Beginning, and containing 178838 square feet or 4.11 acres, more or less.



RRFF5

162ND AVE.

EXHIBIT C



600
1.64 Ac.
12800

900
1.00 Ac.

12-195

12-18

R10

SEE

SEE MAP 2 ZE 01A

(JOHN HAGEL RD.)

EASEMENT
N 89° 13' 37" E
700
0.56 Ac.
12888
PT. P.P.
2003-087

PARCEL 1

P.P.

PARCEL 3

12-237

701
2.05 Ac.
12960

2015-17

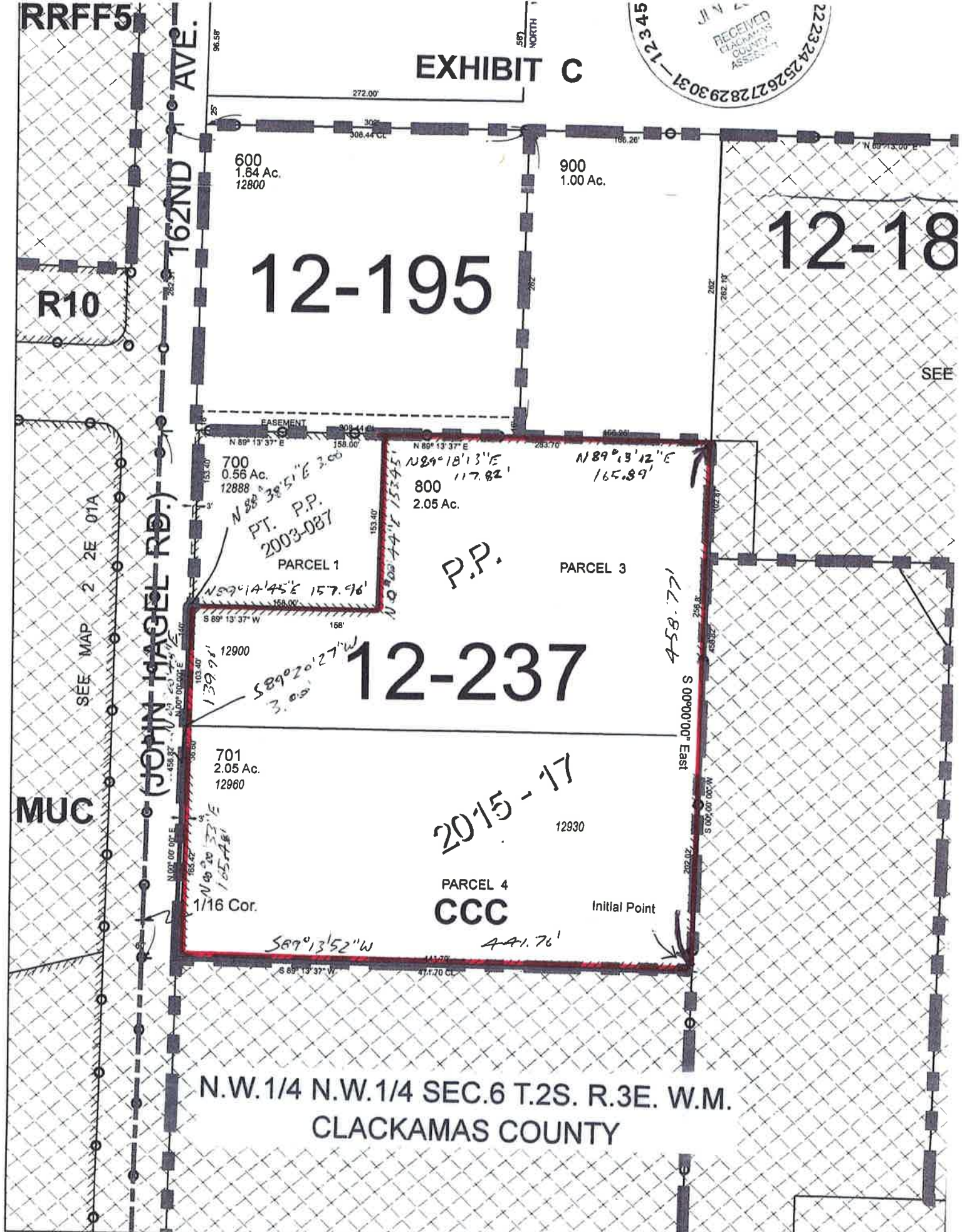
MUC

1/16 Cor.

PARCEL 4
CCC

Initial Point

N.W.1/4 N.W.1/4 SEC.6 T.2S. R.3E. W.M.
CLACKAMAS COUNTY





OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Approving Boundary Proposal CL 17-010
For Annexation to Clackamas County Service District No. 1

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Purpose/Outcomes	Conduct Public Hearing/Approve Order
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Contact Person	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND:

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 17-010 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District within the City of Happy Valley. The territory contains 0.09 acres, is vacant and is valued at \$3,565.

REASON FOR ANNEXATION

Sewer service is desired for development. The parcel is part of a larger 29 lot subdivision within the City of Happy Valley.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached to the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. This territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION:

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-17-010, annexation to Clackamas County Service District No. 1.

Respectfully submitted,


Chris Storey
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 17-010



ORDER NO.

WHEREAS, this matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1; and

WHEREAS, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

WHEREAS, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

WHEREAS, it further appearing that this matter came before the Board for public hearing on September 14, 2017 and that a decision of approval was made on September 14, 2017;

NOW THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 17-010 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of September 14, 2017.

ADOPTED this 14th day of September, 2017

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 0.09 acres, is vacant and is valued at \$3,565.
2. Sewer service is desired for development. The parcel is part of a larger 29 lot subdivision within the City of Happy Valley.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in the Finding No. 6 below. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall " . . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.
6. According to the application: The Foxwood subdivision complies with the City of Happy Valley's Comprehensive Plan through the approval of the subdivision via Casefile No. SUB-03-16/ERP-26-16/ERP-27-16. The City planning/zoning for the site is MUR-A (Mixed Use Residential-Attached).
 7. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
 8. Water Environment Services, as the service provider for the District, has sewer lines available in SE Sunnyside Road and Creswell Cove which can serve the main development of which this tiny parcel is a part.
 9. The territory to be annexed is within the Sunrise Water Authority which serves the area with an 18-inch water line in SE Sunnyside Road and an 8-inch water line in SE Creswell Cove.
 10. The area receives police service from City of Happy Valley which contracts with the Clackamas County Sheriff's Department.
 11. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.
 12. The area to be annexed is within the North Clackamas County Parks & Recreation District, with a withdrawal to be effective as of December 31, 2017 per City of Happy Valley ordinance.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 7 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and

services." The Board notes the original public facility plan for this area does call for sewer service by the District.

3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Happy Valley's Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 8. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job #4298

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM-KEIZER, OR

EXHIBIT B

A tract of land located in the Northwest One-Quarter of Section 6, Township 2 South, Range 3 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon and being more particularly described as follows:

Beginning at a 5/8 inch iron rod with a red plastic cap inscribed "COMPASS ENGINEERING" at the northeast corner of Parcel 3 of Partition Plat No. 2015-17, also being the northwest corner of the tract per Document Number 2016-050889; thence along the most northerly north line of said tract per Document Number 2016-050889 North 88°55'47" East 40.21 feet to a 5/8 inch iron rod with a red plastic cap inscribed "CENTERLINE CONCEPTS"; thence along the northerly east line of said tract South 00°01'51" East 89.37 feet to a 5/8 inch iron rod with a red plastic cap inscribed "CENTERLINE CONCEPTS"; thence South 89°11'55" West 40.21 feet to the west line of said tract from which point a 1/2 inch iron pipe bears North 89°11'55" East 1.00 feet; thence along said west line North 00°01'51" West 89.18 feet to the Point of Beginning.

The above described tract of land contains 3,589 square feet, more or less.

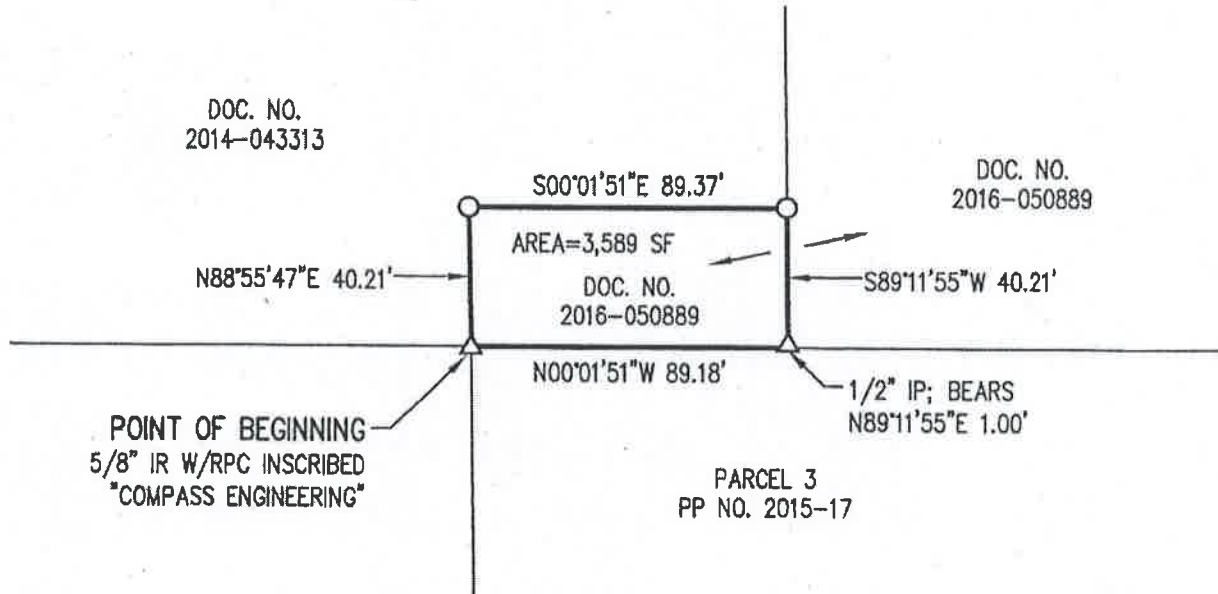
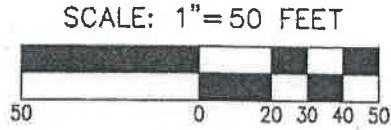
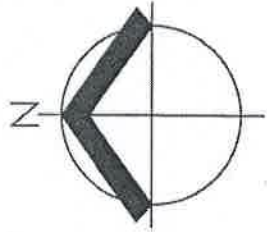
08/10/2017

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/18

LOCATED IN THE NORTHWEST 1/4 OF SECTION 6,
TOWNSHIP 2 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,
CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON



LEGEND

- 5/8" IRON ROD W/RPC INSCRIBED "CENTERLINE CONCEPTS"
- △ DENOTES MONUMENT AS NOTED
- DOC. NO. DOCUMENT NUMBER PER CLACKAMAS COUNTY DEED RECORDS
- IP IRON PIPE
- IR IRON ROD
- W/RPC WITH A RED PLASTIC CAP
- PP NO. PARTITION PLAT NUMBER PER CLACKAMAS COUNTY SURVEY RECORDS
- SF SQUARE FEET

PREPARED FOR

FOXWOOD HV HOLDINGS, LLC
8121 S VALE GARDEN ROAD
CANBY, OR 97013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/18

DATE: 08/10/2017

AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 P: 503.563.6151 F: 503.563.6152 aks-eng.com		EXHIBIT C
		DRWN: JOH
		CHKD: RDR
		AKS JOB: 4298



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
 Clackamas County

Members of the Board:

Board Order Approving Boundary Change Proposal CL 17-011
For Annexation to Clackamas County Service District No. 1

Stephen L. Madkour
 County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
 Assistants

Purpose/Outcomes	Conduct Public Hearing/Approve Order
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Contact Person	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND:

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 17-011 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District within the City of Happy Valley. The territory contains 9.8 acres, 2 single family dwellings and is valued at \$471,143.

REASON FOR ANNEXATION

Sewer service is desired for development of a 50-lot PUD which has been approved by the City of Happy Valley.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached to the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. This territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as may be amended from time to time.

RECOMMENDATION:

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL 17-011, annexation to Clackamas County Service District No. 1.

Respectfully submitted,


Chris Storey
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 17-011



ORDER NO.

WHEREAS, this matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1; and

WHEREAS, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

WHEREAS, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

WHEREAS, it further appearing that this matter came before the Board for public hearing on September 14, 2017 and that a decision of approval was made on September 14, 2017;

NOW THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 17-011 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of September 14, 2017.

ADOPTED this 14th day of September, 2017

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 9.8 acres, 2 single family dwellings and is valued at \$471,143.
2. Sewer service is desired for development of a 50-lot PUD which has been approved by the City of Happy Valley.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in Finding No. 6 below. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “ . . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.
6. According to the application: "The Stella Heights PUD complies with the City of Happy Valley's Comprehensive Plan through the approval of the PUD (Casefile No. CPA 15-16/LDC 12-16/PUD-06-16/ERP-22-16/ERP-23-16), The City planning/zoning for the site is MUR-S (Mixed Use Residential-Single Family).
 7. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
 8. Water Environment Services, as the service provider for the District, has 8-inch sewer lines available in the subdivision on the south edge of the territory to be annexed.
 9. The territory to be annexed is within the Sunrise Water Authority which serves the area with an 8-inch water line in SE 172nd Avenue and an 8-inch water line in SE Morning Dew Road adjacent to the site on the south.
 10. The area receives police service from City of Happy Valley which contracts with the Clackamas County Sheriff's Department.
 11. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the District for sanitary sewers.
 12. The area to be annexed is within the North Clackamas County Parks & Recreation District, with a withdrawal to be effective as of December 31, 2017 per City of Happy Valley ordinance.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 7 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for

sewer service by the District.

3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Happy Valley's Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 8. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job #4262

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM, OR

EXHIBIT B

Annexation Description

A tract of land located in the Northwest One-Quarter of Section 31, Township 1 South, Range 3 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon, and being more particularly described as follows:

Commencing at the North one-quarter corner of said Section 31; thence along the north line of said Section 31, North 89°09'59" West 30.00 feet to the west right-of-way line of SE 172nd Avenue (30.00 feet from centerline), also being on the Clackamas County Service District No. 1 (CCSD#1) line and the Point of Beginning; thence leaving said north line along said west right-of-way line and said CCSD#1 line, South 01°35'55" West 330.77 feet to the easterly extension of the north line of the plat "Scouters Meadow", Plat No. 4493, Clackamas County Plat Records; thence along said easterly extension and the north line of said plat and said CCSD#1 line, North 89°09'44" West 1290.28 feet to the east line of Document Number 1997-021813; thence leaving said CCSD#1 line along said east line, North 01°33'47" East 330.67 feet to the north line of said Section 31; thence along said north line, South 89°09'59" East 1290.48 feet to the Point of Beginning.

The above described tract of land contains 9.80 acres, more or less.

5/23/2017

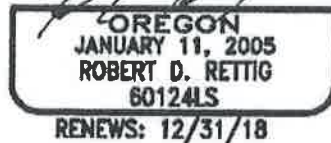
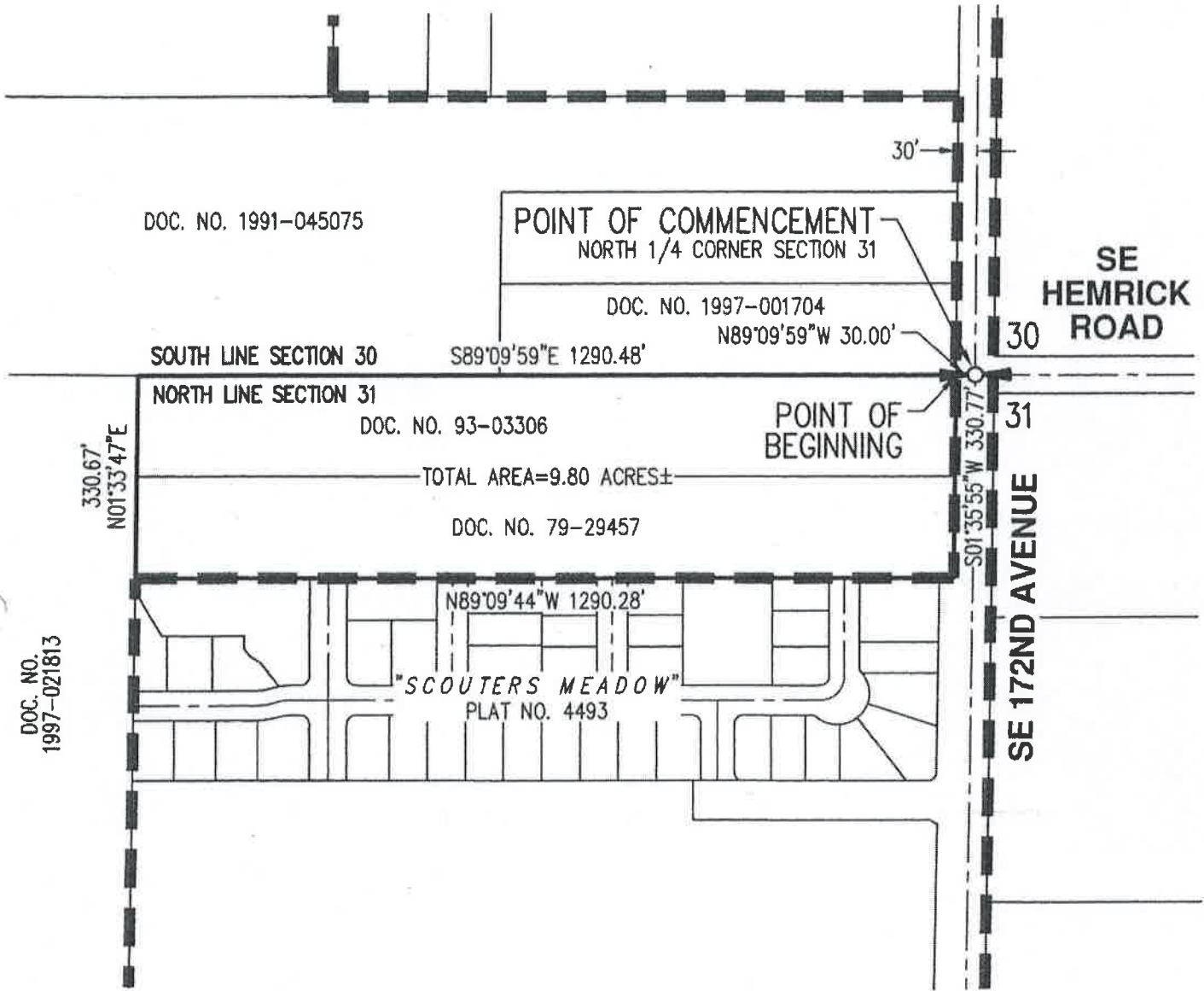


EXHIBIT C

A TRACT OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 31,
TOWNSHIP 1 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,
CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON



LEGEND

 CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 LINE

5/23/2017

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Robert D. Rettig

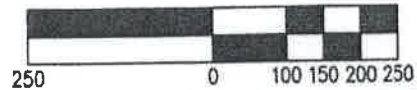
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/18

PREPARED FOR

GEO DEVELOPMENT, LLC
12042 SE SUNNYSIDE ROAD
CLACKAMAS, OR 97015

SCALE: 1" = 250 FEET



MAP OF ANNEXATION

AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062
P: 503.563.6151 F: 503.563.6152 aks-eng.com



EXHIBIT
B

DRWN: WCB
CHKD: RDR

AKS JOB:
4262



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Approving Boundary Change Proposal CL 17-012
For Annexation to Clackamas County Service District No. 1

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Purpose/Outcomes	Conduct Public Hearing/Approve Order
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Contact Person	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND:

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 17-012 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 2.51 acres, is vacant and is valued at \$82,809.

REASON FOR ANNEXATION

Sewer service is desired for development of a 9-lot PUD which has been approved by Clackamas County.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in the section below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. This territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as may be amended from time to time.

RECOMMENDATION:

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL 17-012, annexation to Clackamas County Service District No. 1.

Respectfully submitted,



Chris Storey
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 17-012



ORDER NO.

WHEREAS, this matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1; and

WHEREAS, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

WHEREAS, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

WHEREAS, it further appearing that this matter came before the Board for public hearing on September 14, 2017 and that a decision of approval was made on September 14, 2017;

NOW THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 17-012 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of September 14, 2017.

ADOPTED this 14th day of September, 2017

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed is located generally in the eastern part of the District. The territory contains 2.51 acres, is vacant and is valued at \$82,809.
2. Sewer service is desired for development of a 9-lot PUD which has been approved by Clackamas County.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the Findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

to ORS 195.020 (2) between the affected entity and a necessary party;

- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in Finding 5 below. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

Clackamas County has approved a 9-unit PUD on this site. Despite its general proximity to the City of Happy Valley the site is not contiguous to the City and the City does not object to the annexation of the area to the District.

6. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
7. Water Environment Services, as the service provider for the District, has an 8-inch sewer line in an easement to the west of the site which can serve the property.
8. The territory to be annexed is contemporaneously being annexed to the Sunrise Water Authority (Proposal No CL-17-013) which has a water line in SE Madena Way at the north edge of the site.
9. The area receives police service from the Clackamas County Sheriff's Department.
10. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.
11. The area to be annexed is within the North Clackamas County Parks & Recreation District, with a withdrawal to be effective as of December 31, 2017 per City of Happy Valley ordinance.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 6 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (the Clackamas County Comprehensive Plan) and concludes this proposal complies with it.

All other necessary urban services can be made available.

4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. Water Environment Services on behalf of the District has service available to the area to be annexed as noted in Finding No. 7. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job #4234

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM, OR

EXHIBIT B

Annexation Description

A tract of land located in the Northeast One-Quarter of Section 11, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeast corner of Lot 52 of the plat "Howard's Estates", Plat No. 3834, Clackamas County Plat Records, also being on the Sunrise Water District and the Clackamas County Sewer District limits line; thence along the south line of the plat "Bella Pointe Cino", Plat No. 4139, Clackamas County Plat Records, and the south line of Partition Plat No. 2002-091, Clackamas County Plat Records, and said District limits line, North 88°59'25" East 492.63 feet to the east line of Document Number 2015-070984; thence leaving said District limits line along said east line, South 00°00'00" East 222.30 feet to the north line of Tract 'E' of the plat "Howard's Estates" and said District limits line; thence along said north line and the north line of Lots 44 through 46 of said plat and said District limits line, South 88°59'25" West 490.45 feet to east line of Lot 49 of said plat; thence along said east line and the east line of Lots 50 through 52 of said plat and said District limits line, North 00°33'39" West 222.27 feet to the Point of Beginning.

The above described tract of land contains 2.51 acres, more or less.

4/27/2017

REGISTERED
PROFESSIONAL
LAND SURVEYOR


OREGON
JANUARY 9, 2007
NICK WHITE
70652LS

RENEWS: 6/30/18

EXHIBIT C

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 11,
TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,
CLACKAMAS COUNTY, OREGON

LEGEND

 SUNRISE WATER AUTHORITY (SWD) AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD#1) LIMITS LINE

PP NO. 2002-091
PARCEL 1

SE MARCI WAY

PP NO. 2008-045

"BELLA PONTE CINO"
PLAT NO. 4139

TRACT 'D'

PARCEL 3

LOT 66

N88°59'25"E 492.63'

LOT 52

POINT OF BEGINNING
NE COR LOT 52

DOC. NO. 2015-070984
AREA=2.51 ACRES±

LOT 51

LOT 50

LOT 49

LOT 48

LOT 46

LOT 45

LOT 44

S88°59'25"W 490.45'

TRACT 'E'

DOC. NO.
2016-040837

"HOWARD'S ESTATES"
PLAT NO. 3834

5/31/2017

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Nick White

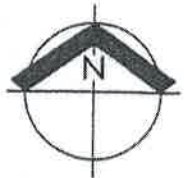
OREGON
JANUARY 9, 2007
NICK WHITE
70652LS

RENEWS: 6/30/18

PREPARED FOR

SPENCER MANAGEMENT GROUP, INC.
12042 SE SUNNYSIDE ROAD, #534
CLACKAMAS, OR 97015

SCALE: 1"=100 FEET



ANNEXATION

EXHIBIT
B

AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062

P: 503.563.6151 F: 503.563.6152 aks-eng.com

AKS

DRWN: WCB

CHKD: NSW

AKS JOB:

4234



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Approving Boundary Change Proposal CL 17-013
For Annexation to Sunrise Water Authority

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Purpose/Outcomes	Conduct Public Hearing/Approve Order
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Contact Person	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND:

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a water authority. Sunrise Water Authority is such a district.

Proposal No. CL 17-013 is a proposed annexation to Sunrise Water Authority ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation.

This proposal was initiated by a consent petition of the owners of all of the property to be annexed. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 2.51 acres, is vacant and is valued at \$82,809.

REASON FOR ANNEXATION

Water service is desired for development of a 9-lot PUD which has been approved by Clackamas County.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the section below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the section below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration.

RECOMMENDATION:

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL 17-013, annexation to Sunrise Water Authority.

Respectfully submitted,



Chris Storey
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 17-013



ORDER NO.

WHEREAS, this matter coming before the Board at this time, and it appearing that all of the owners of the land in the territory to be annexed have petitioned to annex the territory to Sunrise Water Authority; and

WHEREAS, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

WHEREAS, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

WHEREAS, it further appearing that this matter came before the Board for public hearing on September 14, 2017 and that a decision of approval was made on September 14, 2017;

NOW THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 17-013 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Sunrise Water Authority as of September 14, 2017.

ADOPTED this 14th day of September, 2017

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory contains 2.51 acres, is vacant and is valued at \$82,809.
2. Water Service is desired for development of a 9-lot PUD which has been approved by Clackamas County.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the Findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- party;
- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in Finding 5 below. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Water

* * *

- 15.0 Require water purveyors in urban areas to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers, and storm drainage facilities, necessary to serve additional lands.

Clackamas County has approved a 9-unit PUD on this site. Despite its general proximity to the City of Happy Valley the site is not contiguous to the City and the City does not object to the annexation of the area to the Sunrise Water Authority since it is also the water provider to the City.

6. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to water service in this area of Clackamas County.
7. The property is being proposed to contemporaneously annex into Clackamas County Service District No. 1 (Proposal CL 17-012). Water Environment Services, as the service provider for Clackamas County Service District No. 1, has a sewer line available in an easement on the west edge of the property.
8. The Water Authority has an 8-inch water line in SE Madena Way adjacent to the site.
9. The area receives police service from the Clackamas County Sheriff's Department.
10. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the Water Authority.
11. The area to be annexed is within the North Clackamas County Parks & Recreation District, with a withdrawal to be effective as of December 31, 2017 per City of Happy Valley ordinance.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 6 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The area is served by the Sunrise Water Authority and no other entity has the capability of serving this site.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Clackamas County's Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.

4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job #4234

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM, OR

EXHIBIT B

Annexation Description

A tract of land located in the Northeast One-Quarter of Section 11, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeast corner of Lot 52 of the plat "Howard's Estates", Plat No. 3834, Clackamas County Plat Records, also being on the Sunrise Water District and the Clackamas County Sewer District limits line; thence along the south line of the plat "Bella Pointe Cino", Plat No. 4139, Clackamas County Plat Records, and the south line of Partition Plat No. 2002-091, Clackamas County Plat Records, and said District limits line, North 88°59'25" East 492.63 feet to the east line of Document Number 2015-070984; thence leaving said District limits line along said east line, South 00°00'00" East 222.30 feet to the north line of Tract 'E' of the plat "Howard's Estates" and said District limits line; thence along said north line and the north line of Lots 44 through 46 of said plat and said District limits line, South 88°59'25" West 490.45 feet to east line of Lot 49 of said plat; thence along said east line and the east line of Lots 50 through 52 of said plat and said District limits line, North 00°33'39" West 222.27 feet to the Point of Beginning.

The above described tract of land contains 2.51 acres, more or less.

4/27/2017

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 9, 2007
NICK WHITE
70652LS

RENEWS: 6/30/18

EXHIBIT C

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 11,
TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,
CLACKAMAS COUNTY, OREGON

LEGEND

--- SUNRISE WATER AUTHORITY (SWD) AND
CLACKAMAS COUNTY SERVICE DISTRICT
NO. 1 (CCSD#1) LIMITS LINE

PP NO. 2002-091
PARCEL 1

SE MARCI WAY

PP NO. 2008-045

"BELLA PONTE CINO"
PLAT NO. 4139

TRACT 'D'

PARCEL 3

LOT 66

N88°59'25"E 492.63'

LOT 52

POINT OF BEGINNING
NE COR LOT 52

DOC. NO. 2015-070984
AREA=2.51 ACRES±

LOT 51

N00°33'39"W 222.27'

S00°00'00"E 222.30'

DOC. NO.
2016-040838

LOT 50

LOT 49

S88°59'25"W 490.45'

DOC. NO.
2016-040837

LOT 48

LOT 46

LOT 45

LOT 44

TRACT 'E'

"HOWARD'S ESTATES"
PLAT NO. 3834

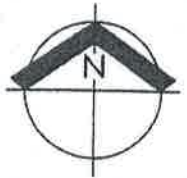
5/31/2017

REGISTERED
PROFESSIONAL
LAND SURVEYOR

PREPARED FOR

SPENCER MANAGEMENT GROUP, INC.
12042 SE SUNNYSIDE ROAD, #534
CLACKAMAS, OR 97015

SCALE: 1"=100 FEET



Nick White

OREGON
JANUARY 9, 2007
NICK WHITE
70652LS

RENEWS: 6/30/18

ANNEXATION

EXHIBIT
B

AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062

P: 503.563.6151 F: 503.563.6152 aks-eng.com

AKS

DRWN: WCB
CHKD: NSW

AKS JOB:
4234

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval to Apply for a Capital Grant for Federal Transit Administration
Bus and Bus Infrastructure Investment Program Funds through Oregon Department
of Transportation for Mt Hood Express Vehicle Replacements

Purpose/Outcomes	Agreement with Oregon Department of Transportation to provide funding for the purchase of three buses for the Mt Hood Express
Dollar Amount and Fiscal Impact	The maximum grant award is \$368,900. The contract is funded through the Oregon Department of Transportation.
Funding Source	FTA 5339- Bus and Bus Infrastructure Investment Program funds - no County General Funds are involved.
Duration	N/A- one time capital purchase
Previous Board Action	None
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	N/A

BACKGROUND:

The Social Services Division of the Health, Housing, and Human Services Department requests approval to apply for an capital purchases grant for Federal Transit Administration Bus and Bus Infrastructure Investment Program funds through the Oregon Department of Transportation to purchase three replacement buses to continue to provide public transit services in the Hoodland area of Clackamas County, especially for seniors and persons with disabilities. The grant application will be for a one time amount of \$368,900. The grant, if awarded, would have no effect on staffing. No County General Funds are involved.

The Mt. Hood Express (formerly the Mountain Express) provides public transit service from the City of Sandy along the Highway 26 corridor including stops in Welches, Rhododendron, Government Camp and Timberline Lodge. The service connects to Sandy’s bus service to provide regional public transit access to employees, local residents and persons who desire to access recreational opportunities year round on Mt. Hood. The Villages Shuttle service provides point-deviated bus service to the Villages at Mt. Hood Communities on weekdays, allowing seniors, persons with disabilities and others who need extra stops and route deviations bus service to access work, medical appointments and

other needs. The Mt Hood Express cannot function without safe, reliable vehicles and these funds will allow the replacement of the current vehicles in a timely manner to ensure continuation of the service.

RECOMMENDATION:

We recommend the approval to apply for this grant and further recommend the acceptance of the award if funded, and that Richard Swift be authorized to sign all documents necessary to accomplish this action on behalf of the Board of Commissioners.

Respectfully submitted

Richard Swift, Director
Health, Housing and Human Services

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with
Cascadia Behavioral Healthcare for Residential Treatment Services

Purpose/Outcomes	This contractor provides mental health residential treatment services to Clackamas County residents.
Dollar Amount and Fiscal Impact	Contract maximum value is \$1,558,631.52.
Funding Source	Oregon Health Authority 2017-2019 CMHP Agreement # 153117 No County General Funds are involved.
Duration	Effective July 1, 2017 and terminates June 30, 2019
Previous Board Action	Previous contract approved August 18, 2016, Agenda Item # 081816-A3
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503.742.5305
Contract No.	8116

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Cascadia Behavioral Healthcare for Residential Treatment Services to residents of Clackamas County. Such services are provided to persons enrolled in services through Clackamas County Behavioral Health Division.

The contract is effective July 1, 2017 and continues through June 30, 2019 with a maximum payment not to exceed \$1,558,631.52. County Counsel reviewed and approved this contract on August 17, 2017.

This contract is retroactive due to a delayed receipt of funding from our grantor, combined with delayed contractor approval. The contractor has provided ongoing critical services for Clackamas County residents, ensuring there is no gap in service between contracts.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

AGENCY SERVICES CONTRACT Contract # 8116

This Agency Service Contract, herein called "Contract," is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **CASCADIA BEHAVIORAL HEALTHCARE**, hereinafter called "AGENCY."

CONTRACT

1.0 Engagement

COUNTY hereby engages AGENCY to provide **residential treatment services** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This contract sets forth the terms under which AGENCY will contract with COUNTY to provide **residential treatment services** to clients.

2.0 Term

Services provided under the terms of this Contract shall commence **July 1, 2017 and shall terminate June 30, 2019** unless terminated by one or both parties as provided for in paragraph 6.0 below.

3.0 Compensation and Fiscal Records

3.1 **Compensation**. COUNTY shall compensate AGENCY as specified in **Exhibit C: Compensation**. 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.

Maximum Contract payment shall not exceed **\$1,558,631.52**.

3.2 **Withholding of Contract Payments**. Notwithstanding any other payment provision of this Contract, should AGENCY fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until AGENCY 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 AGENCY.

3.3 **Financial Records**. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this Contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least **six (6) years** or such period as may be required by applicable law, following final payment made under this Contract or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 **Access to Records and Facilities**. COUNTY, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this Contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and OHA to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY 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. AGENCY shall make reports and fiscal data generated under and for this Contract available to COUNTY upon request.

3.4.2 COUNTY may conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this Contract. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this Contract to ensure appropriate expenditure of funds under this Contract. COUNTY shall monitor compliance with AGENCY's financial reporting and accounting requirements

3.4.3 AGENCY may be subject to audit requirements. AGENCY 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, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this Contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (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.

4.1.1 AGENCY must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of AGENCY'S warranty, in this Contract that AGENCY has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of AGENCY'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4.2 Precedence. Where there is a requirement listed both in the main boilerplate of this Contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this Contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

4.5. Tax Laws. The AGENCY represents and warrants that, for a period of no fewer than **six (6) calendar years** preceding the effective date of this Contract, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

5.0 General Conditions

5.1 **Indemnification.** AGENCY agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to AGENCY's negligent or willful acts or those of its employees, agents, volunteers, or those under AGENCY's control. AGENCY is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to AGENCY's actions, employees, agents, volunteers, or otherwise with respect to those under its control.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, Oregon Health Authority, 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 AGENCY, or its agents or employees under this Contract.

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

5.2 **Insurance.** COUNTY shall enforce AGENCY compliance with the insurance requirements outlined herein, and shall take all reasonable steps to enforce such compliance. Examples of reasonable steps include issuing stop work orders until the insurance is in full force, terminating the Contract as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Contract, AGENCY 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

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury, death and property damage on an "occurrence" form in the amount of **not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate** for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract and personal injury liability, products and completed operations. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

5.2.2 Automobile Liability.

- Required by COUNTY Not required by COUNTY

AGENCY shall obtain at AGENCY expense, and keep in effect during the term of this Contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall **not be less than \$1,000,000**, or AGENCY shall obtain at AGENCY expense, and keep in effect during the term of the Contract, Personal Auto Coverage. The limits shall be no less than **\$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.**

5.2.3 Professional Liability.

- Required by COUNTY Not required by COUNTY

If this Contract involves the delivery of professional services, AGENCY shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of **not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate** for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Additional Insured Provisions. All required insurance, other than Professional Liability, and Workers' Compensation, shall include "**Clackamas County, its agents, elected officials, officers, and employees**" and "**the State of Oregon and its officers, employees and agents**" as additional insureds, but only with respect to AGENCY's activities performed under this Contract.

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 **thirty (30) days** written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 days-notice of cancellation provision shall be physically endorsed on to the policy.

5.2.6 Insurance Carrier Rating. Coverage provided by AGENCY 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 Contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its officers must be named as an additional insured on the Certificate of Insurance. No Contract shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

Certificate holder should be:

Clackamas County, 2051 Kaen Road, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically to:

BHcontracts@clackamas.us

Or by mail to:

**Clackamas County Behavioral Health Division
Attn: Contracts
2051 Kaen Road, Suite 154
Oregon City, OR 97045**

5.2.8 Primary Coverage Clarification. AGENCY coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.

5.2.9 Cross-Liability Clause. A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Contract.

5.2.10 Waiver of Subrogation. AGENCY agrees to waive their rights of subrogation arising from the work performed under this Contract.

5.2.11 "Tail Coverage" If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the AGENCY shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the AGENCY Contract, for a minimum of **twenty-four (24) months** following the later of: (i) the AGENCY's completion and COUNTY's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the AGENCY Contract. Notwithstanding the foregoing 24-month requirement, if the AGENCY elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less

than the 24-month period described above, then the AGENCY may request and COUNTY may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COUNTY approval is granted, the AGENCY shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this Contract 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. AGENCY by execution of this Contract consents to the in personal jurisdiction of said courts.

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

5.5 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 or 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.

5.6 Waiver. The failure of either party to enforce any provision of this Contract 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 of the activity contracted herein except as set forth in this Contract.

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

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this Contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the performance of the work provided for in this Contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing 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 to AGENCY by reason of this Contract.

5.9.3 No person shall be employed for more than **ten (10) 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 except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- i. for all overtime in excess of **eight (8) hours a day** or **forty (40) hours** in any one week when the work week is five consecutive days, Monday through Friday;

- ii. for all overtime in excess of **ten (10) hours in any one day or forty (40) hours** in any one week when the work week is four consecutive days, Monday through Friday; and
- iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this Contract in excess of **forty (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.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law or contract for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. AGENCY, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. AGEMCU shall maintain employer's liability insurance with limits of **\$500,000 each accident, \$500,000 disease each employee, and \$500,000** each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this Contract are the exclusive property of COUNTY.

5.11 Integration. This Contract contains the entire Contract between COUNTY and AGENCY and supersedes all prior written or oral discussions or Contracts.

5.12 Successors in Interest. The provisions of this Contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

6.0 Termination

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

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

6.2.1 Terms of the **2017-2019 Community Mental Health Provider (CMHP) Intergovernmental Agreement** are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.

6.2.2 The termination, suspension or expiration of the **2017-2019 Community Mental Health Provider Intergovernmental 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. The Contract may be modified to accommodate a reduction in funds.

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

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

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

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

6.2.8 **Debarment and Suspension.** COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYs with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 **Notice of Default.** COUNTY may also issue a written notice of default (including breach of Contract) to AGENCY and terminate the whole or any part of this Contract if AGENCY substantially fails to perform the specific provisions of this Contract. The rights and remedies of COUNTY related to default (including breach of Contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

6.4 **Transition.** Any such termination of this Contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

7.0 Notices

IF TO AGENCY:
Cascadia Behavioral HealthCare
ATTN: Hali Mendez / Risk Manager
PO Box 8459
Portland, OR 97207

IF TO COUNTY:
Clackamas County Behavioral Health Division
Attention: Contract Administration
2051 Kaen Road, #154
Oregon City, OR 97045

This Contract consists of seven (7) sections plus the following exhibits which by this reference are incorporated herein:

- Exhibit A: Definitions
- Exhibit B: Scope of Work
- Exhibit C: Compensation
- Exhibit D: CMHP Required Provider Contract Provisions
- Exhibit E: CMHP Required Federal Terms and Conditions

(signature page follows)

SIGNATURE PAGE TO AGENCY SERVICES CONTRACT

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

CASCADIA BEHAVIORAL HEALTHCARE

By: 
Derald Walker, CEO/President

8/16/2017
Date

847 NE 19th Avenue Suite 100
Street Address

Portland, OR 97207
City / State / Zip

(503) 963-7766 (503) 963-7711
Phone / Fax

CLACKAMAS COUNTY


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

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing & Human Service Department

Date

Approved to Form:


County Counsel
7/3/17
Date

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with
Northwest Housing Alternatives, Inc. for supported housing services

Purpose/Outcomes	This contractor provides supported housing services.
Dollar Amount and Fiscal Impact	Contract maximum value is \$72,000.
Funding Source	State of Oregon Choice Model contract. No County General Funds are involved.
Duration	Effective July 1, 2017 and terminates June 30, 2018
Previous Board Action	No previous board action taken.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503.742.5305
Contract No.	8225

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Professional Service Contract with Northwest Housing Alternatives, Inc. for Supported Housing Services to residents of Clackamas County. Such services are provided to persons enrolled in services through Clackamas County Behavioral Health Division.

The contract is effective July 1, 2017 and continues through June 30, 2018 with a maximum payment not to exceed \$72,000.00. County Counsel reviewed and approved this contract on August 14, 2017.

This contract is retroactive due to a delayed receipt of funding from our grantor, combined with delayed contractor approval. The contractor has provided ongoing critical services for Clackamas County residents, ensuring there is no gap in service between contracts.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

PROFESSIONAL, TECHNICAL, AND CONSULTANT SERVICES AGREEMENT

AGREEMENT 8225

This Professional, Technical, and Consultant Services Agreement is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and NORTHWEST HOUSING ALTERNATIVES, INC hereinafter called "CONTRACTOR"

AGREEMENT

1.0 Engagement

COUNTY hereby engages CONTRACTOR to provide **supported housing services** as more fully described in Exhibit A, Scope of Work, attached hereto and incorporated herein.

2.0 Term

Services provided under the terms of this Agreement shall commence **July 1, 2017** and shall terminate **June 30, 2018** unless terminated earlier by one or both parties as provided for in paragraph 6.0.

3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate CONTRACTOR for satisfactorily performing contracted services as specified in Exhibit A as follows:

Total payment to CONTRACTOR shall not exceed **\$72,000**

Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

3.2. Method of Payment. To receive payment, CONTRACTOR shall submit invoices as follows:

CONTRACTOR shall submit itemized invoices by the 10th day of the month following the month services were performed. The invoice shall include the contract #8225 dates of service and the total amount due for all service provided during the month. Invoices shall be submitted electronically to:

BHAP@co.clackamas.or.us

Or by mail to:

Clackamas County Behavioral Health Division
Attn: Accounts Payable
2051 Kaen Road, 154
Oregon City, Oregon 97045

When submitting electronically, designate CONTRACTOR name and Agreement # **8225** in the subject of the e-mail.

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

3.3 Withholding of Agreement Payments. Notwithstanding any other payment provision of this Agreement, should CONTRACTOR fail to perform or document the performance of contracted services,

Northwest Housing Alternatives Inc

Professional, Technical and Consultant Agreement 8225

Page 2 of 30

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.

3.4 Financial Records. CONTRACTOR shall maintain complete and legible financial records pertinent to payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles. Financial records 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.

3.4.1 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.

3.4.2 COUNTY may 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.

3.4.3 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, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over CONTRACTOR.

3.4.4 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.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CONTRACTOR shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances 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 B, Performance Standards, attached hereto and incorporated herein.

CONTRACTOR must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement. Further, any violation of CONTRACTOR'S warranty, in this Agreement that CONTRACTOR has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle COUNTY to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- i. Termination of this Agreement, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to CONTRACTOR, in an amount equal to COUNTY'S setoff right, without penalty; and

- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of CONTRACTOR'S breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4.2 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this Agreement.

4.3 Independent Contractor. CONTRACTOR certifies that it is an independent contractor and not an employee or agent of Clackamas County, State of Oregon or Federal government. CONTRACTOR is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the solely the responsibility of CONTRACTOR.

4.4. Tax Laws. The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, to CONTRACTOR'S property, operations, receipts, or income, or to CONTRACTOR'S performance of or compensation for any work performed by CONTRACTOR;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by CONTRACTOR; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

5.0 General Conditions

5.1 Indemnification. CONTRACTOR agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts 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, Oregon Health Authority 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 \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees**. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall obtain at CONTRACTOR's expense, and keep in effect during the term of the Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles, or CONTRACTOR shall obtain at CONTRACTOR'S expense, and keep in effect during the term of the Agreement, Personal auto coverage. The limits shall be **no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage. The combined single limit per occurrence shall not be less than \$1,000,000.**

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 \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, 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 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Agreement.

5.2.5 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.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to 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.

5.2.7 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.

5.2.8 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 ten days prior to coverage expiring.

Certificate holder should be:

Clackamas County, 2051 Kaen Road, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically to:

BHcontracts@co.clackamas.or.us

Or by mail to:

Clackamas County Behavioral Health Division
Atten: Contracts
2051 Kaen Road, # 154
Oregon City, OR 97045

5.2.9 Primary Coverage Clarification. CONTRACTOR's coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.

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.

5.2.11 Waiver of Subrogation. CONTRACTOR agrees to waive their rights of subrogation arising from the work performed under this 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 without giving effect to the conflict of law provisions thereof. 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 personal 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.

Northwest Housing Alternatives Inc

Professional, Technical and Consultant Agreement 8225

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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 Public Contracting Requirements. Pursuant to the requirements of Oregon law, the following terms and conditions are made a part of this Agreement:

5.8.1 Workers' Compensation. All subject employers working under this Agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify 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.**

5.8.2 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.

5.8.3 Oregon Public Contracting Conditions. Pursuant to the terms of ORS 279B.220, CONTRACTOR shall:

- i. 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.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in performance of this Agreement.
- iii. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.8.4 CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.

5.8.5 As required by ORS 279B.230, 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, agreement or agreement for the purpose of providing or paying for such services.

5.9 Integration. This Agreement contains the entire Agreement between COUNTY and CONTRACTOR and supersedes all prior written or oral discussions or Agreements.

5.10 Ownership of Work Product. All work products of CONTRACTOR which result from this Agreement are the exclusive property of COUNTY.

6.0 Termination

6.1 Termination Without Cause. This Agreement may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days' notice, in writing and delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY, by written notice of default (including breach of Agreement) to CONTRACTOR, 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:

- i. If 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, the Agreement may be modified to accommodate a reduction in funds.
- ii. If Federal or State regulations or guidelines 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.
- iii. If any license or certificate required by law or regulation to be held by CONTRACTOR to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- iv. If CONTRACTOR fails to provide services, outcomes, reports as specified by COUNTY in this Agreement.
- v. If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

6.3 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 individuals 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:
Northwest Housing Alternatives Inc
2316 SE Willard Street
Milwaukie, OR 97222-7740

If to COUNTY:
Clackamas County Behavioral Health Division
2051 Kaen Road, # 154
Oregon City, OR 97045

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

Exhibit A	Scope of Work
Exhibit B	Performance Standards
Exhibit C	Budget
Exhibit D	General Conditions
Attachment 1	Monthly Report Template

(signature page follows)

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with Oregon Health & Sciences University to
Provide Culturally Specific Mental Health Services

Purpose/Outcomes	This contractor provides culturally specific mental health services for Clackamas County residents.
Dollar Amount and Fiscal Impact	Contract maximum value is \$69,525.
Funding Source	OHP, Oregon Health Plan / Health Share of Oregon No County General Funds are involved.
Duration	Effective upon signature and terminates June 30, 2018
Previous Board Action	NA
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503.742.5305
Contract No.	8228

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with the Oregon Health & Sciences University to provide culturally specific mental health services to residents of Clackamas County. Clients served in this program are typically immigrants or refugees from a variety of countries outside of North America. Generally these individuals speak a language other than English and may have limited community integration. Affective disorders and PTSD are common. Individuals in this program often have experienced very traumatic events which may have contributed to relocating to the United States.

The contract is effective upon signature and continues through June 30, 2018 with a maximum payment not to exceed \$69,525. County Counsel reviewed and approved this contract on June 12, 2017.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

AGENCY SERVICES CONTRACT Contract # 8228

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **OREGON HEALTH & SCIENCES UNIVERSITY** hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

CONTRACT

1.0 Engagement

COUNTY hereby engages AGENCY to provide ***culturally specific mental health*** services as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

2.0 Term

Services provided under the terms of this contract shall commence on **upon signature and shall terminate June 30, 2018** unless terminated by one or both parties as provided for in paragraph 6.0 below.

3.0 Compensation and Fiscal Records

3.1 **Compensation.** COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. 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.

Maximum compensation for the term of this contract shall not exceed **\$69,525.00.**

3.2 **Withholding of Contract Payments.** Notwithstanding any other payment provision of this Contract, should AGENCY fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until AGENCY 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 AGENCY.

3.3 **Financial Records.** AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this Contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least **six (6) years** or such period as may be required by applicable law, following final payment made under this Contract or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 **Access to Records and Facilities.** COUNTY, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this Contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and State of Oregon to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY 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. AGENCY shall make reports and fiscal data generated under and for this Contract available to COUNTY upon request.

3.4.2 COUNTY may conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this Contract. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this Contract to ensure appropriate expenditure of funds under this Contract. COUNTY shall monitor compliance with AGENCY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY 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, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this Contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (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.

4.1.1 AGENCY must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of AGENCY'S warranty, in this Contract that AGENCY has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of AGENCY'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4.2 Precedence. Where there is a requirement listed both in the main boilerplate of this Contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this Contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

4.5 Tax Laws. The AGENCY represents and warrants that, for a period of no fewer than **six (6) calendar years** preceding the effective date of this Contract, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;

- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

5.0 General Conditions

5.1 **Indemnification.** AGENCY agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to AGENCY's negligent or willful acts or those of its employees, agents or those under AGENCY's control. AGENCY is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to AGENCY's actions, employees, agents, volunteers, or otherwise with respect to those under its control.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, DHS, 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 AGENCY, or its agents or employees under this Contract.

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

5.2 **Insurance.** COUNTY shall enforce AGENCY compliance with the insurance requirements outlined herein, and shall take all reasonable steps to enforce such compliance. Examples of reasonable steps include issuing stop work orders until the insurance is in full force, terminating the Contract as permitted herein, or pursuing legal action to enforce such requirements. **During the term of this Contract, AGENCY shall maintain in force, at its own expense, insurance, adequately underwritten by an insurance company or provided through a program of self-insurance in order to comply with requirements in Sections 5.2 through 5.2.10 and Section 5.9.6:**

5.2.1 Commercial General Liability.

- Required by COUNTY Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury, death and property damage on an "occurrence" form in the amount of **not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate** for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract and personal injury liability, products and completed operations. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

5.2.2 Automobile Liability.

- Required by COUNTY Not required by COUNTY

AGENCY shall obtain at AGENCY expense, and keep in effect during the term of this Contract, **Commercial Automobile Liability** coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall **not be less than \$1,000,000**, or AGENCY shall obtain at AGENCY expense, and keep in effect during the term of the Contract, **Personal Auto Coverage**. The limits shall be no less than **\$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.**

5.2.3 Professional Liability.

- Required by COUNTY Not required by COUNTY

If this Contract involves the delivery of professional services, AGENCY shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of **not less than \$1,000,000 combined single limit per**

occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, agents, 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 Contract. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without **thirty (30) days** written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 days-notice of cancellation provision shall be physically endorsed on to the policy.

5.2.5 Insurance Carrier Rating. Coverage provided by AGENCY must be underwritten by an insurance company or be provided through a program of self-insurance 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.

5.2.6 Certificates of Insurance. As evidence of the insurance coverage required by this Contract, AGENCY shall furnish a Certificate of Insurance or a Self-Insurance Certification form to COUNTY. No Contract shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. AGENCY will use best efforts to submit a renewal certificate to COUNTY **ten (10) days** prior to coverage expiration.

Certificate holder should be:

Clackamas County, 2051 Kaen Road, Oregon City, Oregon 97045

Insurance certificates should be submitted electronically to:

BHContracts@clackamas.us

Or by mail to:

**Clackamas County Behavioral Health Division
Atten: Contracts
2051 Kaen Road, Suite 154
Oregon City, OR 97045**

5.2.7 Primary Coverage Clarification. AGENCY coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

5.2.8 Cross-Liability Clause. A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Contract.

5.2.9 Waiver of Subrogation. AGENCY agrees to waive their rights of subrogation arising from the work performed under this Contract.

5.2.10 "Tail Coverage". If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the AGENCY shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the AGENCY Contract, for a minimum of twenty-four (24) months following the later of: (i) the AGENCY's completion and COUNTY's acceptance of all Services required under the Contract; or (ii) the expiration of all warranty periods provided under the AGENCY Contract. Notwithstanding the foregoing 24-month requirement, if the AGENCY elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the AGENCY may request and COUNTY may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COUNTY approval is granted, the AGENCY shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action, or

suit between COUNTY and AGENCY that arises out of or relates to performance under this Contract 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. AGENCY by execution of this Contract consents to the in personal jurisdiction of said courts.

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

5.5 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 or 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.

5.6 Waiver. The failure of either party to enforce any provision of this Contract 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 of the activity contracted herein except as set forth in this Contract.

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

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this Contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the performance of the work provided for in this Contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing 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 to AGENCY by reason of this Contract.

5.9.3 No person shall be employed for more than **ten (10) 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 except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- i. for all overtime in excess of **eight (8) hours a day** or **forty (40) hours** in any one week when the work week is five consecutive days, Monday through Friday;
- ii. for all overtime in excess of **ten (10) hours in any one day** or **forty (40) hours** in any one week when the work week is four consecutive days, Monday through Friday; and
- iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this Contract in excess of **forty (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.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law or contract for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. AGENCY, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of **\$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit**.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this Contract are the exclusive property of COUNTY.

5.11 Integration. This Contract contains the entire Contract between COUNTY and AGENCY and supersedes all prior written or oral discussions or Contracts.

5.12 Successors in Interest. The provisions of this Contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

6.0 Termination

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

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

6.2.1 Terms of the Health Share Risk Accepting Entity Contract are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.

6.2.2 The termination, suspension or expiration of the Health Share Risk Accepting Entity Contract.

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. The Contract may be modified to accommodate a reduction in funds.

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

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

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

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

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of Contract) to AGENCY and terminate the whole or any part of this Contract if AGENCY substantially fails to perform the specific provisions of this Contract. The rights and remedies of COUNTY related to default (including breach of Contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

6.4 Transition. Any such termination of this Contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

7.0 Notices

IF TO AGENCY:
Oregon Health & Sciences University
3181 SW Sam Jackson Park Road
Portland, OR 97239

IF TO COUNTY:
Clackamas County Behavioral Health Division
Attention: Contract Administration
2051 Kaen Road, #154
Oregon City, OR 97045

This Contract consists of seven (7) sections plus the following exhibits which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scope of Work
Exhibit C	Compensation
Exhibit D	OHP Required Federal Terms and Conditions
Exhibit E	Statement of General Conditions

(signature page follows)

SIGNATURE PAGE

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

OREGON HEALTH & SCIENCES UNIVERSITY

CLACKAMAS COUNTY

By: Anthony R. Masciotra, Jr.
(Anthony R. Masciotra, Jr. CEO, OHSU Practice Plan and Sr. Associate Dean, Clinical Practice)

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

8/22/2017

Date

Signing on Behalf of the Board:

MBS81 3181 SW Sam Jackson Park Road

Street Address

Portland, OR 97239-3098

City / State / Zip

Richard Swift, Director
Health, Housing & Human Service Department

(503) 494-4147

Phone

/ Fax

Date

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #1 of the Intergovernmental Subrecipient Agreement with Oregon Trail School District (OTSD) for Preschool Promise Services

Purpose/Outcomes	OTSD will provide Preschool Promise services to 18 children ages 3-5 living at or below 200 percent of the Federal Poverty Level to improve educational outcomes
Dollar Amount and Fiscal Impact	\$224,400 No County General Funds are involved
Funding Source	Oregon Department of Education Early Learning Division
Duration	From July 1, 2016 through June 30, 2017
Previous Board Action	112316-A2
Strategic Plan Alignment	<ul style="list-style-type: none"> • Individuals and families in need are healthy and safe • Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook, 503-650-5677
Contract No.	8013

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of Amendment #1 of the non-federal Subrecipient Intergovernmental Agreement with Oregon Trail School District for Preschool Promise programming. Preschool Promise promotes healthy child development and early learning to underserved families to improve educational outcomes.

The Amendment adds \$38,466 for a revised maximum value of \$262,866. No County General funds are involved and no match is required. It is effective upon signature for services from July 1, 2017 through September 30, 2017. It has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

Subrecipient Amendment (FY 16-17)
Health, Housing & Human Services

Subrecipient Agreement Number: 8013	Board Order Number: 112316-A2
Department/Division: CYF Division	Amendment No. 1
Subrecipient: Oregon Trail School District	Amendment Requested By: Rod Cook
Changes: <input type="checkbox"/> Scope of Service <input checked="" type="checkbox"/> Agreement Time	<input checked="" type="checkbox"/> Agreement Budget <input type="checkbox"/> Other:

Justification for Amendment:

The Agreement by and between Clackamas County and Oregon Trail School District, entered into on 11/23/16 (the Agreement) funds Preschool Promise Early Childhood Services and Early Learning opportunities for underserved Clackamas County families.

This Amendment extends the work and term of the Agreement through September 30, 2017, aligning it with the terms of the County's Agreement with Oregon Department of Education Early Learning Division. Maximum compensation is increased by \$31,785 to a revised value of \$ \$256,185.00. This Amendment becomes effective July 1, 2017 and continues through September 30, 2017.

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

AMEND:

1. **Term and Effective Date.** This Agreement shall be effective as of July 1, 2016 and shall expire on June 30, 2017, unless sooner terminated or extended pursuant to the terms hereof.

TO READ:

1. **Term and Effective Date.** This Agreement shall be effective as of July 1, 2016 and shall expire on ***September 30, 2017***, unless sooner terminated or extended pursuant to the terms hereof.

AMEND:

4. **Grant Funds.** The COUNTY's funding for this Agreement is the EARLY LEARNING DIVISION PRESCHOOL PROMISE contract #5803 issued to the COUNTY by the State of Oregon, Early Learning Division. The maximum, not to exceed, Contract amount that the COUNTY will pay on this Agreement with Oregon Trail School District is \$224,400.00.

TO READ:

4. **Grant Funds.** The COUNTY's for this Agreement is the EARLY LEARNING DIVISION PRESCHOOL PROMISE contract #5803 issued to the COUNTY BY THE State of Oregon, Early Learning Division. The maximum, not to exceed, Contract amount that the COUNTY will pay on this Agreement with Oregon Trail School District is ***\$256,185.00***

REPLACE:

Exhibit B: Oregon Trail School District Program Budget

WITH:

EXHIBIT B. 1: SUBRECIPIENT BUDGET 16-17 PROGRAM YEAR (AMENDED)			
Subrecipient <u>Oregon Trail School District</u>		<u>CYF 8013</u>	
Address: <u>36525 Industrial Way</u>		<u>7/1/16-9/30/17</u>	
<u>Sandy, OR 97055</u>			
Contact Person: <u>Timothy Belanger/Rachael George</u>			
Phone Number: <u>503-668-5541 x4007</u>			
E-mail: <u>timothy.belanger@ortrail.k12.or.us</u>			
Budget Category	Current Budget	7/1-9/30/2017 Extension	Total Budget
Personnel			
Wages	\$ 72,454.00	\$ 5,236.00	\$ 77,690.00
Benefits/Fringe	\$ 33,960.00	\$ 4,971.00	\$ 38,931.00
Administrative Costs and Indirect Costs	\$ 19,000.00	\$ 1,583.00	\$ 20,583.00
Program			
(Classroom, utilities, building ins. Maintenance,	\$ 61,586.00	\$ 15,566.00	\$ 77,152.00
Program Start Up (Classroom furniture, supplies)	\$ 27,000.00	\$ -	\$ 27,000.00
Professional Development	\$ 10,400.00	\$ 4,429.00	\$ 14,829.00
Total Grant Funds Requested	\$ 224,400.00	\$31,785	\$ 256,185.00

ADD:

Except as set forth herein, the County and Subrecipient ratify the remainder of the Agreement.

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

SUBRECIPIENT

Oregon Trail School District
36525 Industrial Way
Sandy, Oregon 97055

By: 

Aaron Bayer, Superintendent

7-31-17

Dated

CLACKAMAS COUNTY

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

Signing on behalf of the Board:

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

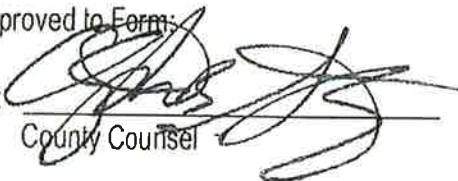
Dated

By: 

Rodney A. Cook, Director
Children, Youth & Families Division

8/17/17

Dated

Approved to Form: _____
By: 

County Counsel

11 July 2017

Dated

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Agreement with Northwest Family Services
for Evidence-based Parenting Education Classes

Purpose/Outcomes	Provide parenting education classes, enhance teaching skills and competencies of parents to promote child social/emotional well-being and kindergarten readiness.
Dollar Amount and Fiscal Impact	Contract has a maximum value of \$15,000 and no match is required. No County General Funds are involved.
Funding Source	Oregon Community Foundation – Oregon Parent Education Collaborative
Duration	Effective August 1, 2017 and terminating June 30, 2018
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF-8462

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Subrecipient Agreement with Northwest Family Services to provide parent education and skills training to a minimum of 24 parents of children ages 0-6 years. Classes will improve the quality of parent/child interaction, support healthy child development, and kindergarten readiness.

This Agreement has a maximum value of \$15,000 and has been reviewed and approved by County Counsel. No County General funds are involved and no match is required. It is effective upon signature for services starting August 1, 2017 and terminating June 30, 2018.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

**CLACKAMAS COUNTY, OREGON
LOCAL SUBRECIPIENT GRANT AGREEMENT CYF-8462**

Program Name: **Northwest Family Services OPEC Parenting Education**

Program/Project Number: CYF-8462

This Agreement is between **Clackamas County, Oregon**, acting by and through its Health, Housing & Human Services Children, Youth & Families Division (COUNTY) and **Northwest Family Services** (SUBRECIPIENT), an Oregon Non-profit Organization.

COUNTY Data

Grant Accountant: Michael Morasko

Clackamas County Finance
2051 Kaen Rd.
Oregon City, OR 97045
503-742-5435
mmorasko@clackamas.us

Program Coordinator: Chelsea Hamilton

Clackamas County Children, Youth & Families Division
150 Beaver Creek Rd.
Oregon City, OR 97045
503-650-5682
chamilton@clackamas.us

SUBRECIPIENT Data

Finance/Fiscal Representative: Kathy Shay

Northwest Family Services
6200 SE King Rd
Portland, OR 97222
503-546-6377
ksahy@nwfs.org

Program Representative: Samantha Furlow

Northwest Family Services
6200 SE King Rd
Portland, OR 97222
503-546-6377
sfurlow@nwfs.org

FEIN: 93-0841022

RECITALS

1. Northwest Family Services (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was chosen by CYF through a competitive process to provide parenting classes to parents with children (prenatal to age six) to increase parenting skills and knowledge of healthy child development and to promote early learning and readiness for kindergarten. SUBRECIPIENT enhances access to this service across the county and has demonstrated capacity to deliver evidence-based parenting programs.
2. SUBRECIPIENT will conduct one Spanish series of *Haga de la Paternidad un Placer*, one English class series of *Active Parenting Now* and one English class series of *Make Parenting A Pleasure* with a minimum of 24 unduplicated parents (16 English and 8 Spanish-speaking) by June 30, 2018. Parents will expand their knowledge about child development, build effective parenting skills, and strengthen parent-child relationships, resulting in enhanced children's health, development, and school readiness.
3. The Oregon Community Foundation – Oregon Parenting Education Collaborative (OPEC), which funds this Agreement, is a multi-year initiative to expand access to high-quality parenting programs and develop a stronger and more coordinated parenting education system in order to reach Clackamas County parents with young children, and especially those who are English language learners, low income, living in rural communities, and/or are otherwise traditionally underserved, lack adequate access to evidence-based parenting education.
4. This Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

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

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than August 1, 2017 and not later than June 30, 2018, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: SUBRECIPIENT Statement of Program Objectives. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Oregon Community Foundation – Oregon Parenting Education Collaborative Grant Agreement that is the source of the grant funding.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to the COUNTY by the Oregon Community Foundation. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is \$15,000.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

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

among its duties and responsibilities the following:

- a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
- c) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or Agreement.
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- j) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the Oregon Community Foundation, and their duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- k) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2018), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

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

11. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to SUBRECIPIENT.
- b) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

12. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY, its elected officials, officers, employees and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its elected officials, officers, employees and agents. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. The policy(ies) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of

this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this Agreement, with limits not less than \$2,000,000 per occurrence for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its elected officials, officers, employees and agents" as an additional insured, but only with respect to SUBRECIPIENT's activities under this Agreement.
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- 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 9) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
- 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- 11) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.

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

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

SUBRECIPIENT

Northwest Family Services
6200 SE King Rd
Portland, OR 97222

By: 
Rose Fuller, Executive Director

Dated: _____

CLACKAMAS COUNTY


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

Signing on behalf of the Board:

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

Dated: _____

Approved to form

By: 
County Counsel

By: _____
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 29 August 2017

Dated: _____

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Agreement with Clackamas County Children’s Commission
Head Start for Evidence-based Parenting Education Classes

Purpose/Outcomes	Provide parenting education classes, enhance teaching skills and competencies of parents to promote child social/emotional well-being and readiness for kindergarten.
Dollar Amount and Fiscal Impact	Contract has a maximum value of \$15,000. No match is required. No County General Funds are involved.
Funding Source	Oregon Community Foundation – Oregon Parenting Education Collaborative
Duration	Effective August 1, 2017 and terminating June 30, 2018
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF-8463

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Subrecipient Agreement with CCCCHS to provide parent education and skills training to a minimum of 40 parents of children ages 0-6. Classes will improve the quality of parent/child interaction, support healthy child development, and readiness for kindergarten.

This Agreement has a maximum value of \$15,000 and becomes effective upon signature for services starting August 1, 2017 and terminating June 30, 2018. No County General funds are involved and no match is required and it has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

CLACKAMAS COUNTY, OREGON	
LOCAL SUBRECIPIENT GRANT AGREEMENT CYF-8463	
Program Name: <i>Clackamas County Children's Commission Head Start (CCCCHS) OPEC Parenting Education</i>	
Program/Project Number: CYF-8463	
This Agreement is between <u>Clackamas County, Oregon</u> , acting by and through its Health, Housing & Human Services Children, Youth & Families Division (COUNTY) and <u>Clackamas County Children's Commission-Head Start (CCCCHS)</u> (SUBRECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Michael Morasko	Program Coordinator: Chelsea Hamilton
Clackamas County Finance 2051 Kaen Rd. Oregon City, OR 97045 503-742-5435 mmorasko@clackamas.us	Clackamas County Children, Youth & Families Division 150 Beaver Creek Rd. Oregon City, OR 97045 503-650-5682 chamilton@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Candace Clarke	Program Representative: Linda Dorzweiler
Clackamas County Children's Commission 16518 SE River Road Milwaukie, OR 97267 503.675.4565 candacec@cccchs.org	Clackamas County Children's Commission 16518 SE River Road Milwaukie, OR 97267 503.675.4565 lindad@cccchs.org
FEIN: 93-0624672	

RECITALS

1. Clackamas County Children's Commission Head Start (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was chosen by CYF through a competitive process to provide parenting classes to parents with children (prenatal to age six) to increase parenting skills and knowledge of healthy child development and to promote early learning and readiness for kindergarten. SUBRECIPIENT enhances access to this service across the county and has demonstrated capacity to deliver evidence-based parenting programs.
2. SUBRECIPIENT will conduct four 8 week series of Circle of Security with a minimum of 10 unduplicated parents each series and must conclude by June 30, 2018. Parents will expand their knowledge about child development, build effective parenting skills, and strengthen parent-child relationships – resulting in enhanced children's health, development, and school readiness.
3. The Oregon Community Foundation – Oregon Parenting Education Collaborative (OPEC), which funds this Agreement, is a multi-year initiative to expand access to high-quality parenting programs and develop a stronger and more coordinated parenting education system in order to reach Clackamas County parents with young children, and especially those who are English language learners, low income, living in rural communities, and/or are otherwise traditionally underserved, lack adequate access to evidence-based parenting education.
4. This Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

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

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than August 1, 2017 and not later than June 30, 2018, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: SUBRECIPIENT Statement of Program Objectives. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Oregon Community Foundation – Oregon Parenting Education Collaborative Grant Agreement that is the source of the grant funding.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to the COUNTY by the Oregon Community Foundation. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is \$15,000.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

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

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

among its duties and responsibilities the following:

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

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

SUBRECIPIENT

Clackamas County Children's Commission
16518 SE River Road
Milwaukie, OR 97267

CLACKAMAS COUNTY

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

By: 
Sue Elder, Executive Director

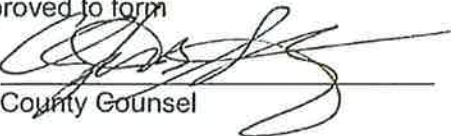
Signing on behalf of the Board:

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

Dated: 8/30/17

Dated: _____

Approved to form

By: 
County Counsel

By: _____
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 29 August 2017

Dated: _____

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Revenue Agreement with Oregon Health Authority
For Drug and Alcohol Prevention Education and Programming

Purpose/Outcomes	Funding supports the goals and objectives outlined in the Alcohol and Drug Prevention and Education Program Plan, which was approved by OHA for the 17-19 biennium.
Dollar Amount and Fiscal Impact	\$608,750 Catalogue of Federal Domestic Assistance (CFDA) #93.959 and #93.243 No impact to the County and no match required
Funding Source	Oregon Health Authority Public Health Division
Duration	Effective July 1, 2017 through July 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF-8480

BACKGROUND:

The Children, Youth and Families Division of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Revenue Agreement with the Oregon Health Authority Public Health Division for drug and alcohol prevention services, which include implementation of a range of activities outlined in the Alcohol and Drug Prevention Education Program Plan.

This Revenue Agreement is effective upon signature by all parties for services starting July 1, 2017 and terminating July 30, 2019. It has a maximum value of \$608,750 and has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Agreement with Todos Juntos
for PreventNet Community Schools – Molalla-Canby, Rural

Purpose/Outcomes	PreventNet Community Schools provide in-school services to improve academic outcomes for at-risk/high-risk youth.
Dollar Amount and Fiscal Impact	\$372,000 (\$186,000 for FY 17/18 and \$186,000 for FY 18/19) Catalogue of Federal Domestic Assistance (CFDA) #93.667 No fiscal impact to the County
Funding Source	Oregon Department of Education Youth Development Division
Duration	July 1, 2017 through June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Individuals and families in need are healthy and safe • Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook x 5677
Contract No.	CYF-8452

BACKGROUND: BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Subrecipient Agreement with Todos Juntos for PreventNet Community Schools Sites in the communities of Molalla, Canby, Estacada, and Sandy. Services to be provided under this Agreement include resources and support to improve academic achievement for a minimum of 240 youth (120 in FY 17/18 and 120 in FY 18/19).

Services are funded with federal funds granted through Oregon Department of Education Youth Development Division. This Agreement is effective upon signature for services starting July 1, 2017 and terminating on June 30, 2019. It has a maximum value of \$372,000 and has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 18-021**

Project Name: ***PreventNet Community Schools – Molalla-Canby, Rural***
Project Number: ***CYF-8452***

This Agreement is between **Clackamas County**, Oregon, acting by and through its
Children, Youth & Families Division and
Todos Juntos, an Oregon Nonprofit Corporation.

Clackamas County Data

Grant Accountant: ***Michael Morasko***

Program Manager: ***Tiffany Hicks***

Clackamas County – Finance

Clackamas County – Children, Youth & Families Division

2051 Kaen Road

150 Beaver Creek Road

Oregon City, OR 97045

Oregon City, OR 97045

Phone: 503-742-5435

Phone; 503-722-6867

mmorasko@co.clackamas.or.us

thicks@co.clackamas.or.us

Subrecipient Data

Finance/Fiscal Representative: ***Eric Johnston***

Program Representative: ***Eric Johnston***

Todos Juntos

Todos Juntos

PO Box 645

PO Box 645

Canby, OR 97013

Canby, OR 97013

503-544-1513

503-544-1513

ejtodosjuntos2@gmail.com

ejtodosjuntos2@gmail.com

DUNS: 614865355

RECITALS

1. Todos Juntos (SUBRECIPIENT) is a not-for-profit organization whose mission is to develop the partnerships necessary to create and/or enhance local resources and services for all youth and families. Todos Juntos partners with schools, local law enforcement, county agencies and others to deliver a range of challenging, age-appropriate programs in a safe, structured, and positive environment.
2. Clackamas County (COUNTY) desires to work with Todos Juntos to promote youth academic success and reduce high risk behaviors that could lead to drop out and/or juvenile justice system involvement.
3. Program Description: PreventNet Community School System was created in 2001 as a community/school-based service system. It improves outcomes for high-risk youth and their families by creating a web of support among schools, non-profit agencies (in this case, Todos Juntos), community members, local businesses, and local government. These evidence-based prevention and early intervention services are provided in the schools, both during and after hours to increase youths' protective factors by building nurturing relationships with positive adult role models, improving attachment to school, building leadership and problem-solving skills and reduce risk behaviors such as poor school performance, truancy, alcohol and drug use, negative peer association, etc.

4. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2017** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements set by Oregon Department of Education Youth Development Division (Federal award date: 6/28/17) that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the *Code of Federal Regulations* (CFR), Part 96.70-96.74, Sub-Part G.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the **2017-2019 Biennial Youth Development Council Youth & Community Tiers 1 and 2 Grants (Catalogue of Federal Domestic Assistance [CFDA] #93.667, Federal Award Identification Number [FAIN] 2B08T1010043-16)** issued to the COUNTY by Oregon Department of Education Youth Development Division. The maximum, not to exceed, grant amount that the COUNTY will pay is as follows:

For Fiscal Year 7/1/17-6/30/18: \$186,000

For Fiscal Year 7/1/18-6/30/19: \$186,000

This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D-1: Request for Reimbursement and Exhibit E: Quarterly Performance Reporting Schedule. Failure to comply with the terms of this Agreement may result in withholding of payment.

5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty-five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days' notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** The COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.

8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned”. All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Budget.** The SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
 - h) **Indirect Cost Recovery.** SUBRECIPIENT chooses to forego indirect cost recovery on this award.
 - i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
 - j) **Payment.** The SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Request for Reimbursement.
 - k) **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each quarter during the term of this Agreement.
 - l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance

with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Request for Reimbursement on a monthly basis.

- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial, performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 15 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Congressional Lobbying Certificate) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** The SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal government, and their duly authorized representatives shall have

access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

- s) **Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws

applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the County shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.

- e) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- g) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
 - Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

11. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, elected officials, and employees. This coverage

shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

- 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.
- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance, in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" as an additional insured.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to 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.
- 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its, elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

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

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

SUBRECIPIENT

Todos Juntos
PO Box 645
Canby, OR 97013

By: 
Eric Johnston, Executive Director

Dated: 8/30/17

CLACKAMAS COUNTY

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

Signing on behalf of the Board:

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

Dated: _____

By: _____
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: _____

Approved to Form

By: 
County Counsel

29 August 2017
Date

- Exhibit A-1: Statement of Program Objectives
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Client Feedback Survey and Report
- Exhibit B: Program Budgets
- Exhibit C: Lobbying Certificate
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report
- Exhibit E: Quarterly Performance Reporting Schedule
- Exhibit F: Final Financial Report

September 14, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Agreement with Northwest Family Services
for PreventNet Community Schools – Urban, Milwaukie, Gladstone, and Oregon City

Purpose/Outcomes	PreventNet Community Schools provide in-school services to improve academic outcomes for at-risk/high-risk youth.
Dollar Amount and Fiscal Impact	\$558,000 (\$279,000 for FY 17/18 and \$279,000 for FY 18/19) Catalogue of Federal Domestic Assistance (CFDA) #93.667 No County General Funds are involved
Funding Source	Oregon Department of Education Youth Development Division
Duration	July 1, 2017 through June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Individuals and families in need are healthy and safe • Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook x 5677
Contract No.	CYF-8451

BACKGROUND: BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Subrecipient Agreement with Northwest Family Services for PreventNet Community Schools Sites (Urban, Milwaukie, Gladstone, and Oregon City). Services to be provided under this Agreement include resources and support to improve academic achievement. A minimum of 180 youth per year will be served.

Services are funded with federal funds granted through Oregon Department of Education Youth Development Division. This Agreement is effective upon signature for services starting July 1, 2017 and terminating June 30, 2019. It has a maximum value of \$558,000 and has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

CLACKAMAS COUNTY, OREGON SUBRECIPIENT GRANT AGREEMENT 18-020	
Project Name: <i>PreventNet Community Schools – Urban, Milwaukie, Oregon City, Gladstone</i> Project Number: <i>CYF-8451</i>	
This Agreement is between <u>Clackamas County</u> , Oregon, acting by and through its Children, Youth & Families Division and <u>Northwest Family Services</u> , an Oregon Nonprofit Corporation.	
Clackamas County Data	
Grant Accountant: <i>Michael Morasko</i>	Program Manager: <i>Brian McCrady</i>
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 Phone: 503-742-5435 mmorasko@co.clackamas.or.us	Clackamas County – Children, Youth & Families Division 150 Beaver Creek Road Oregon City, OR 97045 Phone: 503-650-5681 bmccrady@co.clackamas.or.us
Subrecipient Data	
Finance/Fiscal Representative: <i>Rose Fuller</i>	Program Representative: <i>Rose Fuller</i>
Northwest Family Services 6200 SE King Road Portland, OR 97222 Phone: 503-546-6377 Email: rfuller@nwfs.org	Northwest Family Services 6200 SE King Road Portland, OR 97222 Phone: 503-546-6377 Email: rfuller@nwfs.org
DUNS: 612467134	

RECITALS

1. Northwest Family Services (SUBRECIPIENT) is a not-for-profit organization whose mission is to equip people with vital skills for a lifetime in support of child well-being and family stability. Northwest Family Services partners with schools, county agencies, and others to deliver a range of challenging, age-appropriate programs in a safe, structured, and positive environment, including academic skills enhancement, alcohol and drug education and prevention, culturally focused activities, gender-specific programs, leadership and youth development programming, parent education, peer mediation, recreation/sports activities, restorative justice, supervised community service and service learning, and truancy prevention.
2. Clackamas County (COUNTY) desires to work with Northwest Family Services to promote youth academic success and reduce high risk behaviors that could lead to drop out and/or juvenile justice system involvement.
3. Program Description: PreventNet Community School System was created in 2001 as a community/school-based service system. It improves outcomes for high-risk youth and their families by creating a web of support among schools, non-profit agencies (in this case, Northwest Family Services), community members, local businesses, and local government. These evidence-based prevention and early intervention services are provided in the schools, both during and after hours to increase youths' protective factors by building nurturing relationships with positive adult role models, improving

attachment to school, building leadership and problem-solving skills and reduce risk behaviors such as poor school performance, truancy, alcohol and drug use, negative peer association, etc.

4. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2017** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements set by Oregon Department of Education Youth Development Division (Federal award date: 6/28/17) that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the *Code of Federal Regulations* (CFR), Part 96.70-96.74, Sub-Part G.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the **2017-2019 Biennial Youth Development Council Youth & Community Tiers 1 and 2 Grants (Catalogue of Federal Domestic Assistance [CFDA] #93.667, Federal Award Identification Number [FAIN] 2B08T1010043-16)** issued to the COUNTY by Oregon Department of Education Youth Development Division. The maximum, not to exceed, grant amount that the COUNTY will pay is as follows:

For Fiscal Year 7/1/17-6/30/18: \$279,000

For Fiscal Year 7/1/18-6/30/19: \$279,000

This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty-five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days' notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** The COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this

Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.

8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
 - h) **Indirect Cost Recovery.** Per the approved application budget from the awarding agency, SUBRECIPIENT will receive indirect cost recovery of 8% of the total funding awarded to COUNTY (9.6% of program expenses), which is incorporated by reference into the SUBRECIPIENT program budget in Exhibit B.
 - i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
 - j) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.

- k) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F, G & H), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 15 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If requested and if SUBRECIPIENT does not

meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.

- c) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the County shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- g) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
 - Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

11. General Agreement Provisions.

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

c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

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

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

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


(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

SUBRECIPIENT

Northwest Family Services
6200 SE King Rd.
Portland, OR 97222

By: 
Rose Fuller, Executive Director

Dated: 8/30/17

CLACKAMAS COUNTY

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

Signing on behalf of the Board:

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

Dated: _____

By: _____
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: _____

Approved to Form:

By: 
County Counsel

29 August 2017
Date

- Exhibit A: Statement of Program Objectives
- Exhibit B: Subrecipient Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D-1: Financial Reporting Schedule and Reimbursement Request
- Exhibit D-2: Monthly Activity Report
- Exhibit E-1: Performance Reporting Schedule and Work Plan Quarterly Report
- Exhibit E-2: Demographic Report
- Exhibit E-3: Client Feedback Survey and Report
- Exhibit F: Final Financial Report



M. BARBARA CARTMILL
DIRECTOR

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

September 14, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

**Approval of Metro Grant Agreement # 934631 for the
Clackamas County Active Transportation Counting Devices Project**

Purpose/Outcomes	Approve grant agreement with Metro to purchase active transportation counting devices.
Dollar Amount and Fiscal Impact	Total Project Cost Estimate: \$17,729.00 Metro Regional Travel Options (RTO) Grant: \$15,909.00 In-Kind Staff Time Match (10.27%): \$1,820.00
Funding Source	Metro RTO Grant
Duration	July 1, 2017 to July 31, 2019
Previous Board Action	None
Strategic Plan Alignment	The collection of accurate data is essential to making wise investments in transportation infrastructure. This project will help build a strong infrastructure and safe, healthy communities by building long-term support for walking and bicycling as a viable transportation option.
Contact Person	Scott Hoelscher, Project Manager 503-742-4533

This Regional Travel Options (RTO) from Metro grant consists of the purchase and installation of active transportation counting devices to count the number of bicyclists and pedestrians at three locations in urban, unincorporated Clackamas County. The Department of Transportation and Development (DTD) anticipates purchasing two fixed location counters and one mobile counting device. DTD will work with the North Clackamas Parks District to select and install the counting devices. The required 10.27% local match will be contributed as in-kind staff time.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Grant Agreement (Metro Grant #934631) to purchase and install active transportation counting devices

Respectfully submitted,

Mike Bezner
Assistant Director

Grant Agreement

Metro Grant 934631

Project: Clackamas County Active Transportation Counting

THIS AGREEMENT is between **Metro**, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and **Clackamas County**, referred to herein as "Grantee," located at 150 Beaver Creek Road, Oregon City, OR 97045.

A. Recitals

1. Metro and its Regional Travel Option's (RTO) program is the recipient of Federal Transit Administration ("FTA") Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Program (STP) grant funds, and wishes to enter into this Agreement with the Grantee, utilizing these federal funds.
2. Metro considers the Grantee to be a **subrecipient** of federal funds. Funding for this project is obtained from a Grant Agreement between Metro and the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) or Surface Transportation Program (STP) funds, CFDA No. 20.507. As federal funds are involved in the Agreement, Exhibit C – Federal Clauses, and Exhibit D – Department of Labor Clauses are attached hereto and by this reference made a part of this Agreement as if set forth in full.
3. The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments and non-profit agencies in managing demand on the transportation system and increasing use of travel options.
4. Metro selected Grantee, through a competitive process, to receive partial funding for the purpose of supporting the **Clackamas County Active Transportation Counting Project**. Collecting accurate data is essential to building long-term support for walking and cycling, and improving the conditions for those who choose travel options. This project will allow us to understand the needs in our community and prioritize where to invest more resources and increase the public's use of travel options. This program will provide a historical usage record and strengthen the case for active transportation and direct efforts that have the greatest impact. The data can help to quantify the benefits of walking and biking, which will help make the case for active transportation projects in competitive grant applications. Needed changes, over time, can be assessed and the impact of new facilities can be analyzed. Finally, maintenance priorities can be established when we know which facilities receive the most use. This project is expected to further the RTO effort toward accomplishing Regional Transportation Plan modal target of 40% non-SOV trips or higher, by the year 2040. The work plan elements outlined here are elements of a much larger Grantee work plan that is being partially funded using requested METRO RTO grant dollars for Metro fiscal years 17 -18 and 18 -19.

B. Effective Date and Duration

The beginning date of this Agreement is July 1, 2017, and shall remain in effect until and including July 31, 2019 unless terminated or extended as provided in this Agreement. Costs incurred on or after July 1, 2017 which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.

C. Scope of Work

Grantee shall provide all services and materials specified in the attached "Exhibit A – Scope of Work," which is incorporated into this Agreement by this reference as if set forth in full. Grantee in accordance with the Scope of Work shall provide all services and materials, in a competent and professional manner. To the extent that the Scope of Work contains additional Agreement provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

Grant Agreement

Metro Grant 934631

D. Compensation

The total Agreement amount is **SEVENTEEN THOUSAND SEVEN HUNDRED TWENTY NINE AND NO/100ths DOLLARS (\$17,729.00)**. This amount includes (1) FTA GRANT funds to be dispersed to Grantee not to exceed **FIFTEEN THOUSAND NINE HUNDRED NINE AND NO/100ths DOLLARS (\$15,909.00)**; (2) Grantee's non federal local match of **ONE THOUSAND EIGHT HUNDRED TWENTY AND NO/100ths DOLLARS (\$1,820.00)**.

E. Payment

1. All invoice payments are conditional upon Metro's Project Manager approval of the Quarterly Progress Reports. Grantee shall present cost reports, reimbursement requests and progress reports to Metro's RTO Project Manager on a quarterly basis.
2. Qualified costs are direct project costs, incurred by the Grantee and personal services contractor(s) during the term of this Agreement that are eligible for federal funds. Metro shall reimburse Grantee for qualified costs for work described in Exhibit A, in accordance with:
 - 2 CFR 200 - Uniform Guidance – Super Circular
3. Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. If Metro requests documentation, including without limitation copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense, Metro must receive the documentation before Metro makes payment.

F. Subcontracts

1. Grantee **shall not** enter into any subcontract for any of the Services required by this Agreement without Metro's prior written consent. Upon approval by Metro of a subcontract, the parties will amend the Agreement to include provisions related to the subcontract.
2. Metro's consent to any subcontract shall not relieve Grantee of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to the Grantee and subcontractors have no right to payment directly from the Metro.
3. Grantee is solely responsible for paying Grantee's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor and Metro.

G. Records Maintenance – Access

1. Grantee shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, Grantee shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Grantee's performance.
2. Grantee acknowledges and agrees that Metro, the FTA, the Comptroller General of the United States and/or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Grantee that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.

Grant Agreement

Metro Grant 934631

3. Grantee shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

H. Indemnity

Grantee is an independent contractor and assumes full responsibility for the performance of the Scope of Work and the content of its work and performance. Grantee agrees to indemnify and defend Metro and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees at trial and on appeal, arising out of or in any way connected with its performance of this Agreement.

Oregon public entities indemnity will be limited by ORS 30.260-300

I. Termination

Metro may terminate this Agreement for cause or convenience. In the event of termination, Grantee shall be entitled to payment for qualified costs incurred before the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro shall not waive any claim or remedies it may have against Grantee.

J. Insurance

1. Grantee shall purchase and maintain at Grantee's expense, the following types of insurance, covering Grantee, its employees, and agents:
 - a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Grantee's coverage will be primary as respects Metro
 - b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000.00 per occurrence
 - c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000.00 per accident or disease.
2. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies. Oregon public entities may provide additional insured status on excess liability in place of the additional insured on commercial general liability and auto policies.
3. Grantee shall provide to Metro thirty (30) days' written notice of any material change or policy cancellation.
4. Grantee shall provide Metro with a Certificate of Insurance complying with this article upon return of the Grantee's signed Agreement to Metro. The Certificate of Insurance shall identify the Metro Grant number **(93427)**.
5. Oregon public entities may provide evidence of a self-insurance program in place of any or all requirements of item J.1.

Grant Agreement

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K. Right to Withhold Payments

Metro shall have the right to withhold from payments due Grantee such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grantee's performance or failure to perform under this Agreement or the failure of Grantee to make proper payment to any suppliers or subcontractors. Metro shall withhold 20% of the FTA grant funds, which it will release to Grantee after Metro accepts Grantee's final report.

L. Federal, State, and Local Law Compliance

1. Grantee shall comply with the public contracting provisions of ORS chapters 279A, 279B and 279C and the recycling provisions of ORS 279B.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Grantee shall comply with all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations.

2. This Agreement is subject to a financial assistance agreement between Metro and the Federal Transit Administration (FTA). Grantee shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof:

- the terms and conditions applicable to a "recipient" set forth in the October 1, 2016 FTA Master Agreement [FTA MA 23] or most recent between Metro and the FTA
- FTA Circular 5010.1E, Grant Management Requirements
- FTA Circular 4220.1F, 3rd Party Procurement Requirements
- 2 CFR 200 - Uniform Guidance – Super Circular

3. Grantee also shall comply with federal, state, and local laws, statutes, and ordinances relative to, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

M. Discrimination Prohibited

No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Grantee receiving funds pursuant to this Agreement.

Grant Agreement

Metro Grant 934631

N. Ownership of Documents and Credit to Metro

1. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Grantee pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Grantee hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.
2. Grantee shall ensure that all communications tools related to work performed under this Agreement including without limitation brochures and advertisements, include language found in Exhibit B – “Partnership Requirements” which is attached hereto and by this reference made a part of this Agreement as if set forth in full.

O. Project Information

Grantee shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Grantee shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

P. Independent Contractor Status

1. Grantee shall be an independent Contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Grantee be considered an employee of Metro.
2. Grantee shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work.
3. Grantee is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement.
4. Grantee shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

Q. Assignment

Grantee may not assign or transfer this Agreement without written permission from Metro.

R. Choice of Law

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the State of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

S. No Waiver of Claims

The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

Grant Agreement

Metro Grant 934631

T. Modification

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing, signed by both parties.

U. Severability

If any clause, sentence or any other portion of the terms and conditions of this Grant Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

V. No Special or Consequential Damages

Grantee expressly waives any claims against Metro regarding the Scope of Work under this Agreement. Metro's liability under this Agreement shall be limited to payment of the Grant Funds, to the extent that Grantee has fully and completely complied with all terms and conditions of this Agreement. In no event shall Metro be liable for and the Grantee specifically releases Metro from any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related to the Scope of Work or this Agreement, however caused, whether or not arising from Metro's sole, joint or concurrent negligence.

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

Clackamas County

By: _____

Printed: _____

Title: _____

Date: _____

Metro

By: _____

Printed: _____

Title: _____

Date: _____



Exhibit A – Scope of Work

Metro Grant 934631

Project Description

This project supports the purchase and installation of active transportation counting devices that measure frequency, direction of travel and time of day of bicyclists and pedestrians in urban, unincorporated Clackamas County. The County anticipates acquiring two fixed-location devices and one mobile counting device. The permanently installed devices will be designed to blend into the urban environment and resist vandalism. These devices have the capacity to differentiate between cyclists and pedestrians making them ideal for multi-use path facilities. The second counting device for this project will be a mobile counting unit that can be moved to different bikeways and multi-use paths. One such device is the PYRO-Box from Eco-Counter, a 9 x 3.9 x 7-inch weatherproof unit that can be installed to any post. This device can be installed at a location for long periods of time or moved to various locations throughout the county for shorter time periods

Following device selection and installation, the County will prepare a reporting system for easy input of data downloaded from each device. Staff will update data quarterly and prepare annual count data reports for departmental use as well as viewing on the county's active transportation webpage. Depending on the exact type of counter purchased, automatic data transfer to an on-line platform may be feasible. Some systems even allow direct data transfer from the counting device to a laptop in the office. Staff will work with the selected vendor to receive training on the counting systems. This project aligns with the RTO mission to promote travel options that support communities, increase active transportation and are environmentally sustainable. The counting program will answer frequent bicycle and pedestrian planning questions including, how many people ride and walk on county facilities, what are the busiest facilities and where is the greatest need to complete system gaps.

Outcomes and Benefits

The collection of accurate data is essential to building long-term support for walking and cycling, and improving the conditions for those who choose travel options. This project will provide understanding in our community and prioritize where to invest more resources and increase the public's use of travel options. This program will provide a historical usage record and strengthen the case for active transportation and direct efforts that have the greatest impact. Second, data can help to quantify the benefits of walking and biking, which will help make the case for active transportation projects in competitive grant applications. Third, changes over time can be assessed and the impact of new facilities can be analyzed. Finally, maintenance priorities can be established when we know which facilities receive the most use.

Direct outcomes from the active transportation counting program will include regular reporting of trail usage and increased efficiencies during Metro's September trail count campaign. Clackamas County, in conjunction with the North Clackamas Parks & Recreation District, regularly participates in the annual trail counts campaign by tallying active transportation users at designated spots on the regional trail network. Recruiting volunteers and organizing for the annual trail counts is time consuming. With an automated system in place, the County will be able to collect data with significantly fewer person-hours. Staff will spend less time traveling to trail count sites, fewer hours collecting data and become overall more efficient during the annual trail counting campaign. In addition, the county will be able to collect data where none was previously collected and easily expand the collection program to urban active transportation network: bikeways, sidewalks and/or other multi-use paths such as the new Sunrise Path which leads to the Clackamas Industrial Park.

Task 1

Research and Purchase Active Transportation Devices

The Project Manager will research active transportation counting devices. The Project Manager will consult with County Transportation Planning; Traffic Engineering Division; Technology Services; Public and Government Affairs and North Clackamas Parks District for opinions and/or concurrence. For final device selection, Project Manager may consult Metro and other local agencies that use automated counting devices and the Federal Highway Administration (FHWA) report on Trail Traffic Counters. Device selection will be sensitive to ease of use (including downloading and posting data on the county website), reliability/accuracy of data, and vulnerability to weather and vandalism, and device warranty. There will be one kick-off meeting with Traffic Engineering Division and North Clackamas Parks District staff to explain the project and review the timeline and schedule. The information collected at this meeting will help inform the purchase of the devices. The DTD will work with the North Clackamas Parks & Recreation District and the Pedestrian / Bikeway Advisory Committee to make the final product selection and determine sites for the devices.



Exhibit A – Scope of Work

Metro Grant 934631

Time Period
December 2017

- Deliverables:
- a. Minutes of kick-off meeting
 - b. Receipt for counting devices

Task 2

Develop Active Transportation Counts Program

Identify potential locations for the counting devices purchased in Task 1. Locations across the urban portion of the county will be considered. The Project Team will develop a list of locations for both the mobile counting device installation and for the permanent counting device. The count locations will be developed in conjunction with the Traffic Engineering Division and North Clackamas Parks District. Once the locations are determined, County will prepare a reporting system (spreadsheet) for easy input of data downloaded from each device and collected during year 1 (July 1, 2018 to June 30, 2019). The county will also utilize the data analysis package provided by the device manufacturer to supplement or incorporate in the reporting process. Information on the active transportation counting device program and the data collected following device installation will be available for public viewing on the county webpage.

Time Period
March 2018

- Deliverables:
- a. Map of count locations
 - b. Schedule of counts frequency and draft spreadsheet for storing and organizing count data
 - c. Update of county webpage for data reporting

Task 3

Install and Learn Counting Devices

The Department of Transportation and Development and the North Clackamas Parks and Recreation District will work together to install the active transportation counting devices. Key staff will spend time with the active transportation devices to become familiar with the equipment and associated systems and software. Devices will be tested at select locations to confirm accuracy.

Time Period
June 2018

- Deliverables:
- a. Memo regarding device installation and operations

Task 4

Report

Project staff will prepare a report documenting the first year of device use. This report will summarize the data collected from each device installed and provide information about the ways in which the data is being utilized by other county departments and in the community. The County shall coordinate with Metro and Portland State University to share the year 1 count data. Project Manager will work with Traffic Engineering and North Clackamas Parks District in the preparation of this report.

Time Period
June 2019

- Deliverables:
- a. Evaluation Report summarizing collected data (including year 1 count data input to spreadsheet developed in Task 2.b.)
 - b. Date input to the Bike-Ped Portal at Portland State University



Exhibit A – Scope of Work

Metro Grant 934631

Budget:

	Grant	Match	Total Project
Materials	15,909.00	1,820.00	17,729.00

(1) FTA GRANT funds to be dispersed to Grantee not to exceed **FIFTEEN THOUSAND NINE HUNDRED NINE AND NO/100ths DOLLARS (\$15,909.00)**

The amount the Grantee is required to spend for local match to Metro’s grant:

(2) Grantee’s non federal local match (10.27%) of **ONE THOUSAND EIGHT HUNDRED TWENTY AND NO/100ths DOLLARS (\$1,820.00)**.

Grantee’s invoices shall include:

- Metro Grant number **(934631)**
- Grantee name
- remittance address
- invoice date
- invoice number
- invoice amount
- Local Match amount
- itemized statement of work performed and expenses incurred during the invoice period
- **Required** to be submitted quarterly

Grantee’s invoice shall be sent to:

Metro
Caleb Winter – Project Manager
600 N.E. Grand Avenue
Portland, Oregon 97232-2736

Or:

caleb.winter@oregonmetro.gov

The Metro Grant number **(934631)** shall be referenced in the email subject line.

Pursuant to Metro’s fiscal year end, Grantee’s invoices for services through June 30 of each year of the grant period shall be submitted to Metro no later than July 15. Payment shall be made by Metro on a Net (thirty) 30 day basis upon approval of Grantee’s invoice.

Exhibit B – Partnership Requirements

Metro Grant 934631

Partnership Requirements

The purpose of the following partnership requirements are to set up Regional Travel Options (RTO) partners for success in their grant projects. As the RTO program is largely funded through ongoing allocations of Regional Flexible Funds, these requirements help partners produce solid evidence of the efficient and effective use of their regional funds. RTO is available to support partners by providing tools and guidance to achieve a successful grant project, both during the grant cycle and beyond. Partnership will multiply the benefits of the RTO grant by applying current strategies and brands while incorporating past lessons learned.

Grantee will engage in a partnership with Metro, RTO staff and other RTO program partners. Partnership requirements apply to anything included in the grant agreement or made possible by the grant agreement. Exceptions to the following requirements can be requested by writing to RTO staff and must receive confirmation in writing by RTO staff.

Instructions: Read each section below and then initial

Applying Strategies and Collaborating with RTO Partners

Grantee will:

- Review 2012-2017 RTO Strategic Plan and the 2018 RTO Strategy, when completed.
- Review RTO Marketing Strategy and use messages, approaches and techniques with applicable audiences.
- Participate in the RTO Collaborative Marketing Group, including attending bi-monthly meetings, and implementing regional marketing campaigns when applicable. Resources can be found online <http://www.oregonmetro.gov/collaborativemarketing>.
- If the grant is focused on commute options, grantee must coordinate frequently with TriMet, Wilsonville SMART, City of Portland, TMAs or other employer outreach partners affected by this project scope or located in the project geographic area to exchange existing tools, campaigns and support ECO surveys.

____ **Initial Here**

General Tools & Resources

Grantee will use, at minimum, the tools and resources available below.

- For rideshare or vanpool matching, RTO encourages the use of Drive Less Connect www.drivelessconnect.org. Other options include Enterprise Vanpool, CarpoolWorld, ERideShare, or one of any number of mobile ridesharing apps.
- For logging trips, RTO encourages the use of Drive Less Connect www.drivelessconnect.org. RTO can provide training for using the Drive Less Connect tool upon request.
- For personalized trip planning, RTO encourages the use of TriMet Trip Planner. Contact TriMet (Adriana Britton at BrittonA@trimet.org) for language or logos if highlighting use of the tool.
- Information on federal commuter tax benefits can be found at <https://www.nctr.usf.edu/programs/clearinghouse/commutebenefits/>

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Exhibit B – Partnership Requirements

Metro Grant 934631

Project Materials

Grantee will use, at minimum, the tools and resources available below.

- All projects shall attribute credit to the Federal Transit Administration and Metro. Print attribution on project materials (such as reports, booklets, brochures, and web pages) must read:
 - “Made possible with support from Metro and the Federal Transit Administration”
- All print ads, banners, flyers, posters, signage and videos must include the Metro logo.
- If marketing is done with audio only, spoken attribution language must be:
 - “This project is made possible by a partnership with Metro, with support by the Federal Transit Administration”
- For non-commercial promotional photo needs, browse the existing collection of RTO photos (currently located publically on Flickr). Refer to each photo’s guidance for determining attribution and any use restrictions. Project photos that have potential value to partners should be shared by uploading them to the photo website.
- Include the Metro logo on all marketing and advertising materials, both print and online (size permitting). Grantees must seek Metro approval through the grant manager of any materials where the Metro logo is included to ensure proper logo design and placement. Metro logos and usage guidelines will be emailed to grantee. If you need them again, please email Commshelp@oregonmetro.gov and CC rto@oregonmetro.gov.
- If the project designs wayfinding signage, apply the Intertwine design guidelines: http://library.oregonmetro.gov/files/intertwine_regional_trail_signage_guidelines.pdf
- For web-based resources needed for biking and walking info, include a link to Metro’s Getting Around web page, <http://www.oregonmetro.gov/gettingaround>

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Events and Media

Grantee will:

- Inform RTO grant manager of any event needs 90 days in advance. Examples of needed help from partners may include cross-promotion or recruiting volunteers.
- Mention support provided by Metro and the Federal Transit Administration in press releases, and social media.
- For projects that include a ceremony (e.g., ribbon-cutting, unveiling), please contact the RTO grant manager to consider partnership highlights and discuss if a Metro official should attend and speak.
- If a reporter or media outlet inquires about efforts related to this grant project, please notify the RTO grant manager immediately. If the grant manager is not available, contact other RTO staff immediately.

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Exhibit B – Partnership Requirements

Metro Grant 934631

Measurement and Evaluation

Grantee will communicate, monitor and track progress, demonstrate impact, document lessons learned, and be accountable and transparent to Metro, partners and benefiting communities by doing the following:

- Review the Multiple Accounts Evaluation (MAE) framework at the beginning of the grant cycle, prioritize measurement efforts, collect qualitative and quantitative project data, and incorporate it into the tasks and deliverables throughout the grant cycle.

Quarterly Reports: These reports are required by all grantees, to be delivered by the dates listed in ZoomGrants. Quarterly reports should contain:

- **Qualitative Data:** The purpose of qualitative data is to help illustrate the impact of a project (the how and why), based on background information, descriptive text and visuals. Stakeholder engagement can be vital part of the qualitative process. We encourage grantees to engage with stakeholders or seek advice from RTO on this topic. If the project includes conducting a survey, contact RTO staff for assistance and provide a report to RTO grant manager at least two weeks before official release.
- **Quantitative Data:** The purpose of quantitative data is to help illustrate the impact of a project based on comparable values. When calculating vehicle miles reduced, emissions reduced, gas savings or other numeric MAE metrics, use tools provided by RTO to ensure consistent methods. If collecting automated data (for example, bike/ped counters), contact RTO staff regarding format, data cleaning, and shareability.
- Data can be collected internally or from outside sources, and creative reports, visuals, and stories are encouraged. Use of past Metro reports as sources is also encouraged. Quantitative data should be combined with qualitative data to create a well-rounded project summary. See the ZoomGrants Library for more help, or contact RTO for more information.

End of Year One Check In: No later than one year after the grant begins, the grantee shall update the RTO grant manager with details confirming that the groundwork is set for this grant project to deliver measured results (for example, a baseline survey has been conducted).

End of grant project report: Grantee shall produce a final project report and the RTO Story Form in a timely manner. These products shall be consistent with initial grant application and the MAE framework outcomes highlighted in the scope of work.

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Exhibit C – Federal Clauses

Metro Grant 934631

The Grantee agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2016 FTA Master Agreement [FTA MA 23]**, or most recent, including, but not limited to, the following:

A. Application of Federal, State, and Local Laws, Regulations and Guidance.

For purposes of this Master Agreement:

- (1) Federal requirement. A Federal requirement includes, but is not limited to a:
 - (a) An applicable Federal law,
 - (b) Applicable Federal regulation,
 - (c) Provision of the Recipient's Underlying Agreement, or
 - (d) Provision of this Master Agreement,

- (2) Federal guidance. Federal guidance includes, but is not limited to:
 - (a) Federal guidance such as a:
 - 1 Presidential Executive Order,
 - 2 Federal order that applies to entities other than the Federal Government,
 - 3 Federal published policy,
 - 4 Federal administrative practice,
 - 5 Federal guideline,
 - 6 Letter signed by an authorized Federal official, and
 - 7 Other applicable Federal guidance as defined at section 1.j of this Master Agreement, or
 - (b) Other Federal publications or documents providing official instructions or advice about a Federal program that:
 - 1 Are not designated as a "Federal Requirement" in section 2.c (1) of this Master Agreement, and
 - 2 Are signed by an authorized Federal official,

- (3) Compliance. The Recipient understands and agrees that:
 - (a) Federal Requirements. It must comply with all Federal requirements that apply to itself and its Project,
 - (b) Federal Guidance. FTA strongly encourages the Recipient and each of its Third Party Participants to follow Federal guidance as described in the preceding section 2.c(2) of this Master Agreement to ensure satisfactory compliance with Federal requirements,
 - (c) Alternative Actions. It may violate Federal requirements if it:
 - 1 Adopts an alternative course of action not expressly authorized by the Federal Government in writing, and
 - 2 Has not first secured FTA's approval of that alternative in writing,

Exhibit C – Federal Clauses

Metro Grant 934631

[FTA Master Agreement §2.c (1) (2) (3)]

B. No Federal Government Obligations to Third Parties.

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government shall not be subject to any obligations or liabilities related to:
 - (a) The Project,
 - (b) Any Third Party Participant at any tier, or
 - (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement for the Project, and

- (2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have obligation or liability to any:
 - (a) Third Party Participant, or
 - (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

[FTA Master Agreement, §2.f]

C. False or Fraudulent Statements or Claims.

- (1) Civil Fraud. The Recipient acknowledges and agrees that:
 - (a) Federal law and regulations apply to itself and its Project, including:
 - (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and
 - (2) U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31,
 - (b) By executing the Underlying Agreement, the Recipient certifies and affirms the:
 - (1) Truthfulness and accuracy of any
 - (a) Claim,
 - (b) Statement,
 - (c) Submission,
 - (d) Certification,
 - (e) Assurance, or
 - (f) Representation, and
 - (2) For which the Recipient has made, makes, or will make to the Federal Government, and
 - (c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient:
 - (1) Presents, submits, or makes available any information in connection with any:

Exhibit C – Federal Clauses

Metro Grant 934631

- (a) Claim
- (b) Statement
- (c) Submission
- (d) Certification
- (e) Assurance, or
- (f) Representation, and

(2) That information is false, fictitious, or fraudulent,

(2) **Criminal Fraud.** The Recipient acknowledges that 49 U.S.C. § 5323 (1) (1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:

(1) Presents, submits, or makes available any information in connection with any:

- (a) Claim
- (b) Statement
- (c) Submission
- (d) Certification
- (e) Assurance, or
- (f) Representation, and

(2) That information is false, fictitious, or fraudulent,

[FTA Master Agreement §3.f]

D. Procurement.

Access to Third Party Contract Records. The Recipient agrees to require, and assures that its Subrecipients will require, its Third Party Contractors at each tier, to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable Federal laws and regulations or to assure proper Project management as determined by FTA.

[FTA Master Agreement §17(u)]

E. Project Implementation.

Changes to Federal Requirements and Guidance.

(1) Requirements and Guidance. New Federal Requirements and Guidance may:

a. Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and

b. Apply to the Recipient or its Project,

[FTA Master Agreement, §2.d (1)]

Exhibit C – Federal Clauses

Metro Grant 934631

F. Civil Rights.

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Specifically:

a. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:

(1) prohibit discrimination based on:

- (a) race,
- (b) color, or
- (c) national origin

(2) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. Part 21 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the previous section 13.a of this Master Agreement, and

(3) Except as FTA determines otherwise in writing, follow

- (a) The most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance.
- (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964, 28 C.F.R. § 50.3, and
- (c) other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
- (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13.a of this Master Agreement, and,

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(d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Religion,
- 4 Sex,
- 5 Disability,
- 6 Age, or
- 7 National origin.

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:

(a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and

(b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

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

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- (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13a. of this Master Agreement,

- (2) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:

The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*,

g. Nondiscrimination of the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

- (1) Federal laws, including:

- (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
- (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C.12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities;
- (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities;
- (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
- (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

- (2) The following Federal regulations including:

- (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37,
- (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
- (c) U. S. DOT regulations “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,

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(d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and

(e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,

(f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,

(g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,

(h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,

(i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and

(j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and

(1) Other applicable Federal civil rights and nondiscrimination guidance,
[FTA Master Agreement §13(b) (c) (d) (g)]

G. Private Enterprise.

The Recipient agrees to protect the interests of private enterprise affected by Federal public transportation programs by:

a. Participation. Encouraging private enterprise to participate in the planning of public transportation and the programs that provide public transportation, to the extent permitted by

(1) 49 U.S.C. § 5306,

[FTA Master Agreement §15(a)]

H. Right of the Federal Government to Terminate.

a. Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:

(1) The Recipient has violated the Underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project,

(2) The Recipient has failed to make reasonable progress on the Project,

(3) The Federal Government determines that the continuation of the Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

b. Financial Implications.

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- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled, and
- (2) The Federal Government may:
 - (a) Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:
 - 1 Failing to make adequate progress,
 - 2 Failing to make appropriate use of Project property, or
 - 3 Failing to comply with the underlying Agreement or this Master Agreement
 - (b) Require the Recipient to refund
 - 1 The entire amount of Federal funds provided for the Project, or
 - 2 Any lesser amount as the Federal Government may determine, and
 - c. Expiration of Project Time Period. Except for a Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the underlying Agreement.

[FTA Master Agreement §12]

I. Debarment and Suspension.

The Recipient agrees that:

- (1) It will not engage Third Party Participants that are debarred or suspended except as authorized by:
 - (a) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200,
 - (b) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, including any amendments thereto, and
 - (c) Executive Orders Nos. 12549 and 12689. “Debarment and Suspension,” 31 U.S.C. § 6101 *note*,
- (2) It will review the “Excluded Parties Listing System” at <http://epls.gov/> (to be transferred to <https://www.sam.gov>), if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and
- (3) It will include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Party Participants:
 - (a) Will comply with Federal debarment and suspension requirements, and
 - (b) Review the “Excluded Parties Listing System” at <http://www.epls.gov/> (to be transferred to <https://www.sam.gov>), if necessary to comply with U.S. DOT regulations 2 C.F.R. part 1200.

[FTA Master Agreement §3.b]

J. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U. S. domestic preference requirements and follow Federal guidance, including:

- a. Buy America. Domestic preference procurement requirements of:

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- (1) 5323 (j), as amended by MAP-21, and
- (2) FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with MAP-21

b. Fly America. Air transportation requirements of:

- (1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and
- (2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 - 301-10.143.

[FTA Master Agreement §16(a)(c)]

K. Disputes, Breaches, Defaults or Other Litigation.

The Recipient understands and agrees that:

a. FTA Interest. FTA has a vested interest in the settlement of any disagreement involving the Project including, but not limited to:

- (1) a major dispute,
- (2) A breach,
- (3) A default, or
- (4) Litigation,

b. Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges:

- (1) The Recipient agrees to notify immediately:
 - (a) The FTA Chief Counsel, or
 - (b) The FTA Regional Counsel for the Region in which the Recipient is located, (2)

The types of legal matters that require notification include, but are not limited to:

- (a) A major dispute,
- (b) A breach,
- (c) A default,
- (d) Litigation, or
- (e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, and(3) The types of matters that may affect the Federal Government include, but are not limited to:

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- (a) The Federal Government's interests in the Project, or
 - (b) The Federal Government's administration or enforcement of Federal laws or regulations,
- c. Federal Interest in Recovery.
- (1) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project, but
 - (1) Liquidated Damages. Notwithstanding the preceding section 96.c(1) of this Master Agreement, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government,
- d. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under:
- (1) Any third party agreement,
 - (2) Any Federal law or regulation,
 - (3) Any State law or regulation, or
 - (4) Any local law or regulation,
- e. FTA Concurrence. If a legal matter described in section 96(2) and (3) of this Master Agreement involves the Project or the Recipient, FTA reserves the right to concur in any:
- (1) Compromise, or
 - (2) Settlement, and
- f. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.
- [FTA Master Agreement §96]*

L. Lobbying Restrictions.

The Recipient agrees that, as provided by 31 U.S.C. §1352(a):

- (1) Prohibition on Use of Federal Funds. It will not use Federal funds
 - (a) To influence any:
 - 1. Officer or employee of a Federal Agency
 - 2. Member of Congress,
 - 3. Officer or employee of Congress, or
 - 4. Employee of a Member of Congress

Exhibit C – Federal Clauses

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(b) To take any action involving the Project or the Underlying Agreement for the Project, including any:

1. Award,
2. Extension, or
3. Modification

(2) Laws and Regulations. It will comply, and will assure that each Third Party Participant complies with:

- (a) 31 U.S.C. § 1352 as amended,
- (b) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with as necessary by 31 U.S.C. § 1352, as amended, and
- (c) Other applicable Federal laws and regulations prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence:

1. The U.S. Congress, or
2. A State legislature, but

(3) Exception. The prohibitions of the preceding section 3.d(1) – (2) of this Master Agreement do not apply to any activity that is undertaken through proper official channels, if permitted by the underlying law or regulations,

[FTA Master Agreement §3.d (1)(2)]

M. Environmental Protections.

a. Air Quality. The Recipient agrees to, and assures that its Third Party Participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q, and implementing Federal regulations, as provided in Federal guidance, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Public Transportation Operators. It will comply with:

- (a) U.S. EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85;
- (b) U.S. EPA regulations “Control of Emissions from New and In-Use Highway Vehicles and Engines,” 40 C.F.R. Part 86, and
- (c) U.S. EPA regulations “Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles,” 40 C.F.R. Part 600 and any revisions to these regulations.

(2) State Implementation Plans. It will support State Implementation Plans by:

- (a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,
- (b) Assuring that any Project identified as a Transportation Control Measure in its State Implementation Plan will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan, and
- (c) Complying with:

1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

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2. U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects developed, Funded or Approved Under Title 23, U. S. C. or the Federal Transit Laws,” 40 C.F.R. Part 93, subpart A, and

3. Other applicable Federal conformity regulations that may be promulgated at a later date, and

(3) Violating Facilities. It will:

- (a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and
- (b) Facilitate compliance with Executive Order No. 11738, “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

b. Clean Water. The Recipient agrees to, and assures that its Third Party Participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, and follow Federal implementing guidance, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(2) Drinking Water. It will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f - 300j-6.

(3) Violating Facilities. It will.

- (a) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and
- (b) Facilitate compliance with Executive Order No. 11738, “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

[FTA Master Agreement §29(c),(d)]

N. Employee Protections.

The Recipient agrees to comply, and assures that each Third Party Participant will comply, with all of the following:

a. Construction Activities. Federal laws and regulations providing protections for construction employees involved in Project activities, including:

(1) Prevailing Wage Requirements.

- (a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”),
- (b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and
- (c) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions

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Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5,

(2) Wage and Hour Requirements.

- (a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and
- (b) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5,

(3) “Anti -Kickback” Prohibitions.

- (a) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874,
- (b) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145, and
- (c) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3,

(4) Safety at the Construction Site.

- (a) Section 107 of that Contract Work Hours and Safety Standards Act, as amended, U. S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*,and
- (b) U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926,

[FTA Master Agreement §28.a]

O. Energy Conservation.

The Recipient agrees to and assures its Subrecipients will:

a. State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.*, except as the Federal Government determines otherwise in writing, and

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

[FTA Master Agreement §30]

Exhibit D

Department of Labor Clauses



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UNIFIED PROTECTIVE ARRANGEMENT
For Application to Capital and Operating Assistance Projects
PURSUANT TO SECTION 5333(b) OF TITLE 49
OF THE U.S. CODE, CHAPTER 53
January 3, 2011

The following language shall be made part of the Department of Transportation's contract of assistance with the Grantee, by reference;

The terms and conditions set forth below shall apply for the protection of the transportation related employees in the transportation service area of the Project. As a precondition of the release of assistance by the Grantee to any additional Recipient under the grant, the Grantee shall incorporate this arrangement into the contract of assistance between the Grantee and the Recipient, by reference, binding the Recipient to these arrangements.

These protective arrangements are intended for the benefit of transit employees in the service area of the project, who are considered as third-party beneficiaries to the employee protective arrangements incorporated by reference in the grant contract between the U.S. Department of Transportation and the Grantee, and the parties to the contract so signify by executing that contract. Transit employees are also third-party beneficiaries to the protective arrangements incorporated in subsequent contracts of assistance, pursuant to the Department's certification, between the Grantee and any Recipient. Employees may assert claims through their representative with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

The term "service area," as used herein, includes the geographic area over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project. The term "Union," as used herein, refers to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant, including both employees of the Recipient and employees of other public transportation providers. The term "Recipient," as used herein, shall refer to any employer(s) receiving transportation assistance under the grant. The term "Grantee," as used herein, shall refer to the applicant for assistance; a Grantee which receives assistance is also a Recipient.

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

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(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/ or the preservation or continuation of the collective bargaining rights of such employees.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and check off arrangements, as provided by applicable laws, policies and/ or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5)(a) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices, provided under subparagraph S (a), involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either:

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- 1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached;
- 2) the decision has been rendered pursuant to the dispute resolution procedures in accordance with paragraph (15) of this arrangement; or
- 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final dispute resolution determination is rendered pursuant to subparagraph (b), any involved party may immediately submit that issue to the dispute resolution process under paragraph (15) of this arrangement. In any such dispute resolution procedure, the neutral shall rely upon the standards and criteria utilized by the Surface Transportation Board (and its predecessor agency, the Interstate Commerce Commission) to address the "preconsummation" issue in cases involving employee protections pursuant to 49 U.S.C. Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such dispute resolution process, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such dispute resolution procedure, the time period within which the parties are to respond to the list of potential neutrals submitted by the American Arbitration Association shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, and the award of the neutral shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days if post hearing briefs are submitted by either party. The intended change shall not be instituted during the pendency of any dispute resolution proceedings under this subparagraph (c).

(5)(d) If an intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final dispute resolution determination rendered pursuant to subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final dispute resolution determination shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final decision pursuant to subparagraph (b).

(6)(a) Whenever an employee retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7) (e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid to each displaced employee during the protective period SQ long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

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(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee's normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/her employment, the employee shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid to each dismissed employee on the thirtieth (30th) day following the day on which the employee is "dismissed" and shall continue during the protective period, as follow:

Employee's length of service Prior to adverse effect	Period of protection
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/ 12th) of the total compensation received by the employee in the last twelve (12) months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee's normal work schedule to the date on which the employee was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and the employee is unable to obtain another position, either by the exercise of the employee's seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

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(7)(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his/her current address and the current name and address of any other person by whom the employee may be regularly employed, or if the employee is self-employed.

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

(7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer, after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee is physically and mentally qualified, or for which the employee can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(7)(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while the employee is so reemployed, and the period of time during which the employee is so reemployed shall be deducted from the total period for which the employee is entitled to receive a dismissal allowance. During the time of such reemployment, the employee shall be entitled to the protections of this arrangement to the extent they are applicable.

(7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with the employee's former employer, including self-employment, and the benefits received.

(7)(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of the employee's allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his/her representative, or by final and binding dispute resolution determination rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employee were continuing to perform services in his/her former position.

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(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, the employee could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this arrangement who is retained in the service of his/her employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or the employee's representatives.

(11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12) (a) hereof.

(11)(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within ninety (90) days after the date on which the expenses were incurred.

(11)(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and is thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employee's option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his/her conventional fees and closing costs.

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If the employee is under a contract to purchase his/her home, the Recipient shall protect the employee against loss under such contract, and in addition, shall relieve the employee from any further obligation there under.

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

(12)(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within one year after the effective date of the change in residence.

(12)(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his/her union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State and local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(12)(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(e) "Change in residence" means transfer to a work location which is either:

- (A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee's residence than was his/her former work location, or
- (B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.

(13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>	<u>Separation Allowance</u>
1 year and less than 2 years	3 month's pay
2 years and less than 3 years	6 month's pay
3 years and less than 5 years	9 month's pay
5 years and less than 10 years	12 month's pay
10 years and less than 15 years	12 month's pay
15 years and over	12 month's pay

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

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Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(13)(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of the employee's dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years there from, provided, however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date of the employee's displacement or dismissal.

(15) Any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c) of this arrangement, the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient(s) and the Union(s), which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be submitted at the written request of the Recipient(s) or the Union(s) in accordance with a final and binding resolution procedure mutually acceptable to the parties. Failing agreement within ten (10) days on the selection of such a procedure, any party to the dispute may request the American Arbitration Association to furnish an arbitrator and administer a final and binding arbitration under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding.

The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient(s), and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the employee's obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (See Hodgson's Affidavit in Civil Action No. 825-71).

(16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected, as a result of the project, may file a written claim through his/her Union representative with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's position with respect to his/her employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation

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shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim. Unless the claim is filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claims.

The Recipient will fully honor the claim, making appropriate payments, or will give written notice to the claimant and his/her representative of the basis for denying or modifying such claim, giving reasons therefore. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed in accordance with the final and binding resolution procedures described in paragraph (15).

(17) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not be deemed a waiver of any rights derived from any other agreement or provision of federal, state or local law.

(18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21) hereof, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which the employee may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books

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and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising there under.

(20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Grantee and between the Grantee and any Recipient; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management, provision and/ or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree in writing. Transit employees in the service area of the project are third-party beneficiaries to the terms of this protective arrangement, as incorporated by reference in the contractual agreement.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part or portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable federal, state or local law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/ or any applicable collective bargaining agreements.

(23) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(24) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its work force(s) in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when the employee was so affected.

DRAFT

Approval of Previous Business Meeting Minutes:

August 3, 2017

August 10, 2017

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

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

Thursday, August 3, 2017 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

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

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION

1. Presentation of the Women, Infant and Children (WIC) Program in Clackamas County and Recognizing August as World Breastfeeding Month
Lindsey Butler, Public Health presented the staff report including a PowerPoint presentation. She introduced three Mothers who use the WIC program, they each spoke in support of the WIC program and thanked the County for this important program.
~Board Discussion~

II. CITIZEN COMMUNICATION

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

1. Les Poole, Gladstone – spoke about County services, outreach for Damascus residents and the sunrise project.

III. PUBLIC DISCUSSION ITEM

Public & Government Affairs

1. **Resolution No. 2017-93** Reaffirming Clackamas County as Non-Partisan
Gary Schmidt, Public & Government Affairs presented the staff report.
~Board Discussion~ <http://www.clackamas.us/bcc/business.html>
Chair Bernard announced this is a discussion item and asked if anyone signed up to speak.
 1. Les Poole, Gladstone – spoke in support of the resolution.Chair Bernard asked for a motion.

MOTION:

Commissioner Savas: I move we approve the Resolution Reaffirming Clackamas County as Non-Partisan.
Commissioner Humberston: Second.
all those in favor/opposed:
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Schrader: Aye.
Commissioner Savas: Aye.
Chair Bernard: Aye – the Ayes have it, the motion passes 5-0.

IV. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title, he then asked for a motion.
~Board Discussion~ <http://www.clackamas.us/bcc/business.html>

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Savas: Second.
all those in favor/opposed:
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Schrader: Aye.
Commissioner Savas: Aye.
Chair Bernard: Aye – the Ayes have it, the motion passes 5-0.

A. Health, Housing & Human Services

1. Approval of an Agency Service Contract with Lifeworks, NW for Assertive Community Treatment – *Behavioral Health*
2. Approval of Intergovernmental Agreement No. 154378 with the State of Oregon, Department of Human Services (DHS), for the Operation of the Job Opportunity & Basic Skills (JOBS) Program – *Community Solutions*

B. Department of Transportation & Development

1. Approval of Amendment No. 2 to the Contract with Parametrix for Engineering Services for the Signal Project at the Carver Intersection of Hwy. 224 & Springwater Rd. - *Procurement*

C. Finance Department

1. Authorization to Purchase Fourteen (14) 2017 Dodge Charges for the Clackamas County Sheriff's Office - *Procurement*

D. Elected Officials

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

E. Department of Disaster Management

1. Approval of an Intergovernmental Agreement with the City of Portland for Purchase and Reimbursement Activities for the FY 2016 US Department of Homeland Security's Urban Area Security Initiative (UASI) Grant Program

F. Business & Community Services

1. Approval of an Allocation Certification Agreement with the Oregon State Marine Board for the Maintenance Assistance Program (MAP) 2017-18 Funding

G. County Counsel

1. Release of an Interest in Land Located Near Molalla in the Vicinity of South Lowe Road
2. Approval of a Settlement Agreement between Wildish Standard Paving, Clackamas County and the Clackamas River Water District Relating to the Carver Bridge Project

V. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Approval of Amendment No. 2 and Renewal No. 3 to the Contract Documents with Richwine Environmental, Inc. for Wastewater Process Engineering and Technical Assistance - *Procurement*
2. Approval of Early Work Amendment No.1 for the Kellogg Creek Water Resource Recovery Facility Improvement Project - *Procurement*

VI. COUNTY ADMINISTRATOR UPDATE

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

VII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 11:35 AM

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

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

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

Thursday, August 10, 2017 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Paul Savas

EXCUSED: Commissioner Ken Humberston
Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

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

1. Les Poole, Gladstone – thanked Gary Schmidt, PGA for agreeing to meet with him regarding Damascus; also, SB 694, supporting Veterans, and County Fair and Rodeo.

II. PUBLIC HEARINGS

1. **Board Order No. 2017-94** for Boundary Change Proposal No. CL 17-006, Annexation to Clackamas County Service District No. 1

Amanda Keller, County Counsel and Ken Martin, Boundary Change Consultant presented the staff report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Fischer: I move we approve the Board Order for Boundary Change Proposal No. CL 17-006, Annexation to Clackamas County Service District No. 1.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 3-0.

2. **Board Order No. 2017-95** for Boundary Change Proposal No. CL 17-007, Annexation to Clackamas River Water

Amanda Keller, County Counsel and Ken Martin, Boundary Change Consultant presented the staff report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Fischer: I move we approve the Board Order for Boundary Change Proposal No. CL 17-007, Annexation to Clackamas River Water.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 3-0.

3. **Resolution No. 2017-96** for a Clackamas County Supplemental Budget Greater than 10% and Budget Reduction for Fiscal Year 2017-2018

Diane Padilla, Budget Manager presented the staff report.

~Board Discussion~

Chair Bernard opened the public hearing and asked if anyone would like to speak.

Les Poole, Gladstone – gave some background of the Altamont area.

Chair Bernard closed the public hearing and asked for a motion.

MOTION:

Commissioner Fischer: I move we approve the Resolution for a Clackamas County Supplemental Budget Greater than 10% and Budget Reduction for Fiscal Year 2017-2018.

Commissioner Savas: Second.

~Board Discussion~

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 3-0.

III. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title, he then asked for a motion.

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

MOTION:

Commissioner Fischer: I move we approve the consent agenda.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 3-0.

A. Health, Housing & Human Services

1. Approval of a Grant Agreement with LifeWorks Northwest for Relief Nursery Services – *Children, Youth & Families*
2. Approval of Amendment No. 1 to the Intergovernmental Agreement with North Clackamas School District for Kindergarten Partnership Innovation Services – *Children, Youth & Families*
3. Approval of Intergovernmental Agreement No. 8422 with the State of Oregon, acting by and through its Oregon Health Authority and Partnering with Clackamas County Health Centers for Participation in Oregon’s Alternative Payment and Care Methodology Program – *Health Centers*

B. Department of Transportation & Development

1. Approval of Amendment No. 2 to the Local Agency Agreement No. 29634 with Oregon Department of Transportation for the Sunnyside Road Adaptive Signal System Project
2. Approval of Contract Amendment No. 2 and Renewal No. 3 for On-Call Hydrogeological Peer Review Services with GSI Water Solutions for the Planning and Zoning Division - *Procurement*

C. Finance Department

1. **Resolution No. 2017-97** for a Clackamas County Supplemental Budget Less than 10 % for Fiscal Year 2017-2018
2. **Resolution No. 2017-98** for Clackamas County for a Transfer of Appropriations for Fiscal Year 2017-2018

D. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

E. Community Corrections

1. Approval to Apply for a Grant between Criminal Justice Commission, Justice Reinvestment and Clackamas County Community Corrections to Develop a Pretrial Program

F. Public & Government Affairs

1. Approval of a Contact for Publication Printing Services with Eagle Web Press

IV. DEVELOPMENT AGENCY

1. Approval of a Disposition Agreement and Post Closing Escrow and Development Agreement with G Properties, LLC

V. SERVICE DISTRICT NO. 5 (Street Lighting)

1. Approval of Amendment No. 1 to the Cooperative Improvement Agreement between Oregon Department of Transportation (ODOT) and Clackamas County Service District No. 5 (CCSD#5) for McLoughlin Blvd. Street Lighting

VI. COUNTY ADMINISTRATOR UPDATE

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

VII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 10:43 AM

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OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement
 Between Clackamas County and Multnomah County

Stephen L. Madkour
 County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
 Assistants

Purpose/Outcomes	Approve Intergovernmental Agreement between Clackamas County and Multnomah County for HIPAA and Part 2 privacy officer
Dollar Amount and Fiscal Impact	Services are to be provided on an as-needed basis at the hourly rate of \$89.82 per hour
Funding Source	County general fund
Duration	July 1, 2017 through July 1, 2018
Previous Board Action	The BCC approved and signed an IGA for the initial work on 8/4/16, which expired 7/1/17.
Strategic Plan Alignment	Ensure safe, healthy and secure communities Build public trust through good government
Contact Person	Kathleen Rastetter, Assistant Senior County Counsel

BACKGROUND:

Clackamas County has engaged the services of a HIPAA compliance expert employed by Multnomah County. The Multnomah County HIPAA Privacy Officer is an attorney in the Multnomah County Attorney's Office and is experienced and knowledgeable regarding all aspects of HIPAA and 42 CFR Part 2 (governing drug and alcohol records) compliance and has established a centralized HIPAA compliance program for Multnomah County. The Multnomah County HIPAA Privacy Officer has assisted with drafting a HIPAA Privacy Policy.

Clackamas County desires to continue its consultation with the MC Privacy Officer to assist Clackamas County in establishing a robust centralized HIPAA and Part 2 compliance program in Clackamas County. The MC Privacy Officer will perform work under this contract in Clackamas County Offices onsite or remotely not to exceed 10 hours a week on an as-needed basis at an hourly rate of \$89.82. HIPAA and Part 2 regulations and compliance are relatively esoteric areas of federal law, thus the IGA will allow Clackamas County the benefit from the services of a subject matter expert.

RECOMMENDATION:

County Counsel respectfully requests that the Board of County Commissioners authorize the County to enter into an IGA with Multnomah County for the services of a HIPAA and Part 2 compliance expert.

Respectfully submitted,



Kathleen Rastetter
Assistant Senior County Counsel

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Clackamas County, a political subdivision of the State of Oregon, and Multnomah County, a political subdivision of the State of Oregon.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.


Now, therefore, the parties agree as follows:

- 1) The effective date is: July 1, 2017, or upon final signature, whichever is later.
The expiration date is July 1, 2018; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 5) This Agreement may be terminated, with or without cause and at any time, by a party by providing 30 days written notice of intent to the other party(s).
- 6) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 7) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 8) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to the work performed under this Agreement.
- 9) Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.
- 10) Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.

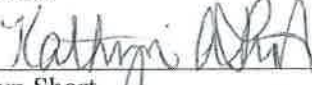
- 11) This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

MULTNOMAH COUNTY:

 _____ County Chair or Designee	<u>8/23/17</u> _____ Date
<u>DEBORAH KAFONY</u> _____ Printed Name	<u>CHAIR</u> _____ Title

Reviewed:



Kathryn Short
Deputy County Attorney

CLACKAMAS COUNTY:

_____ Signature	_____ Date
_____ Printed Name	_____ Title

Address:

Office of County Counsel
Clackamas County
2051 Kaen Road
Oregon City, OR 97045

ATTACHMENT "A"

1. **Purpose:** The Multnomah County Privacy Officer (MC Privacy Officer) is experienced and knowledgeable regarding all aspects of HIPAA and 42 CFR Part 2 ("Part 2") compliance and has established a centralized HIPAA compliance program for Multnomah County. Clackamas County desires to consult with the MC Privacy Officer to assist Clackamas County in establishing a robust centralized HIPAA and Part 2 compliance program in Clackamas County. The MC Privacy Officer will perform work under this contract in Clackamas County Offices onsite or remotely not to exceed 10 hours a week. Multnomah County agrees that Clackamas County may consult with the MC Privacy Officer for certain functions described below.

2. **Statement of Work:**

A. Multnomah County responsibilities:

Clackamas County may consult with the MC Privacy Officer on HIPAA and Part 2 compliance issues. Clackamas County shall use no more than .25 of the MC Privacy Officer's time per week. The MC Privacy Officer may be made available for consultation in person, by telephone and by email. The MC Privacy Officer may periodically or as needed be physically present at Clackamas County offices. The MC Privacy Officer may be contacted on other days in case of suspected HIPAA or Part 2 breaches. The Clackamas County Counsel shall be the primary contact for the MC Privacy Officer. In addition, the MC Privacy Officer will also work with a project team consisting of the Risk Manager, and a special projects manager with Clackamas County Health and Human Services. The primary duties to be performed by the MC Privacy Officer for Clackamas County when requested are:

(a) Review Clackamas County Departments to assess and determine correct status of covered components of Clackamas County's hybrid entity and develop a chart of covered components similar to chart developed for Multnomah County;

(b) Identify HIPAA privacy rule and Part 2 compliance issues Clackamas County needs to address in light of HITECH and new HIPAA Omnibus Rules of 2013 and the 2017 changes to the Part 2 rules;

(c) Develop a Work Plan for HIPAA privacy rule and/or Part 2 compliance issues Clackamas County needs to address;

(d) Review, revise and update Clackamas County HIPAA Privacy and Security rules (Security rules in consultation with the Clackamas County Security Officer) and Part 2 rules;

- (e) Develop written breach policy and procedures that align with current practice in Clackamas County and HIPAA and Part 2 regulations to meet Clackamas County organizational needs;
- (f) Review and revise current Clackamas County HIPAA and Part 2 training material;
- (g) Work with Clackamas County Counsel and/or the Clackamas County Privacy Officer to identify and define privacy officer performance requirements; and
- (h) Assist Clackamas County to develop and implement a process for evaluating and assisting in responding to instances of suspected HIPAA or Part 2 breaches that occur during the period of this contract.

B. Clackamas County responsibilities:

Pay for consulting services as described in the Payment Terms. If needed, provide office space and use of a computer, software, phone and network capabilities for the MC Privacy Officer while performing duties for Clackamas County. Assist in performance evaluation of MC Privacy Officer if requested by Multnomah County. Clackamas County retains all final authority and responsibility for HIPAA and Part 2 compliance and breach response.

3. Payment Terms:

Clackamas County agrees to pay for the services of Multnomah County's Privacy Officer on an hourly basis at the hourly rate of \$89.92 which reflects

Multnomah County's Privacy Officer's salary and fringe benefits. Currently that annual sum is \$187,033. Additionally, mileage for travel to Clackamas County will be reimbursed by Clackamas County. Both parties understand that Multnomah County may request that this Agreement be amended to increase or decrease the compensation amount annually if costs are higher or lower than anticipated at the agreement commencement. Multnomah County will invoice Clackamas County Office of County Counsel quarterly. Payments will be due 30 days after invoice.

Invoice Mailing Address:

Clackamas County Counsel
2051 Kaen Road
Oregon City, OR 97045

**Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Business Associate Agreement**

A. General:

For purposes of the IGA and its Attachment A ("IGA"), Multnomah County ("County") is Clackamas County's ("Covered Entity") business associate and will comply with the obligations set forth below and under HIPAA. As described in the IGA, County creates, receives, maintains or transmits PHI on behalf of Covered Entity or to provide a service to Covered Entity.

B. Definitions:

Terms used, but not otherwise defined in this Section, will have the same meaning as those terms in 45 CFR 160.103, 164.103, 164.402 and 164.501. A reference to a regulation means the section as in effect or as amended, and for which compliance is required.

- *Breach*: as defined in 45 CFR 164.402 and includes the unauthorized acquisition, access, use, or disclosure of Protected Health Information (PHI) that compromises the security or privacy of such information.
- *Designated Record Set*: as defined in 45 CFR 164.501.
- *Individual*: as defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule*: the standards for privacy at 45 CFR Part 160 and Part 164, subpart A and E.
- *Protected Health Information (PHI)*: means any information created for or received from County under the IGA from which the identity of an Individual can reasonably be determined, and includes, but is not limited to, all of the information within the statutory meaning of "Protected Health Information" in 45 CFR 160.103.
- *Required by Law*: as defined in 45 CFR 164.103.
- *Secretary*: the Secretary of the U.S. Department of Health and Human Services (HHS) or designee.
- *Security Rule*: the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subpart A and C.
- *Unsecured Protected Health Information*: PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in 45 CFR 164.402.

C. County's Obligations:

1. County agrees to not use or disclose Protected Health Information (PHI) other than as permitted or required by the IGA or as Required or Permitted by Law. County further agrees to use or disclose PHI only on behalf of, or to provide services to, the Covered Entity in fulfilling County's obligations under the IGA, and to not make uses or disclosures that would violate the Privacy Rule if done by Covered Entity or violate the minimum necessary standard as described below.
2. When using, disclosing, or requesting PHI, County agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request, in accordance with 45 CFR 164.514(d), with the following exceptions:
 - a) disclosures to or requests by a health care provider for treatment
 - b) disclosures made to the Individual about his or her own PHI
 - c) uses or disclosures authorized by the Individual
 - d) disclosures made to the Secretary in accordance with the HIPAA Privacy Rule
 - e) uses or disclosures that are Required by Law, and
 - f) uses or disclosures that are required for compliance with the HIPAA Transaction Rule.
3. County is responsible for compliance with the applicable requirements of the HIPAA Privacy Rule and Security Rule to the same extent as Covered Entity.
4. County agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the IGA.
5. County agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by 45 CFR 164 Subpart C.
6. County shall promptly notify Covered Entity of a Breach of Unsecured PHI of which County (or County's employee, subcontractor, officer or agent) knows or should have known of through the exercise of reasonable diligence.

7. County agrees to mitigate, to the extent practicable and without unreasonable delay, any harmful effect that is known to Covered Entity of a use or disclosure of PHI or Breach of Unsecured PHI by County in violation of the requirements of the IGA or HIPAA.
8. County agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by County on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply through the IGA to County with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).
9. County agrees to provide access to PHI about an Individual contained in a Designated Record Set within the reasonable time, manner, form and format specified in Individual's or Covered Entity's request as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524. If an Individual requests access to information directly from County, County agrees to forward the request to Covered Entity within 5 working days of receipt. Covered Entity will be responsible for any denials of requested PHI.
10. County agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 within the reasonable time and manner specified in Covered Entity's request. County shall not respond directly to requests from Individuals for amendments to their PHI in a Designated Record Set. County agrees to forward the request to Covered Entity within 5 working days of receipt.
11. County agrees to make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained or received by County on behalf of Covered Entity available to the Secretary upon request of the Secretary, in a time and manner designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
12. County agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528. County agrees to provide Covered Entity or an Individual information under this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528.
13. County must forward to Covered Entity within 5 working days of receipt any request for restriction or confidential communications as described under 45 CFR 164.522 received from an Individual. County must process such request in the reasonable time and manner as directed by Covered Entity.
14. County may use and disclose PHI (a) for the proper management and administration of County, (b) to carry out the legal responsibilities of County, (c) to provide Data Aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) and required by the IGA, (d) to the extent and for purposes authorized by the Individual, (e) to report violations of law to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(1) or (f) as required by law.

D. Covered Entity's Obligations:

1. Covered Entity shall obtain any consent or authorization from Individuals as necessary or required under HIPAA, other federal or state law or its own policies prior to allowing County and other provider access to an Individual's PHI.
2. Covered Entity shall notify County of:
 - (a) Its permissible uses and disclosures of PHI by providing a copy of its Notice of Privacy Practices upon request;
 - (b) Any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect County's use or disclosure of PHI;
 - (c) Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect County's use or disclosure of PHI; and
 - (d) Any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect County's use or disclosure of PHI.
3. The Covered Entity shall not request that County use or disclose PHI in any manner that would not be permissible under HIPAA.

E. Termination: Upon termination of the IGA for any reason, County will extend the protections of the IGA to any PHI that County is required to retain under any provision of the IGA. The terms of the IGA shall remain in effect until all of the PHI provided by Covered Entity to County, or created or received by County on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.



CHRISTINA MCMAHAN
DIRECTOR

JUVENILE DEPARTMENT

JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Accept Award and Sign Grant Agreement for the
Oregon Criminal Justice Commission Specialty Court Grant Program

Purpose/ Outcomes	This grant awards \$166,440.00 in funding to enhance the services of our Juvenile Drug Court including hiring one full time staff to provide enhancements to increase the successful completion of youth in the drug court program and reduce barriers to success, including additional drug testing,
Dollar Amount and Fiscal Impact	This grant award is for \$166,440.00. There will be no match of County general fund attached to this grant award
Funding Source	2017-19 Criminal Justice Commission Specialty Court funds
Duration	Effective through June 30, 2019
Previous Board Action	None
Strategic Plan Alignment	Ensure safe, healthy and secure communities
Contact Person	Christina McMahan, Director – Juvenile Department – 503-650-3171

BACKGROUND:

The Juvenile Department received an Intent to Award Notice for a Grant Award for Specialty Court provided through the Criminal Justice Commission. This grant awards \$166,440.00 in funding to enhance the services of our Juvenile Drug Court for the next two years, ending June 30, 2019. Received approval to apply for the grant value of \$124,830 on February 27, 2017, actual awarded amount noted above.

RECOMMENDATION:

Staff recommends the Board approval of this contract.

Respectfully submitted,

Christina McMahan, Director
Juvenile

Budget Narrative for CJC Treatment Court Grant

Budget based on the following calculation: 19 youth x \$12 per day x 730 days = \$166,440

Personnel:

Human Services Assistant (1 FTE) will provide educational advocacy; supervision afterhours and weekends; develop vocational skills; expose youth to healthy pro-social activities; take youth to sober support resources such as Narcotics Anonymous, Alcoholics Anonymous and Smart Recovery; and be responsible for reporting on academic performance, attendance and behavioral issues to the drug court team. (*Salary: \$89,821 Fringe: \$41,120 Total \$130,941*)

Personnel Total \$130,941

Travel/Conference/Training:

Vehicle for the proposed staff position (*\$375/month/24 months*) - \$9,000

2018 NADCP Conference – Houston, Texas - \$4,943

Registration fee (*\$750/attendee*)

Airfare/baggage fees (*\$450/attendee*)

Vehicle rental (*\$425*)

Lodging (*\$137/3 nights/attendee; \$121/2 nights/attendee; plus 17% hotel tax*)

Per Diem (*\$59/5 days/attendee*)

Transportation Total \$13,943

Supplies: Phones for proposed staff position (*\$70/month/24 months*).

Supplies Total \$1,680

Other Expenses:

Flex Funds to support youth involvement in pro-social and recreational activities.

Flex Funds Total \$1,707

Drug Testing: Urine analysis tests performed to determine the sobriety of youth in Drug Court.

Drug Testing Total \$9,847

Administrative Expenses:

Administrative cost associated to program work. (*\$346.75/month*)

Administrative Cost Total \$8,322

REQUESTED FUNDING: \$166,440

Budget Narrative and Tables-Revised 8/2017
Oregon Criminal Justice Commission Treatment Court Grant Program
Clackamas County Juvenile Department

Table 1:

2017-2019 CJC Treatment Court Grant Proposed Budget Table - Revised 8/2017				
Budget based on the following calculation:				
<i>19 youth x \$12 per day x 730 days = \$166,440</i>				
			Year 1*	Year 2
<u>Personnel Salaries and Fringe</u>				
Human Services Assistant - 1 FTE			\$ 62,353	\$ 68,588
	<i>Year 1</i>	<i>Year 2</i>	<i>Total</i>	
<i>Salary</i>	\$ 42,772	\$ 47,049	\$ 89,821	
<i>Fringe</i>	\$ 19,581	\$ 21,539	\$ 41,120	
<u>Travel/Conference/Training</u>				
Fleet Services Vehicle			\$ 4,500	\$ 4,500
<i>\$375/month</i>				
2018 NADCP Conference:				
<i>May 30 - June 2, 2018 - Houston, Texas</i>				
	<i>Registration fee \$750/attendee</i>		\$ 1,500	
	<i>Airfare/baggage fees \$450/attendee</i>		\$ 900	
	<i>Vehicle rental \$425</i>		\$ 425	
	<i>Lodging \$137/3 nights/attendee; \$121/2 nights/attendee; plus 17% hotel tax</i>		\$ 1,528	
	<i>Per diem \$59/5 days/attendee</i>		\$ 590	
<u>Supplies</u>				
Phone			\$ 840	\$ 840
<i>\$70/month</i>				
<u>Other Expenses</u>				
Flex Funds			\$ 850	\$ 857
Drug Testing			\$ 4,923	\$ 4,924
<u>Administrative Expenses</u>				
Administrative Cost			\$ 4,161	\$ 4,161
<i>\$346.75/month</i>				
Annual Totals			\$ 82,570	\$ 83,870
Total 2017-19 Drug Court Budget			\$166,440	

The following table illustrates the funding provided outside the funding requested from CJC as part of this grant proposal. This funding is provided by the Drug Court partners.

Table 2:

2016-17 Overall Clackamas County Drug Court Budget		
Drug Court Personnel – Salary and Fringe:		
Position	FTE	Cost
Drug Court Coordinator	0.5	\$59,976
Juvenile Counselor	1	\$109,710
Juvenile Department Supervisor	0.25	\$26,945
Two Therapists	0.5	\$115,000
Therapists’ Supervisor	0.25	\$26,171
District Attorney	0.10	\$15,607
Personnel Costs:		\$353,409
Additional Drug Court Personnel: <i>Salary and fringe information is not available for the Drug Court Judge (5 hours/week) and the Defense Attorney (8 hours/week).</i>		
Other Drug Court Expenses:		
Two Vehicles	\$375/12 months	\$9,000
Two Cell Phones	\$70/12 months	\$1,680
Individualized Service Funds		\$4,400
Other Expenses:		\$15,080
<i>Funding for office space, office telephones, computers, and allocated costs provided by general fund dollars. Exact amounts cannot be provided as costs for the 2016-17 fiscal year are not available.</i>		
Drug Court Budget provided from other sources:		\$368,489

Treatment costs are 100% covered by either the youth’s insurance plan, parent out-of-pocket payment, or a combination of the two. Youth who have public insurance, Oregon Health Plan, have automatic full coverage for drug court treatment services. Youth with private insurance are subject to the discretion of their carrier to authorize Clackamas County Health Centers Division

(CCHCD) as a service provider for drug and alcohol, and/or mental health treatment. Should authorization be denied, parents have the option to pay for services out-of-pocket, however those costs are usually prohibitive. This creates a scenario where primarily youth with public insurance having access to this treatment program.

CCHCD maintains a fiscal relationship with the local Coordinated Care Organizations, verifying coverage and obtaining authorization as a treatment provider for youth in the Drug Court program, and billing for services rendered.

Youth are not charged any other fees in association with their participation in the Clackamas County Juvenile Drug Court program, nor are any Oregon Criminal Justice Commission funds applied to the cost of treatment.



COMMISSIONERS:

Robert Ball
Chairman
Sen. Floyd Prozanski*
Rep. Duane Stark
Walter Beglau
Rob Bovett
Wally Hicks
Greg Hazarabedian
Kiki Parker-Rose
Sebastian Tapia
*Non-Voting

August 28, 2017

County of Clackamas, by and through its Juvenile Department
Lisa Krzmarzick
2121 Kaen Road
Oregon City, OR 97045

Dear Lisa Krzmarzick:

On behalf of the Criminal Justice Commission (CJC), Clackamas County Juvenile Drug Court has been awarded \$166,440.00 under the 2017-19 Specialty Court Grant Program. Included please find the Grant Award Agreement and other conditions. The award is subject to all programmatic and financial requirements, including timely submissions of any reports, reimbursements and requests for information.

Award Number:	SC-19-004	Project Start:	July 01, 2017
Amount:	\$166,440.00	Project End:	June 30, 2019
Award Date:	July 11, 2017		
Funding Source:	State Funds		
Statutory Authority:	ORS 423.150 (2)		

Next Steps in Accepting this Award:

1. Included is the ***Grant Award Agreement***. Please review, sign and return to CJC ***as soon as possible***. Electronic copies should be emailed to cjcgrants@oregon.gov.
2. CJC will execute the agreement and return a fully executed electronic copy to you for your files.

****IMPORTANT DETAIL****

Quarterly Progress and Financial Reports:

Grantees are required to submit quarterly Progress Reports and Financial Reports (RFR's) online through the CJC's grant administration website at <https://cjcgrants.fluidreview.com>. The detail for these reports are listed in the Grant Award Agreement.

Amendments:

All amendment requests will be submitted through the CJC's grant administration website. Only one (1) amendment will be allowed per quarter. Final amendments must be submitted by May 15, 2019 to be processed.

Travel:

Lodging must be at the federal GSA rate to be reimbursed. If the lodging rate is not the federal rate or less, none of the lodging costs will be reimbursed. Other policies around travel reimbursements can be found in the Statewide Travel Policy (OAM 40.10.00).

SUBAWARD CONTRACTS/AGREEMENTS

Grantees are responsible for notifying CJC of all subrecipients. CJC reserves the right to obtain copies of all subawards, contracts and agreements. As a grantee you are responsible to flow down all requirements your agreement with CJC to your sub awardees.

GRANTS MANAGEMENT HANDBOOK

The most current version of CJC's Grants Management Handbook is available on the CJC website.

CJC strives to create an inclusive environment that welcomes and values the diversity of the people we serve. The commission fosters fairness, equity, and inclusion to create a workplace environment where everyone is treated with respect and dignity regardless of race, color, religion, gender, disability, physical stature, age, national origin, sexual orientation, marital status or political affiliation. Recipients of grant funds are expected to comply with these state and federal laws.

If you have additional questions please do not hesitate to contact your Grant Analyst.

Sincerely,



Michael Schmidt
Executive Director
Criminal Justice Commission
885 Summer Street NE Salem, OR 97301

CRIMINAL JUSTICE COMMISSION
SPECIALTY COURT GRANT PROGRAM
GRANT AGREEMENT

885 Summer Street NE
Salem, OR 97301

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Criminal Justice Commission, hereafter referred to as “CJC,” and **County of Clackamas, by and through its Juvenile Department**, hereinafter referred to as “Grantee,” and collectively referred to as the “Parties.” This Agreement shall become effective on the later of July 1, 2017 or the date when this Agreement is fully executed and approved as required by applicable law.

1. Grant. In accordance with the terms and conditions of this Agreement, CJC shall provide Grantee an amount not to exceed \$166,440.00 (the “Grant Funds”) to assist Grantee in implementing the project described in Exhibits A and B (the “Project”) during the period beginning on the Project Start Date and ending on the Project End Date (the “Project Period”), as those dates are specified in Exhibit A. The Grant Funds may be used by Grantee solely for Eligible Costs (as described in Section 4.a) incurred by Grantee within the line items of the Project Budget (set forth in Exhibit A) during the Project Period. CJC’s obligation to disburse Grant Funds under this Agreement shall end 90 days after the Project End Date.

2. Agreement Documents. This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

- Exhibit A: **Project Description and Budget**
- Exhibit B: **Project Goals and Objectives**
- Exhibit C: **Subagreement Insurance Requirements**

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

3. Reports. Grantee shall submit the reports required by this section.

a. Progress Reports. Grantee shall submit to CJC reports each quarter during Project implementation as specified in Exhibit B as well as such other quarterly reports and information on the Project as CJC may reasonably request (collectively, “Progress Reports”). Progress Reports must be received by CJC no later than October 20, January 20, April 20 and July 20 for the prior calendar quarter. Grantee must receive prior approval from CJC to submit a Progress Report after its due date.

b. Financial Reimbursement Reports. Grantee shall submit to CJC a Request for Reimbursement (“RFR”) each quarter for reimbursement of Eligible Costs incurred during the prior calendar quarter. Each RFR must include supporting documentation for all Eligible Costs for which Grantee is seeking reimbursement. RFRs must be received by CJC no later than October 20, January 20, April 20, and July 15; provided, however, that the final RFR must be submitted no later than the earlier of 30 days after completion of the Project or 15 days after the Project End Date. Failure to submit an RFR by the due date could result in a loss of reimbursement for costs incurred during that quarter. Grantee must receive prior approval from CJC to submit an RFR after its due date.

4. Disbursement and Recovery of Grant Funds.

a. Disbursement Generally. Subject to Section 4.b, CJC shall reimburse, on a quarterly basis and within the line items of the Project Budget, Eligible Costs incurred in carrying out the Project, up to the amount of Grant Funds specified in Section 1. Reimbursements shall be made by CJC within 30 days of CJC’s approval of a RFR. “Eligible Costs” are the necessary and reasonable costs incurred by Grantee (or a subgrantee or subrecipient under a Subagreement) during the Project Period in implementation of the Project, and that are not excluded from reimbursement by CJC, either by this Agreement or by exclusion as a result of financial review or audit, subject to the following requirements and limitations:

- i.** Reimbursement rates for travel expenses shall not exceed those allowed by the Oregon travel policy, available at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx>. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.
- ii.** When requesting reimbursement for equipment costing over \$5,000, the Grantee must provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.

b. Conditions Precedent to Disbursement. CJC's obligation to disburse Grant Funds to Grantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i.** CJC has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii.** Grantee is in compliance with the terms of this Agreement.
- iii.** Grantee's representations and warranties set forth in Section 5 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv.** All Progress Reports due on or before the date of disbursement have been completed and submitted to CJC.
- iv.** Grantee has provided to CJC a RFR in accordance with Section 3.b. hereof.

5. Representations and Warranties of Grantee. Grantee represents and warrants to CJC as follows:

a. Organization and Authority. Grantee is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Grantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's charter or other governing documents, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Solicitation. Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. No Debarment. Neither Grantee nor its principals is presently debarred, suspended, or voluntarily excluded, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state agency. Grantee agrees to notify CJC immediately if it is debarred, suspended or otherwise excluded by any state agency or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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

6. Records Maintenance and Access; Audit.

a. Records, Access to Records and Facilities. Grantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. Grantee shall ensure that each of its subgrantees and subrecipients complies with these requirements. CJC, the Secretary of State of the State of Oregon (the “Secretary”), and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, CJC, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Grantee shall permit authorized representatives of CJC and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Grantee as part of the Project, and any transportation services rendered by Grantee.

b. Retention of Records. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Project End Date. If there are unresolved audit questions at the end of the six-year period, Grantee shall retain the records until the questions are resolved.

c. Expenditure Records. Grantee shall document the expenditure of all funds disbursed by CJC under this Agreement. Grantee shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit CJC to verify how the moneys were expended.

7. Grantee Subagreements and Procurements

a. Subagreements. Grantee may enter into agreements with subgrantees and subrecipients ("Subagreements") for implementation of portions of the Project.

i. Each Subagreement must be in writing executed by Grantee and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the Subagreement. Use of a Subagreement does not relieve Grantee of its responsibilities under this Agreement.

ii. Grantee shall notify CJC of each Subagreement and provide CJC with a copy of a Subagreement upon request by CJC. Any material breach of a term or condition of a Subagreement relating to Grant Funds provided under this Agreement must be reported by Grantee to CJC within ten (10) days of its discovery.

b. Subagreement indemnity; insurance.

Each Grantee Subagreement shall require each other party to such Subagreement, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to indemnify, defend, save and hold harmless the CJC and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to the Subagreement or any of such party's officers, agents, employees or contractors ("Claims"). It is the specific intention of the Parties that CJC shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the CJC, be indemnified by the other party to the Subagreement from and against any and all Claims.

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

Grantee shall require each other party to each of its Subagreements, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

c. Procurements.

i. Grantee shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.

ii. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. Justification must be provided to CJC for any non-competitive or sole-source procurement. Justification should include a description of the equipment, materials or services procured, an explanation of why it was necessary to procure noncompetitively, time constraints and any other pertinent information. All sole source procurements in excess of \$100,000 must receive prior written approval from CJC in addition to any other approvals required by law applicable to Grantee. Intergovernmental agreements between units of government are excluded from this requirement to obtain CJC approval of sole source procurements.

iii. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among vendors that may restrict or eliminate competition or otherwise restrain trade. A vendor that develops or drafts specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award in such procurement. A request for a waiver of this restriction must be submitted to and approved by CJC in advance and in writing.

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

a. Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein; or

b. Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by CJC to monitor implementation of the Project, the use of the Grant Funds or the performance by Grantee is untrue in any material respect when made.

9. Remedies upon Default. If Grantee's default is not cured within 30 calendar days of written notice thereof to Grantee from CJC or such longer period as CJC may authorize in its sole discretion, CJC may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement as provided in Section 10.a.ii, suspension

of further disbursements of Grant Funds, recovery of Grant Fund, and declaration of ineligibility for the receipt of future awards from CJC.

10. Termination

a. Termination by CJC. CJC may terminate this Agreement upon thirty (30) days advance written notice of termination to Grantee. In addition, CJC may terminate this Agreement effective upon delivery of written notice of termination to Grantee, or at such later date as may be established by CJC in such written notice, if:

- i.** Grantee fails to implement the Project during the Project Period or commencement or continuation of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal; or
- ii.** Grantee is in default under this Agreement and has failed to cure the default within the time period specified in Section 9; or
- iii.** Grantee takes an action without the approval of CJC that, under the provisions of this Agreement, requires the approval of CJC; or
- iv.** CJC fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement; or
- v.** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- vi.** The Project would not produce results commensurate with the further expenditure of funds.

b. Termination by Grantee. Grantee may terminate this Agreement effective upon delivery of written notice of termination to CJC, or at such later date as may be established by Grantee in such written notice, if:

- i.** After conferring with CJC, Grantee has determined that the requisite local funding to continue the Project is unavailable to Grantee or Grantee is unable to continue implementation of the Project as a result of circumstances not reasonably anticipated by Grantee at the time it executed this Agreement and that are beyond Grantee's reasonable control; or
- ii.** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. Effect of Termination. Upon termination of this Agreement, CJC may end all further disbursements of Grant Funds; provided, however, that if this Agreement is terminated under Sections 10.a.iv, 10.a.v, 10.a.vi, or 10.b, CJC will disburse Grant Funds to cover Eligible Costs incurred by Grantee prior to termination that CJC would otherwise be required to reimburse under the terms and conditions of this Agreement had the Agreement not been terminated. Termination of this Agreement shall not affect Grantee's obligations under this Agreement or CJC's right to enforce this Agreement against Grantee in accordance with its terms, with respect to Grant Funds actually received by Grantee or with respect to portions of the Project actually implemented. Specifically, but without limiting the generality of the preceding sentence, Sections 6 and 11 shall survive termination of this Agreement.

11. GENERAL PROVISIONS

a. Contribution. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against CJC or Grantee relating to this Agreement or the Project and with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's contribution obligation with respect to the Third Party Claim.

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

With respect to a Third Party Claim for which Grantee is jointly liable with CJC (or would be if joined in the Third Party Claim), Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CJC in such proportion as is appropriate to reflect the relative

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

b. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

c. Amendments; budget changes. This Agreement may be amended only by a written instrument signed by both Parties and approved as required by applicable law. Grantee may propose changes to the Project Budget in Exhibit A that do not increase the total budget amount. If Grantee's proposed changes do not alter any line item in the Project Budget by more than ten percent, the proposed changes to the Project Budget will be effective upon written approval by CJC delivered to Grantee as provided in Section 11.f. All other changes to the Project Budget must be implemented through a formal amendment to this Agreement before the changes become effective.

d. Duplicate Payment. Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for costs reimbursed under this Agreement from any agency of the State of Oregon or any other party, organization or individual.

e. No Third Party Beneficiaries. CJC and Grantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Grantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Grantee or any other person pertaining to any matter resulting from the this Agreement.

f. Notices. Except as otherwise expressly provided in this Agreement, any notices to be given by a Party to the other Party hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same by registered or certified mail, postage prepaid, to Grantee Contact or CJC Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any notice personally delivered shall be deemed to be given

when actually delivered. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against CJC, such facsimile transmission must be confirmed by telephone notice to CJC Contact. Any notice by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any notice by registered or certified mail shall be deemed to be given three (3) days after mailing. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed notices under this Section unless receipt by the other Party is expressly acknowledged in writing by the receiving party.

g. Work Product. To the extent it has the necessary rights, Grantee hereby grants to CJC a non-exclusive, irrevocable, perpetual, royalty-free, license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display for governmental purposes, all documents, reports and works of authorship created, produced or obtained as part of or in connection with the Project (“Work Product”). Grantee shall deliver copies of Work Product to CJC upon request. In addition, if applicable law requires that the CJC own any intellectual property created, produced or obtained as part of or in connection with the Project, then Grantee shall execute such further documents and instruments as CJC may reasonably request in order to assign ownership in the intellectual property to CJC.

h. Governing Law, Consent to Jurisdiction.

i. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

ii. Any claim, action, suit or proceeding (collectively, "Claim") between CJC (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon (unless Oregon law requires that it be brought and conducted in another Oregon county). Grantee hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such form is an inconvenient forum.

iii. Notwithstanding Section 11.h.ii above, if a Claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 11.h.iii applies to a Claim brought against CJC or any other agency or department of the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 11.h.iii is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

i. Compliance with Law. Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the

implementation of the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

j. Insurance; Workers' Compensation. All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Grantee shall ensure that each of its subgrantees and subrecipients complies with these requirements.

k. Independent Contractor. Grantee shall implement the Project as an independent contractor and not as an agent or employee of CJC. Grantee has no right or authority to incur or create any obligation for or legally bind CJC in any way. CJC cannot and will not control the means or manner by which Grantee implements the Project, except as specifically set forth in this Agreement. Grantee is responsible for determining the appropriate means and manner of implementing the Project. Grantee acknowledges and agrees that Grantee is not an "officer", "employee", or "agent" of CJC, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

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

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

n. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

Grantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Approved by Grantee

Signature of Grantee

Date

Name/Title

Federal Tax ID Number

State Tax ID Number

Approved by Criminal Justice Commission

Michael Schmidt, Executive Director

Date

Approved for Legal Sufficiency

Approved for Legal Sufficiency by AAG David Elott by email dated 8/16/2017

David Elott

Date

CJC Contact
CJC Grant Administrator
Chris Thomas
885 Summer St. NE
Salem, OR 97301-2524
Chris.Thomas@oregon.gov
503-378-2655

Grant Contact
Lisa Krzmarzick
2121 Kaen Road
Oregon City, OR 97045
LKrzmarzick@clackamas.us
503-655-8788

EXHIBIT A

Project Description and Budget The goal of the Criminal Justice Commission’s *Specialty Court Grant Program* (“Grant Program”) is to financially support Oregon specialty courts. The Grant Program calls for evidence-based problem-solving court strategies designed to address the root causes of criminal activity and substance use disorders by coordinating efforts of the judiciary, prosecution, defense, probation, law enforcement, treatment, mental health, and social services. These courts offer non-violent offenders an alternative to incarceration and teach participants to become productive law abiding citizens, which reduces recidivism and provides for healthier communities. Oregon’s best practice standards applicable to the specialty courts are available at <http://www.oregon.gov/cjc/specialtycourts/Documents/family/OregonTreatmentCourtStandards.pdf> and are incorporated herein by reference (“Best Practices”).

This Grant Agreement funds the **Clackamas County Juvenile Drug Court** to address the needs of juveniles who are involved with the criminal justice system, with the goal of providing the opportunity to divert them from prison. Grantee shall administer the Grant Funds provided under this Grant Agreement to support operation, substantially in accordance with the Best Practices, of the Clackamas County Juvenile Drug Court.

Project Start Date: July 1, 2017
 GRANT #: SC-19-004
 GRANTEE PROGRAM CONTACT: Lisa Krzmarzick
 EMAIL: LKrzmarzick@clackamas.us
 TELEPHONE: 503-655-8788
 BUDGET SUMMARY:

Project End Date: June 30, 2019
 CFDA #: N/A
 GRANTEE FISCAL CONTACT: Ed Jones
 EMAIL: EJones@co.clackamas.or.us
 TELEPHONE: 503-742-5410

	Grant Funds Requested
Personnel Salaries	\$130,941
Contractual/Consultant Services	\$0
Rent And Utilities	\$0
Supplies	\$1,680
Travel/Training/Conferences	\$13,943
Equipment	\$0
Administration	\$8,322
Evaluation	\$0
Other Expenses	\$11,554
Total	\$166,440

EXHIBIT B

Project Goals and Objectives

The goal of the Grant Program is to financially support specialty courts serving adults, juveniles, veterans, and families. Specialty courts have demonstrated positive cost-effective results for people struggling with substance use disorder through recidivism outcomes by way of interdisciplinary team collaboration, court-directed treatment, and compliance.

All *Specialty Court Grant Program* awards require recipients to submit progress reports quarterly through CJC's grant administration website <https://cjcgrants.fluidreview.com/>. Grantees shall complete and submit progress reports that contain all of the requested data.

EXHIBIT C

Subagreement Insurance Requirements

Grantee shall require each other party to a Subagreement that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, CERTIFICATES OF INSURANCE, and NOTIFICATION OF CHANGE OR CANCELLATION before the subgrantee performs under Subagreement, and ii) maintain the insurance in full force throughout the duration of the Subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to CJC. Grantee shall not authorize a subgrantee to begin work under a Subagreement until the insurance is in full force. Thereafter, Grantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Grantee shall incorporate appropriate provisions in the Subagreements permitting it to enforce subgrantee compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subagreement as permitted by the Subagreement, or pursuing legal action to enforce the insurance requirements. In no event shall Grantee permit a subgrantee to work under a Subagreement when the Grantee is aware that the subgrantee is not in compliance with the insurance requirements.

TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Workers' Compensation Insurance as required by applicable workers' compensation laws for persons performing work under a Subagreement including Employers' Liability Insurance with limits not less than \$500,000 each accident.

ii. **PROFESSIONAL LIABILITY**

Required by CJC Not required by CJC.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subagreement, in an amount not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the subgrantee shall provide Tail Coverage as stated below.

iii. **COMMERCIAL GENERAL LIABILITY.**

Required by CJC Not required by CJC.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to CJC. This insurance shall include personal injury liability,

products and completed operations and contractual liability coverage for the indemnity provided under the Subagreement. Coverage shall be written on an occurrence form basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

iv. AUTOMOBILE LIABILITY.

Required by CJC Not required by CJC.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.

ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, CJC, and their officers, employees and agents as Additional Insureds but only with respect to the activities to be performed under the Subagreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance is on a "claims made" basis and does not include an extended reporting period of at least 24 months, the subgrantee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subagreement, for a minimum of 24 months following the later of : (i) the subgrantee's completion and Grantee's acceptance of all work required under the Subagreement or, (ii) the expiration of all warranty periods provided under the Subagreement.

CERTIFICATE(S) OF INSURANCE. Grantee shall obtain from the subgrantee a certificate(s) of insurance for all required insurance before the subgrantee performs under the Subagreement. The certificate(s) list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that subgrantee shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance, CJC has the right to request copies of the certificate(s) or insurance policies relating to the insurance requirements in this Agreement.

NOTICE OF CHANGE OR CANCELLATION. The subgrantee or its insurer must provide at least 30 days' written notice to Grantee and CJC before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW. Grantee agrees to periodic review of insurance requirements by CJC under this agreement and to provide updated requirements as mutually agreed upon by Grantee.



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

September 14, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Service Level Agreements between
Clackamas Broadband eXchange and the City of Lake Oswego for Dark Fiber

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to enter into a Service Level Agreement (SLA) with the City of Lake Oswego for a dark fiber network to public buildings.
Dollar Amount and Fiscal Impact	The City of Lake Oswego will pay a non-recurring fee of approximately \$225,000.00 for the new fiber construction. The City of Lake Oswego will pay a recurring lease fee of \$16,800.00 annually.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the City of Lake Oswego.
Duration	Effective upon signature by the board and the SLA can be renewed on a year to year basis.
Previous Board Action	Board previously approved CBX to build and maintain a dark fiber network for the Lake Oswego School District.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is proposing to build ten new fiber laterals to extend the CBX network to the City of Lake Oswego and their city buildings. The City of Lake Oswego requested that each fiber lateral be a separate SLA. The City of Lake Oswego authorized these ten SLA's with resolution 17 - 45.

RECOMMENDATION:

Staff respectfully recommends approval to enter into these 10 Service Level Agreements. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

RESOLUTION 17-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE OSWEGO AUTHORIZING THE CITY MANAGER TO SIGN TEN INTERGOVERNMENTAL AGREEMENTS (IGAs) WITH CLACKAMAS COUNTY FOR FIBER OPTIC NETWORK CONNECTIVITY NOT TO EXCEED \$300,000

WHEREAS, The City of Lake Oswego purchases network connectivity services from Comcast via a MACC franchise agreement; and

WHEREAS, Clackamas County is building a fiber optic ring to provide connectivity to the Lake Oswego School District; and

WHEREAS, The City of Lake Oswego has been able to work with Clackamas Broadband Express (CBX) to negotiate ten service level agreements (SLAs) that would provide fiber optic network connectivity to ten City facilities at a very attractive rates ; and

WHEREAS, the SLAs are attached to this resolution as Exhibits one through ten; and

WHEREAS, Funding for the associated construction costs have been anticipated and are already available in the account fund balance of the IT Department budget.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Oswego that:

Section 1. The City Manager is authorized to sign the attached ten IGAs with Clackamas County

Section 2. Construction costs are currently estimated at \$226,000 and are not authorized to exceed \$300,000.

Section 3. Effective Date. This Resolution shall take effect upon passage.


Considered and enacted at the regular meeting of the City Council of the City of Lake Oswego on the 18th day of July, 2017.

AYES: Mayor Studebaker, Gudman, LaMotte, Kohlhoff, Buck, O'Neill, Manz

NOES: None

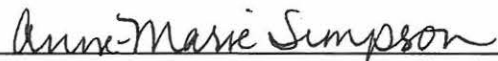
EXCUSED: None

ABSTAIN: None




Kent Studebaker, Mayor

ATTEST:



Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:



David Powell, City Attorney

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

c. **Electronic Payments**

Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): _____ Scott Lazenby

Evan P. Boone, Deputy City Attorney

Title: _____ City Manager

Date: _____

APPENDIX A.08

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.08. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Public Golf Course 17525 SW Stafford Rd, Lake Oswego, OR 97034	Lake Oswego Fire Dept. Station 212 1880 South Shore Blvd, Lake Oswego, OR 97034	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Public Golf Course 17525 SW Stafford Rd, Lake Oswego, OR 97034	Lake Oswego Fire Dept. Station 212 1880 South Shore Blvd, Lake Oswego, OR 97034	Construction	\$24,000.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

c. **Electronic Payments**

Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
See email of 7/5/17

By (signature): _____

Name (print): _____ Scott Lazenby

Title: _____ City Manager

Date: _____

Evan P. Boone, Deputy City Attorney

APPENDIX A.05

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.05. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	Lake Oswego Fire Dept. Station 211 4555 Jean Rd, Lake Oswego, OR 97035	Luscher Farm City Park 125 Rosemont Rd West Linn, OR 97068	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Lake Oswego Fire Dept. Station 211 4555 Jean Rd, Lake Oswego, OR 97035	Luscher Farm City Park 125 Rosemont Rd West Linn, OR 97068	Construction	\$30,500.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

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- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

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NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

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- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

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- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
See email of 7/5/17)

By (signature): _____

Name (print): _____ Scott Lazenby

Title: _____ City Manager

Date: _____

Evan P. Boone, Deputy City Attorney

APPENDIX A.01

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.01. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Fire Dept. Station 214 300 B Ave, Lake Oswego, OR 97034	Lake Oswego Indoor Tennis Center 2900 SW Diane Dr Lake Oswego, OR 97035	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Fire Dept. Station 214 300 B Ave, Lake Oswego, OR 97034	Lake Oswego Indoor Tennis Center 2900 SW Diane Dr Lake Oswego, OR 97035	Construction	\$34,500.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
 - b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
 - c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
 - d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
 - e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.
5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

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APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

c. **Electronic Payments**

Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): _____ Scott Lazenby

Title: _____ : City Manager

Date: _____

Evan P. Boone, Deputy City Attorney

APPENDIX A.06

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.06. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Luscher Farm City Park 125 Rosemont Rd West Linn, OR 97068	Lake Oswego Parks & Recreation (Palisades) 1500 Greentree Rd, Lake Oswego, OR 97034	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Luscher Farm City Park 125 Rosemont Rd West Linn, OR 97068	Lake Oswego Parks & Recreation (Palisades) 1500 Greentree Rd, Lake Oswego, OR 97034	Construction	\$0.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

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It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

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If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

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Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

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County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

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All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Evan P. Boone, Deputy City Attorney

Name (print): Scott Lazenby

Title: City Manager

Date: _____

APPENDIX A.04

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.04. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Maintenance Department 5705 Jean Rd, Lake Oswego, OR 97035	Lake Oswego Fire Dept. Station 211 4555 Jean Rd, Lake Oswego, OR 97035	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Maintenance Department 5705 Jean Rd, Lake Oswego, OR 97035	Lake Oswego Fire Dept. Station 211 4555 Jean Rd, Lake Oswego, OR 97035	Construction	\$16,800.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

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Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

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14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): Scott Lazenby

Title: City Manager

Date: _____

Evan P. Boone, Deputy City Attorney

APPENDIX A.07

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.07. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Parks & Recreation (Palisades) 1500 Greentree Rd, Lake Oswego, OR 97034	Lake Oswego Public Golf Course 17525 SW Stafford Rd Lake Oswego, OR 97034	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Parks & Recreation (Palisades) 1500 Greentree Rd, Lake Oswego, OR 97034	Lake Oswego Public Golf Course 17525 SW Stafford Rd Lake Oswego, OR 97034	Construction	\$11,000.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

c. **Electronic Payments**

Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

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Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

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1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

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Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): _____ Scott Lazenby

Evan P. Boone, Deputy City Attorney

Title: _____ : City Manager

Date: _____

APPENDIX A.09

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.09. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Fire Dept. Station 212 1880 South Shore Blvd, Lake Oswego, OR 97034	Water Treatment Plant 4260 Kenthorpe Way West Linn, 97068	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Fire Dept. Station 212 1880 South Shore Blvd, Lake Oswego, OR 97034	Water Treatment Plant 4260 Kenthorpe Way West Linn, 97068	Construction	\$45,700.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

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APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

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If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

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Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): Scott Lazenby

Title: City Manager

Date: _____

Evan P. Boone, Deputy City Attorney

APPENDIX A.02

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.02. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Indoor Tennis Center 2900 SW Diane Dr Lake Oswego, OR 97035	Lake Oswego Fire Dept. Station 210 4900 Melrose St Lake Oswego, OR 97035	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Indoor Tennis Center 2900 SW Diane Dr Lake Oswego, OR 97035	Lake Oswego Fire Dept. Station 210 4900 Melrose St Lake Oswego, OR 97035	Construction	\$31,500.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
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- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

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any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

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APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

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c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

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N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

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Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

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- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

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Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): Scott Lazenby

Evan P. Boone, Deputy City Attorney

Title: City Manager

Date: _____

APPENDIX A.03

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.03. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Lake Oswego Fire Dept. Station 210 4900 Melrose St Lake Oswego, OR 97035	Lake Oswego Maintenance Department 5705 Jean Rd Lake Oswego, OR 97035	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Lake Oswego Fire Dept. Station 210 4900 Melrose St Lake Oswego, OR 97035	Lake Oswego Maintenance Department 5705 Jean Rd Lake Oswego, OR 97035	Construction	\$27,900.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5.** Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

City of Lake Oswego
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to City of Lake Oswego (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

c. **Electronic Payments**

Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct

maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

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Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege,

property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

City of Lake Oswego
ATTN: IT
380 A Ave
PO Box 369
Lake Oswego, OR 97034

with a copy to

City of Lake Oswego
ATTN: City Manager's Office
380 A Ave
PO Box 369
Lake Oswego, OR 97034

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: David Cummings

Title: Chief Information Officer, Clackamas County Technology Services

Date: _____

Customer

City Of Lake Oswego
(Customer Name)

Approved as to form:
(See email of 7/5/17)

By (signature): _____

Name (print): Scott Lazenby

Title: City Manager

Date: _____

Evan P. Boone, Deputy City Attorney

APPENDIX A.10

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.10. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Water Treatment Plant 4260 Kenthorpe Way West Linn, 97068	Lake Oswego Fire Dept. Station 214 300 B Ave, Lake Oswego, OR 97034	One Pair (two) dark fibers	\$140.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Water Treatment Plant 4260 Kenthorpe Way West Linn, 97068	Lake Oswego Fire Dept. Station 214 300 B Ave, Lake Oswego, OR 97034	Construction	\$4,000.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution to Establish the Water Environment Services
Advisory Committee and Adopt Bylaws

Purpose/Outcomes	Establish the Water Environment Services Advisory Committee (“WESAC”) and adopt bylaws for the same.
Dollar Amount and Fiscal Impact	No fiscal impact.
Funding Source	N/A
Duration	Perpetual until terminated by the Board.
Previous Board Action/Review	Policy Session on August 1, 2017 and discussion at Issues on August 8, 2017.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This initiative supports the WES Strategic Plan to provide partner communities with reliable wastewater infrastructure to serve existing customers and support future growth. 2. This initiative supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.[KA1]
Contact Person	Greg Geist, Director – Water Environment Services – 503-742-4560

BACKGROUND:

After the formalization of the Water Environment Services (“WES”) partnership between Clackamas County Service District No. 1 (“CCSD#1”), Tri-City Service District (“TCSD”) and the Surface Water Management Agency of Clackamas County (“SWMACC”), WES developed a comprehensive communication and engagement outreach initiative to help it better understand what it needs to do to strengthen its relationship with the communities it serves.

Between January and April 2017, WES undertook several efforts to evaluate its internal and external communications and public involvement practices. Thousands of people were made aware of the input opportunity via emails, mailed notices, social media, open houses, phone calls and meetings.

WES held a special meeting on June 27, 2017 with members from the TCSD, CCSD#1 and regional advisory committees to ensure their input and ideas were included in the assessment and recommendation process.

As a result of that comprehensive process, WES has developed a recommended advisory committee structure and an accompanying set of bylaws to govern that committee upon establishment.

This resolution has been reviewed and approved by County Counsel.

RECOMMENDATION:

WES staff recommends the Board of County Commissioners, acting as the governing body of Water Environment Services, approve the Resolution Forming the Water Environment Services Advisory Committee and Adopting Bylaws, attached hereto, with the accompanying bylaws attached as Exhibit A.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

A Resolution of the Clackamas County Board
of Commissioners Forming the Water
Environment Services Advisory Committee and
Adopting Bylaws

RESOLUTION NO.

WHEREAS, after the establishment of Water Environment Services (“WES”) as a regional wastewater and surface water entity within Clackamas County, WES staff engaged in an extensive public outreach initiative to understand how customers and stakeholders desire to participate in an advisory role moving forward;

WHEREAS, the outreach process resulted in a staff recommendation of a single advisory committee made up of a diverse set of customers and stakeholders from the communities within the boundaries of WES, to be known as the Water Environment Services Advisory Committee (“WESAC”);

WHEREAS, the District now seeks a resolution from the Board of County Commissioners, acting as the governing body of Water Environment Services, establishing the WESAC and adopting the bylaws attached hereto as Exhibit A and incorporated herein.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, ACTING AS THE GOVERNING BODY OF WATER ENVIRONMENT SERVICES, THAT:

The Water Environment Services Advisory Committee is hereby formed as of the date of this resolution, and the bylaws, attached hereto as Exhibit A, are hereby adopted for the Water Environment Services Advisory Committee.

ADOPTED this ____ day of ____, 2017.

CLACKAMAS COUNTY BOARD OF COUNTY
COMMISSIONERS, Acting as Governing Body
of Water Environment Services:

Chair

Recording Secretary

WATER ENVIRONMENT SERVICES ADVISORY COMMITTEE BY-LAWS

Pursuant to Resolution No. _____ approved on September 14, 2017 by the Board of County Commissioners of Clackamas County (“Board”) acting as the governing body of Water Environment Services (“WES”), the Board created a standing Advisory Committee consisting of customers, stakeholders and city representatives of WES.

1. PURPOSE

The purpose of the Water Environment Services Advisory Committee (“WESAC”) is to provide input and make recommendations on surface water and wastewater issues affecting the WES service area. WES serves the cities of Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, West Linn, plus the communities of unincorporated Clackamas County.

The committee’s charge is to:

- A. Provide a forum for coordinating, learning, understanding and gathering input on surface water and wastewater plans, policies, rules and regulations, fees, and projects;
- B. Review, discuss and make recommendations on proposed operational and multi-zone capital improvements to the region’s surface water and wastewater treatment systems, master plans, investment strategies and capital projects; and
- C. Advise on and support implementation of educational and public engagement strategies on issues relating to wastewater services, bio-solids management, surface water management, watershed health, erosion control and other related topics.

2. MISSION

WESAC is intended to strengthen WES’ relationships with its key stakeholders and customers at both the regional and local levels for the purpose of maintaining a strong and fully functioning operation that supports surface water and wastewater services in Clackamas County.

3. DUTIES

- A. Members shall review, discuss and make recommendations to WES and the governing body of WES (“Board”) on surface water and wastewater policy issues, rates, financial and budgetary policies, new programs and capital improvement plans that have the potential to impact WES’ service area;
- B. Members shall provide WES with feedback on new fees, rules and regulations, and other long-range planning initiatives;
- C. Members shall recommend a five-member subcommittee to serve as the WES budget committee, which will perform duties consistent with county practices and state law;
- D. Each member shall represent his or her community or interest group to ensure WES projects and policies reflect the community’s input and needs; and

- E. Members shall support and assist, where feasible, with implementation of public engagement strategies on issues relating to wastewater services, bio-solids management, surface water management, watershed health, erosion control and other related topics.

4. MEMBERSHIP AND TERMS

- A. WESAC shall be composed of 16 voting members and two non-voting members.

- B. Membership to include:

- Voting members:
 - 6 ratepayers from cities within the service area
 - 2 ratepayers from the unincorporated portion of Clackamas County who reside within the service area
 - 2 elected officials
 - 2 environmental representatives
 - 2 members of the development community
 - 2 business owners or managers from service area

Each voting member of WESAC shall be entitled to one vote on all issues presented at regular and special meetings. Proxy votes will not be allowed.

- Non-voting members:
 - 1 member from WES management
 - 1 member from Board of County Commissioners

5. ORGANIZATION AND PROCEDURE

- A. At its first regular meeting of the calendar year, WESAC members shall select a chairman and vice chairman from its membership.
- B. The chair is responsible for running the meetings and providing input on the meeting agendas in collaboration with WES management staff.
- C. In the absence of the chairman, the vice chairman shall have all of the authority of the chairman.
- D. The term for each member of WESAC shall be three years. Terms shall begin on January 1 and expire on December 31.
- E. Members shall serve at the pleasure of the Board and may be removed at any time by the Board without cause.
- F. Members shall receive no compensation for their services.

- G. If a member is unable to attend a meeting, he or she is expected to notify the WES staff liaison at least 24 hours prior to the meeting.
- H. Two absences without advance notification may necessitate replacement of the committee member.
- I. All voting members must be residents of the WES service area or own a business or work for a business, governmental agency or non-profit located in the service area.

6. MEETINGS

- A. Regular meetings of WESAC are to be held once per quarter. Additional meetings may be scheduled as appropriate.
- B. Meetings shall be noticed and conducted in accordance with Oregon Public Meeting Laws.
- C. Unless otherwise covered by these bylaws, all WESAC meetings shall be conducted in accordance with Robert's Rules of Order.
- D. A majority of seated voting members shall constitute a quorum. When a quorum is in attendance, recommendations may be made upon a majority vote of committee members present.
- E. All meetings are open to the public. WES staff and the committee determines the means of participation of the public observers. Public comments will be allowed at each meeting.
- F. WES' designee shall maintain records for WESAC.

7. REPORTING PROCEDURES

WESAC shall make its reports, findings and recommendations to the Clackamas County Commissioners and Water Environment Services through dedicated committee members and WES staff.



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment No. 1 to the Contract Documents between
Water Environment Services and CH2M Hill Engineers
for Tri-City Water Resource Recovery Facilities Solids Handling Improvements Project

Purpose/Outcomes	Phase 2 engineering services for final design schematic design of improvements, for the Tri-City Water Resource Recovery Facility Solids Handling Improvements Project.
Dollar Amount and Fiscal Impact	Funding is available in the FY2017-18 budget. Amendment increases contract by \$2,267,500 for a new total contract value of not to exceed \$2,847,500.
Funding Source	Water Environment Service and Clackamas County Service District No. 1 FY 2017-18 annual budgets. No General Funds impacted.
Duration	March 30, 2017 to March 30, 2018
Previous Board Action	Approval of Phase 1 Engineering Services 121715 VI. 1 Approval of Original Contract with CH2M Hill 033017 IV. 1 & 2
Strategic Plan Assignment	1. This project supports the WES Strategic Plan to provide partner communities with reliable waste water infrastructure to serve existing customers and support future growth. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Contact Person	Lynne Chicoine, Capital Program Manager – Water Environment Services – 503-742-4559

BACKGROUND:

The Solids Handling Project was identified in the 2008 Tri-City Master Plan as required to meet capacity requirements for growing service areas. In 2015, an RFQ for multi-phase design engineering services for the project was issued. Several highly-qualified firms were considered and the result of the competitive procurement process was selection of MWH Global (now Stantec) as the top-ranked firm and CH2M as the second-highest ranked firm.

Phase 1 of this project was completed by MWH Global. The result of Phase 1 was a change in direction from a one-time expansion to a just-in-time delivery approach, which will phase implementation of the solids expansion. After much consideration, District staff were of the opinion that it was best positioned to deliver Phase 2 of the project with the second-highest ranked firm, CH2M Hill Engineers, Inc. The Conceptual Design Report (CDR), prepared by MWH Global, defined capacity requirements for anaerobic digestion and dewatering to meet 2040 capacity needs and recommended a phased approach with the initial construction delivering facilities to meet capacity needs until approximately 2030. The CDR also identified needed improvements to existing facilities to improve performance and maximize their use.

Phase 2 of the project included detailed design and bid period services by CH2M Hill. Facilities designed included an anaerobic digester and control building, a biosolids dewatering process and cake loadout facility, rehabilitated existing solids processing facilities, and electrical, site and ancillary improvements. Additionally, a business case study partially funded by an incentive grant from Energy Trust of Oregon (ETO) was prepared which showed the construction of a combined heat and power (CHP) process that was financially attractive with anticipated ETO funding. The CHP process includes biogas cleaning, storage and a lean-burn cogeneration unit.

CH2M recently completed the Project Definition and Schematic Design tasks of this project. Building upon this previous work, CH2M will now advance the design to the Contract Documents (100%) level of completion and provide bidding phase services. This amendment, following final design completion, includes engineering services during construction and some construction management services.

The Amendment has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Amendment #1 to the Engineering Services Contract for Tri-City Water Resource Recovery Facilities Solids Handling Improvements Project for \$2,267,500 for a total contract value not to exceed \$2,847,500.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the September 14, 2017 agenda by Procurement.

AMENDMENT #1

**TO THE CONTRACT DOCUMENTS WITH CH2M HILL ENGINEERS, INC. FOR TRI-CITY
WATER RESOURCE RECOVERY FACILITIES SOLIDS HANDLING IMPROVEMENTS
PROJECT**

This Amendment #1 is entered into between Water Environment Services and Clackamas County Service District No. 1 (collectively referred to as "District") and **CH2M Hill Engineers, Inc.** and shall become part of the Contract entered into between the parties on March 30, 2017.

The Purpose of this Amendment #1 is to make the following changes to the Contract;

1. ARTICLE 2- SERVICES OF THE CONSULTANT

Add additional Scope of Work as described in the Agreement for Professional Services for the Tri City Water Resource Recovery Facility ("WRRF") Solids Handling Improvements Project P632162, hereby attached and included by reference as **Attachment A**.

2. ARTICLE 6 – PAYMENTS AND CONSULTANT

6.1 Compensation

a. Contract is hereby increased by \$2,267,500.00 for the addition of Phase 2 of the multi phased design as described within Article 2- Services of the Consultant and Attachment A. Time and Material fee schedule for Phase 2 is included as **Attachment B**, hereby attached and included by reference.

The maximum compensation under the Contract is not to exceed \$2,847,500.00.

ORIGINAL CONTRACT	\$ 580,000.00
<u>AMENDMENT #1</u>	<u>\$2,267,500.00</u>
TOTAL CONTRACT AMOUNT	\$2,847,500.00

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect.

By signature below, the parties agree to this Amendment #1, effective upon the date of the last signature below.

CH2M Hill, Inc.
24805 SW Cage Road
Wilsonville, OR 97070

Water Environment Services

Authorized Signature

Chair Date

Name, Title

Clackamas County Service District No. 1

Chair Date

Date

Recording Secretary

193470-95

Oregon Business Registry Number

Approved as to Form

FBC/Oregon

Entity Type / State of Formation

County Counsel Date

Amendment #1
CH2M Hill Engineers, Inc.
Tri-City Water Resource Recovery Facilities
Solids Handling Improvements Project



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment No. 1 to the Contract Documents between Service District No. 1
and CH2M Hill Engineers for Tri-City Water Resource Recovery Facilities
Solids Handling Improvements Project

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Dollar Amount and Fiscal Impact	Funding is available in the FY2017-18 budget. Amendment increases contract by \$2,267,500 for a new total contract value of not to exceed \$2,847,500.
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The Amendment has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Service District No. 1, approve and execute the Amendment #1 to the Engineering Services Contract for Tri-City Water Resource Recovery Facilities Solids Handling Improvements Project for \$2,267,500 for a total contract value not to exceed \$2,847,500.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the September 14, 2017 agenda by Procurement.

AMENDMENT #1

**TO THE CONTRACT DOCUMENTS WITH CH2M HILL ENGINEERS, INC. FOR TRI-CITY
WATER RESOURCE RECOVERY FACILITIES SOLIDS HANDLING IMPROVEMENTS
PROJECT**

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CH2M Hill, Inc.
24805 SW Cage Road
Wilsonville, OR 97070

Water Environment Services

Authorized Signature

Chair Date

Name, Title

Clackamas County Service District No. 1

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Oregon Business Registry Number

Approved as to Form

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Entity Type / State of Formation

County Counsel Date

Amendment #1
CH2M Hill Engineers, Inc.
Tri-City Water Resource Recovery Facilities
Solids Handling Improvements Project