



AGENDA

Thursday, August 1, 2013 - 10:00 AM Board of County Commissioners Business Meeting

Beginning Board Order No. 2013-68

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

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

-NO DISCUSSION ITEMS SCHEDULED

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 Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Health, Housing & Human Services

1. Board Order No. _____ Approving the Mental Health Director's Designee to Authorize a Custody Hold Under ORS 426.233 – *Behavioral Health*
2. Approval of a New Revenue Participating Providers Service Agreement with Pacificsource, to Provide Primary Care Services at School Based Health Centers – *Health Centers*

B. Department of Transportation & Development

1. Resolution No. _____ Amending the Declaration of Necessity of Purpose for Acquisition of Rights-of-Way and Easements for the Barlow/Zimmerman Intersection Improvement project and Authorizing Negotiations and Eminent Domain Actions
2. Approval of Cooperative Improvement Agreement No. 29149 with Oregon Department of Transportation for the Sunrise Corridor Project

C. Elected Officials

- 5
1. Approval to Apply for FY 2013 Supplemental Support for the Honest Opportunity Probation with Enforcement (HOPE) Demonstration Field Experiment Program Agreement No. 2011-RY-BX-K007 - DA
 - 6 2. Request by the Clackamas County Sheriff's Office to Enter into an Annual Operating Plan and Financial Plan with the Oregon State Marine Board for the Clackamas County Boating Safety Action Plan 2013 – 2014 - ccso

V. COUNTY ADMINISTRATOR UPDATE

VI. COMMISSIONERS COMMUNICATION

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

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

August 1, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Mental Health Director's
Designee to Authorize a Custody Hold Under ORS 426.233

Purpose/Outcomes	The Clackamas County Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of Jessica Johnson, LCSW with CCBH, Margaret Moore, LCSW with CCBH, Stephanie Gregory, LCSW with CCBH, and Simone Melhuish, MSW with Cascadia, CCBH Director as additional designee authorized under ORS 426.233.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Safety Impact	None
Duration	Effective August 1, 2013 through duration of employment
Previous Board Action	N/A
Contact Person	Martha Spiers, Mental Health Program Mgr. – Behavioral Health Division – 503-742-5833
Contract No.	N/A


BACKGROUND:

The Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of additional designees authorized under ORS 426.233 (copy attached), the mental health designee will be authorized to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division.

RECOMMENDATION:

Staff recommends the Board approve the Board Order of Jessica Johnson, LCSW with CCBH, Margaret Moore, LCSW with CCBH, Stephanie Gregory, LCSW with CCBH, and Simone Melhuish, MSW with Cascadia, as additional qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

Respectfully submitted,


Cindy Becker, Director

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

In the Matter of the Designation of
Jessica Johnson, LCSW with CCBH,
Margaret Moore, LCSW with CCBH,
Stephanie Gregory, LCSW with CCBH,
and Simone Melhuish, MSW with
Cascadia, as Mental Health Director
Designee to Direct Peace Officer
Custody Holds



ORDER NO.

This matter coming on at this time to be heard, and it appearing to this Board that Cindy Becker, Director of Health, Housing & Human Services Department, has recommended to this Board the approval of Jessica Johnson, LCSW with CCBH, Margaret Moore, LCSW with CCBH, Stephanie Gregory, LCSW with CCBH, and Simone Melhuish, MSW with Cascadia, as additional designee of the Behavioral Health Division Director, authorized under ORS 426.233 to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division, and

This Board finds that it would be in the best interest of Clackamas County to approve said designations,

IT IS THEREFORE HEREBY ORDERED that Clackamas County approve the designation of Jessica Johnson, LCSW with CCBH, Margaret Moore, LCSW with CCBH, Stephanie Gregory, LCSW with CCBH, and Simone Melhuish, MSW with Cascadia, as qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

ADOPTED this 1st day of August, 2013.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

426.233 Authority of community mental health program director and of other persons; costs of transportation. (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Oregon Health Authority;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the authority, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232;

(C) Notify a person authorized under subsection (3) of this section to take the person into custody and direct the authorized person to remove the person in custody to a hospital or nonhospital facility approved by the authority;

(D) Direct a person authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the authority to another hospital or nonhospital facility approved by the authority as provided under ORS 426.235; or

(E) Direct a person authorized under subsection (3) of this section to transport a person in custody from a facility approved by the authority to another facility approved by the authority as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must be recommended by the community mental health program director, meet the standards established by rule of the authority and be approved by the county governing body before assuming the authority permitted under subsection (1) of this section.

(3) The county governing body may, upon recommendation by the community mental health program director, authorize any person to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing a person under this subsection, the county governing body shall grant the person the authority to do the following:

(a) Accept custody from a peace officer of a person in custody under ORS 426.228;

(b) Take custody of a person upon notification by the community mental health program director under the provisions of this section;

(c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health program director;

(d) Transfer a person in custody to another person authorized under this subsection or a peace officer;

(e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health program director; and

(f) Retain a person in custody at the approved hospital or nonhospital facility until a physician makes a determination under ORS 426.232.

(4) A person authorized under subsection (3) of this section must be recommended by the community mental health program director, meet the standards established by rule of the authority and be approved by the governing body before assuming the authority granted under this section.

(5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by a person authorized under subsection (3) of this section shall be the responsibility of the county whose peace officer or community mental health program director directs the authorized person to take custody of a person and to transport the person to a facility approved by the authority, but the county shall not be responsible for costs that exceed the amount provided by the state for that transportation. A person authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or otherwise legally responsible persons or agencies in the same manner that costs for the transportation of other persons are charged and collected. [1993 c.484 §5; 1997 c.531 §5; 2009 c.595 §405]

August 1, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a new Revenue Participating Provider Service Agreement with PacificSource, provide primary care services at School Based Health Centers

Purpose/Outcomes	Provide primary care services to referred persons, primarily at the School Based Health Centers.
Dollar Amount and Fiscal Impact	This is a revenue contract. No contract maximum. Revenue depends on number of referred persons.
Funding Source	This revenue agreement is funded by fee for services. No County General Funds are involved.
Safety Impact	None
Duration	Effective upon signature and terminates on June 30, 2014
Previous Board Action	This is a new agreement, no previous Board action has occurred.
Contact Person	Janelle McLeod, Health Clinic Manager – 503-722-6577
Contract No.	6323

BACKGROUND:

Clackamas County Health Center Division (CCHCD) has been working with local High Schools to establish health centers located at the High Schools to promote access to health care for the students.

CCHCD is the medical sponsor for Canby, Oregon City, and Sandy High School's – School Based Health Centers (SBHC). CCHCD provides primary care services to referred persons, primarily at the SBHC. This agreement enables CCHCD to register our medical staff with the insurance company and allows CCHCD to bill for services.

This contract is effective upon signature and continues through June 30, 2014. This contract has been reviewed by County Counsel on July 01, 2013.

RECOMMENDATION:

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

Respectfully submitted,


Cindy Becker, Director



PARTICIPATING PROVIDER SERVICE AGREEMENT

THIS AGREEMENT is entered into as of this 1st day of **September, 2013** (hereinafter referred to as the Effective Date) by and between **PacificSource Health Plans** (hereinafter referred to as PacificSource), an Oregon non-profit corporation, and **Clackamas County acting by and through its Health, Housing and Human Services Department, Health Centers Division**, (hereinafter referred to as **Provider**).

RECITALS

- A. PacificSource is a healthcare service contractor, which currently contracts for the provision of comprehensive healthcare services for its Members enrolled in various Benefit Plans.
- B. PacificSource wishes to contract for the provision of certain healthcare services to its Members by entering into service agreements with various healthcare providers.
- C. Provider desires to enter into a service agreement with PacificSource for the provision of certain covered services to PacificSource Members.
- D. PacificSource and Provider mutually desire to enter into an agreement to provide PacificSource Members with Health Benefit Plans that are committed to high quality, cost effective care and service, positive patient outcomes, and Member satisfaction.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Provider does hereby agree as follows:

AGREEMENTS

I. DEFINITIONS

- 1.1 "Ancillary Medical Services" shall mean those Covered Services necessary to the diagnosis and treatment of Members, including, but not limited to, ambulance, ambulatory or day surgery, durable medical equipment, imaging services, laboratory, pharmacy, physical or occupational therapy, urgent or Emergency care, and other Covered Services customarily deemed ancillary to the care furnished by Primary Care or Specialist Physicians.
- 1.2 "Benefit Plan" shall mean the Covered Services, Copayments, Coinsurance and Deductible requirements, and limitations and exclusions contained in the contract between PacificSource and a Member or Subscriber Group.

- 1.3 "Claim" shall mean a statement prepared by a Physician, Provider or other Participating Provider for the purpose of completely itemizing all services and treatments provided to, and identifying all diagnoses for, a Member
- 1.4 "Clean claim" means a claim that has no defect or impropriety, including any lack of any required substantiating documentation, or particular circumstances requiring special treatment that prevents timely payments from being made on the claim under this section.
- 1.5 "Contracting Hospital" shall mean a hospital that has entered into an agreement with PacificSource to provide Covered Services to Members.
- 1.6 "Coordination of Benefits" shall mean the determination of whether Covered Services provided to a Member will be paid for, either in whole or in part, under any other private or government health benefit plan or any other legal or contractual entitlement, including, but not limited to, a private group indemnification or insurance program.
- 1.7 "Copayment," "Coinsurance," and "Deductible" shall mean any portion of the allowed amount charged to a Member that is provided for in PacificSource's contracts with Subscriber Groups or individuals.
- 1.8 "Covered Services" shall mean those healthcare services, which a Member is entitled to receive from PacificSource pursuant to the applicable Benefit Plan.
- 1.9 "Dependent" shall mean a person who is enrolled in and covered under PacificSource on the basis of that individual's family relationship with a Subscriber, in accordance with the provisions of the applicable contract between PacificSource and an individual or a Subscriber Group.
- 1.10 "Emergency" shall mean a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson possessing an average knowledge of health and medicine would reasonably expect that failure to receive immediate medical attention would place the health of a person, or a fetus in the case of a pregnant woman, in serious jeopardy.
- 1.11 "Emergency Services" shall mean those Covered Services that are Medically Necessary to treat Emergency conditions.
- 1.12 "Health Facility" shall mean those Providers, including, but not limited to, hospitals, skilled nursing facilities, ambulatory surgery centers or home health agencies.
- 1.13 "Medical Group" shall mean a group of Physicians and/or Providers organized as a single professional entity that is recognized under state law as an entity to practice a medical profession, and which has entered into a contract with PacificSource to provide Covered Services to Members.
- 1.14 "Medically Necessary" services shall mean services that PacificSource determines, through its professional review process, are (i) appropriate for the symptoms and diagnosis or treatment of a Member's medical condition, (ii) provided for the diagnosis, or the direct care and treatment of that medical condition, (iii) provided in accordance with standards of good medical practice, (iv) not primarily for the convenience of the Member or the Member's provider of care and (v) the most appropriate level of service that can be safely provided to the Member.
- 1.15 "Member" shall mean any PacificSource Subscriber or Dependent as determined by PacificSource in accordance with the applicable eligibility requirements.

- 1.16 "Member Complaint and Grievance Procedure" shall mean the system for the receipt, handling, and disposition of Member complaints and grievances, as described in the PacificSource Physician and Provider Manual.
- 1.17 "Never Event" shall mean a serious adverse event that is determined by PacificSource to be preventable and within the control of the Provider.
- 1.18 "Non-Covered Services" shall mean those services not eligible for coverage under the terms of the applicable Benefit Plan.
- 1.19 "Other Payor" shall mean other payors for healthcare services, including but not limited to PacificSource subsidiaries, self-funded employers, trusts, and governmental entities or authorized contracting agencies or divisions, with whom PacificSource has entered into a contract.
- 1.20 "Out-of-Area" shall mean that area that is outside the Service Area of PacificSource.
- 1.21 "PacificSource Physician and Provider Manual" shall mean the policies and procedures adopted by PacificSource for the administration of health benefits and the implementation of the terms and conditions of this Agreement.
- 1.22 "Participating" shall refer to those Physicians and Providers that have entered into contracts directly with PacificSource, or that participate indirectly by being a member or contracting with a Participating Individual Practice Association, Medical Group, Physician-Hospital Organization or any other Provider contracting directly with PacificSource to provide Covered Services to Members.
- 1.23 "Physician" shall mean a person duly licensed and qualified to practice medicine or osteopathy in the state where his or her practice is located.
- 1.24 "Preauthorization" shall mean the processes for reviewing and authorizing inpatient and outpatient procedures as specified in the PacificSource Physician and Provider Manual.
- 1.25 "Primary Care Practitioner" shall mean the Medical Group Physician or Provider selected by a Member, whose Benefit Plan requires the designation of a Primary Care Practitioner, who shall have the responsibility of providing initial and primary care, and for referring, authorizing, supervising and coordinating the provision of all other Covered Services to the Member in accordance with PacificSource's Quality Assurance and Utilization Management Programs. A Primary Care Practitioner may be either a family practitioner, general practitioner, nurse practitioner, internist, pediatrician, obstetrician, gynecologist or other women's healthcare provider as defined or limited by state law, or other Physician or Provider who has otherwise limited his or her practice of medicine to general practice or a Specialist Physician or Provider who PacificSource and Medical Group have mutually agreed to be designated as a Primary Care Practitioner.
- 1.26 "Physician and Provider Complaint and Grievance Procedure" shall mean the system for the receipt, handling, and disposition of Physician and Provider complaints and grievances, as described in the PacificSource Physician and Provider Manual.
- 1.27 "Provider" shall mean a Health Facility, a vendor or provider of healthcare supplies and equipment, or any healthcare practitioner other than a Physician. To the extent required by applicable law, Providers shall be licensed and/or certified according to federal and/or state law.

- 1.28 "Quality Assurance Program" shall mean the program and processes established by PacificSource, and carried out by PacificSource in cooperation with Medical Group and other PacificSource Participating Physicians and Providers to monitor, maintain and improve the quality of services provided to Members, as described in the PacificSource Physician and Provider Manual.
- 1.29 "Referral" shall mean the process by which the Member's Primary Care Practitioner directs the Member to seek and obtain Covered Services from other Physicians and Providers.
- 1.30 "Referral Authorization" shall mean the processes for reviewing and authorizing referrals to Specialist Physicians or Providers by Primary Care Practitioners.
- 1.31 "Service Area of PacificSource" shall mean the geographic area defined by the boundaries of the state of Oregon, Idaho, Montana and specific counties in Washington, as modified from time to time by PacificSource.
- 1.32 "Specialist Physician" shall refer to a physician who practices a specialty and who has entered into a written agreement with PacificSource, or any other Participating Provider to provide Covered Services to Members upon Referral.
- 1.33 "Subscriber" shall mean the person who is responsible for payment to PacificSource, or whose employment or other status, except for family dependency, is the basis for eligibility for membership in PacificSource.
- 1.34 "Subscriber Group" shall mean the organization, firm, or other entity contracting with PacificSource to arrange for the provision of Covered Services for its employees or members and their Dependents.
- 1.35 "Utilization Management Program" shall mean the programs and processes established and carried out by PacificSource with the cooperation of Provider and Participating Physicians and Providers to authorize and monitor the utilization of Covered Services provided to Members, as described in the PacificSource Physician and Provider Manual.

II. DUTIES OF PROVIDER

- 2.1 Provision of Covered Services. Provider, in coordination with PacificSource, shall provide or arrange for the provision of Covered Services for Members enrolled in the PacificSource products listed in **Attachment A**. Services will be provided by or referred to Provider or Participating Physicians and Providers unless such services are not available from Provider or Participating Physicians and Providers (see Section 2.9). Nothing in this Agreement shall require Provider to directly provide or contract for all Covered Services.
- 2.2 Provision of Services for Other Payors. Pursuant to each agreement with any Other Payor, Provider shall provide Covered Services to the members or beneficiaries of that Other Payor pursuant to and in accordance with the provisions of this Agreement.
- 2.3 Standard of Care. Provider shall comply with all applicable federal and state laws, licensing requirements, and professional standards, and shall provide or arrange for the provision of Covered Services in accordance with generally accepted medical and surgical practices and standards prevailing in the applicable professional community at the time of treatment, and in conformity with the law of the state in which the Provider is licensed.

- 2.4 Primary Care Practitioner. PacificSource shall, at time of enrollment in a plan requiring a Primary Care Practitioner, require Members to select a Primary Care Practitioner. Upon selection and notification, the Primary Care Practitioner shall assume responsibility for coordinating, supervising, and monitoring the Members' overall healthcare, subject to the terms of this Agreement. Providers, who act as a Primary Care Practitioner or who have Primary Care Practitioners under this Agreement, agree to notify PacificSource in writing at least thirty (30) days in advance of the date that Provider or one of its Primary Care Practitioner will close medical practice to new patients or terminate the relationship with Provider.
- 2.5 Physician and Provider Licensure and Medical Staff Privileges. Provider warrants and represents as a material term of this Agreement that all Providers under this Agreement are, and will continue to be as long as this Agreement remains in effect, holders of a valid, current, and unrestricted license to practice medicine or osteopathy in the state(s) where the Physician or Provider cares for PacificSource's Members. Providers are members in "good standing" of the medical staff of one or more contracted hospitals, if applicable. Provider further warrants and represents as a material term of this Agreement that Provider is, and will continue to be as long as this Agreement remains in effect, licensed to provide their respective services hereunder as required pursuant to applicable law. Provider shall provide PacificSource with a copy of its credentialing plan, and, upon request by PacificSource, supply evidence of any or all Physician and Provider licensure. The parties agree to cooperate in resolving any problems that may arise in the course of this Agreement with respect to any individual Physician or Provider under this Agreement. Professional standards of practice and conduct, as determined and monitored by state licensing boards, professional organizations, and other similar entities, will be used by PacificSource as a benchmark of professionalism. Violation or abrogation of such standards, of which PacificSource may become aware, may be grounds for denial, termination, or corrective action with regard to participation status. In the event that a Physician or Provider is found guilty of a criminal offense or acts contrary to this Agreement, the Physician or Provider shall immediately discontinue providing services to PacificSource Members. Nothing in this Agreement shall prohibit a Physician or Provider while using the degree of care, skill, and diligence which is used by ordinarily careful physicians or providers in the same or similar circumstances in the physician's or provider's community, from advocating a decision, policy or practice without being subject to termination or penalty for the sole reason of such advocacy.
- 2.6 Facilities, Equipment and Personnel. Provider shall provide and maintain sufficient facilities and equipment, and shall provide sufficient personnel and administrative services to perform the duties and responsibilities set forth in this Agreement.
- 2.7 Accessibility and Hours of Service. Provider shall provide or arrange for the provision of Covered Services to Members on a readily available and accessible basis, including, but not limited to, during normal business hours at the usual place of business of Provider. Emergency Covered Services and access to Provider by telephone shall be available and accessible to Members on a twenty-four (24) hour, seven (7) day a week basis. Provider shall arrange for an appropriate call schedule to provide for such availability and accessibility of services.
- 2.8 Nondiscrimination. Provider shall not differentiate or discriminate in its provision of Covered Services to Members because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age or for any reason or purpose prohibited by applicable federal or state law. Provider shall make available Covered Services to Members in the same manner, in accordance with the same standards, and within the same time availability as offered to non-Member patients. Nothing in this Agreement shall prohibit Provider from withdrawing from the care of a patient when, in his or her professional judgment, it is in the best interest of the patient to do so.

- 2.9 Referrals. Provider shall refer Members only to Participating Physicians and Providers for the provision of Covered Services except in cases of Emergencies or if no Participating Physician or Provider is available to perform the appropriate Covered Service. Provider shall make all other Referrals for Covered Services, which are the financial responsibility of PacificSource, to Participating Physicians and Providers in accordance with PacificSource's Referral authorization policies as well as its Quality Assurance and Utilization Management Programs. PacificSource must approve Referrals to nonparticipating Physicians or Providers.
- 2.10 Member Medical Records. Provider shall establish and maintain a medical record for each Member. Each Member's medical record shall be opened upon the Member's first visit to Provider. The record shall contain that information normally included in accordance with generally accepted medical and surgical practices and standards prevailing in Provider's professional community. Provider shall facilitate the sharing of medical information with other Physicians and Providers in cases of authorized Referrals. Provider shall make records available to appropriate State or Federal authorities as required under applicable law. Subject to applicable federal and state laws and professional standards regarding the confidentiality of medical records, Provider shall make available at no charge to PacificSource records that are necessary for coordination of benefits, quality assurance, utilization review, third party claims administration, underwriting, preexisting conditions investigations, and benefits administration.
- 2.11 Physician and Provider Complaint and Grievance Procedures. Provider shall cooperate with PacificSource in identifying, processing, and resolving all Physician and Provider complaints and grievances pursuant to PacificSource's Physician and Provider Complaint and Grievance Procedures. If pursuant to PacificSource's Complaint and Grievance Procedures, it is determined that Covered Services were inappropriately denied by Provider, or Non-Covered Services were provided to a Member who was led to believe by Provider that such services would be covered, Provider agrees to cooperate with PacificSource in resolving any such situation. PacificSource shall have the option to deduct any claims cost related to any such resolution from the compensation payable to Provider per this Agreement.
- 2.12 Prescriptions. Subject to generally accepted medical and surgical practices and standards prevailing in Provider's professional community, Provider shall comply with any drug formularies and policies regarding the prescription of generic or lowest cost alternative brand name pharmaceuticals adopted by PacificSource, and shall recognize the authority of pharmacists to substitute generic drugs for trade name drugs consistent with federal and/or state law.
- 2.13 Identification of Provider. Provider shall provide PacificSource with the identifying information set forth in **Attachment B** with respect to each Provider. Provider shall use its best efforts to notify PacificSource promptly and in advance of any change in this information or of the addition or termination of a Provider. Provider agrees that PacificSource may list the name, address, telephone number and other identifying information of Provider in PacificSource publications furnished to Physicians and Providers, Members and Subscriber Groups, and may identify Provider as a PacificSource Participating Provider in advertising and marketing materials.
- 2.14 Promotional Materials. Provider agrees to display promotional materials provided by PacificSource and approved by Provider in Provider's office.
- 2.15 Out-of-Area Transfers. For any Member who has selected Provider as his or her Primary Care Practitioner, but is receiving Emergency or other authorized care from non-Participating Hospitals, Physicians or Providers, Provider shall assist PacificSource in facilitating the transfer of that Member to a Participating Hospital. The Participating Hospital must be one in which the Member's attending Physician or Provider, or another suitable Participating Physician or Provider, as

determined medically acceptable by Provider and the attending Physician or Provider subject to review by the PacificSource Medical Director, has medical staff privileges.

2.16 Physician and Provider Agreements. Provider shall require that all Physicians and Providers comply with the applicable terms and conditions of this Agreement by entering into a written participation agreement which shall include, but shall not be limited to, the following provisions:

1. Accepting Members for care subject to the Nondiscrimination provisions specified in Section 2.8;
2. Accepting, as payment in full, (less Copayments, Coinsurance and Deductibles), all applicable reimbursement arrangements, including, but not limited to, capitation, discounted rates and/or acceptance of a withhold from usual, customary and reasonable charges, agreed to by Provider;
3. Hospitalizing Members for Non-Emergency Covered Services only in accordance with the admission approval procedures set forth in PacificSource's Utilization Management Program;
4. Maintaining in force professional liability insurance in accordance with the standards established by Provider and Article VI of this Agreement;
5. Complying with and accepting as final the decisions of the PacificSource Quality Assurance and Utilization Management Programs, as applicable and in consideration to PacificSource's appeal and grievance procedures;
6. Following the procedures established by PacificSource for verifying eligibility of Members and authorizing Covered Services;
7. Providing and maintaining sufficient facilities, equipment, personnel, and services to provide specified Covered Services to Members on a readily available and accessible basis;
8. Complying with all applicable federal and state laws, licensing requirements, and professional standards and providing Covered Services in accordance with generally accepted medical and surgical practices and standards prevailing in the applicable professional community at the time of treatment; and
9. Resolving disputes and controversies in accordance with the provisions of Article VIII of this Agreement.

Provider shall provide to PacificSource, without charge, copies of such executed agreements or such other documentation at PacificSource's request.

2.17 Coordination of Benefits and Subrogation. Provider agrees that the procedures used for Coordination of Benefits shall be in conformity with the applicable Subscriber Group Contract and with the PacificSource Physician and Provider Manual.

2.18 Reciprocity with Other PacificSource Participating Providers. Provider agrees that should another Participating Physician or Provider request that Provider provide Covered Services for its patients who are Members, Provider shall provide and/or arrange for the provision of such services and accept payment consistent with the terms of Article V and Attachment A.

2.19 PacificSource Physician and Provider Manual. PacificSource shall make available a copy of the PacificSource Physician and Provider Manual to Provider, which will be modified from time to time by PacificSource and Provider agrees to regularly review and abide by the terms thereof.

2.20 Educational Services. Provider shall provide or assist in the provision of basic health education services including education with respect to the appropriate use of health services, the contribution each Member can make to the maintenance of his or her own health, instruction in personal healthcare measures, and information regarding Provider's services.

2.21 Administrative Services. Provider shall provide the following administrative services marked with an "X" below. If an administrative service is not indicated by an "X," it will not be included as part of this Agreement:

- (X) Physician and/or Provider Information per **Attachment B**;
- () Physician and/or Provider Credentialing per **Attachment C**;
- () Referral Authorization per **Attachment D**.

III. DUTIES OF PACIFICSOURCE

3.1 Administrative Services. PacificSource shall provide the following administrative services:

- a. Marketing services, public relations services, and advertising and marketing to potential Subscriber Groups and Members;
- b. Member services, including, but not limited to, processing enrollment applications and assisting Members in selecting Primary Care Practitioners, responding to Member inquiries, processing Member complaints and grievances, informing Members of PacificSource policies and procedures, providing Members with membership cards and information about PacificSource, and identifying Participating Physicians and Providers;
- c. Physician and Provider relations services, including: (i) providing orientation and education programs to train Physician and Providers and their office staff in the use of the administrative services described herein and in the PacificSource Physician and Provider Manual; (ii) the maintenance of a Physician and Provider Complaint and Grievance Procedure; and (iii) unless otherwise noted in Section 2.21, provider credentialing services;
- d. Unless otherwise indicated in Section 2.21, all Referral Authorization services; and
- e. Claims and benefit administration services, including third party and Coordination of Benefit administration. PacificSource shall make payment to Provider according to the provisions of this Agreement within thirty (30) days of receiving a clean and accurate claim, unless additional time is permitted by statute or administrative rule. This provision is subject to the definition of "clean claim" as provided in Section 1.4, or applicable state law. PacificSource shall make interest payments as provided in applicable state law. Provider acknowledges that some Other Payors may not be subject to interest payments and that interest payments will be limited to those required by applicable state law.

3.2 Primary Care Practitioner. For those Benefit Plans that require it, PacificSource shall require its Members to select a Primary Care Practitioner.

3.3 Final Medical and Mental Health Decisions. A doctor of medicine or osteopathy shall be retained by PacificSource and shall be responsible for all final medical and mental health decisions relating to coverage or payment made by PacificSource pursuant to the dispute procedures listed in Section VIII, Dispute Resolution and/or Section 2.11, Physician and Provider Complaint and Grievance Procedures of this Agreement, or for Washington State providers, Sections IX, Grievance Procedure, or Dispute Resolution of the Washington Addendum.

IV. REPORTING PROCEDURES

4.1 Encounter and Claims Data. Provider shall have the responsibility for furnishing PacificSource with encounter and claims data within thirty (30) days of when services are provided on forms or in an electronic mode mutually agreed upon by both parties. Encounter and claims submissions shall include the rendering Physician's or Provider's name, Member name and PacificSource identification number, dates of services and a full itemization of services and supplies rendered (using current industry-standard coding, as appropriate) including charges, if applicable.

- 4.2 Utilization and Provider Reporting. PacificSource shall provide Provider, upon request, an annual accounting accurately summarizing the financial transactions between the parties.

V. COMPENSATION

- 5.1 Billing. Provider agrees to submit billings to PacificSource directly for services and supplies rendered three hundred and sixty five (365) days after services are provided and using current industry standard forms or in an electronic mode. Provider will submit billings using Provider's usual and customary charges established, including full itemizations for charges (using current industry standard coding methods, when applicable), dates of service, and billing PacificSource as secondary insurance, when applicable. "Usual and customary charges" means the uniform amount a provider charges to the general public and to other payors for a specific medical procedure or service.
- 5.2 Compensation. Except as otherwise provided for in this Agreement, PacificSource shall pay Provider according to the terms set forth in **Attachment A**. Compensation shall be considered payment in full for Covered Services, except for Copayments, Coinsurance, Deductibles, or amounts due as a result of Coordination of Benefits or other third party liability. Any modifications to **Attachment A** shall be attached to this Agreement by written amendment, pursuant to Section 9.1.
- 5.3 Member Non-Liability. Provider shall look solely to PacificSource for compensation for Covered Services. Provider, or other designee or agent of Provider, shall not attempt to collect from Members any sums owed to Provider by PacificSource, notwithstanding the fact that either party fails to comply with the terms of this Agreement. Provider further agrees that if PacificSource determines that a Covered Service was not Medically Necessary, or that Covered Services are provided outside of generally accepted treatment protocols, Provider shall not attempt to collect from Member or PacificSource any sums deemed not reimbursable by PacificSource.
- 5.4 Never Events. Provider agrees not to seek payment from either PacificSource or Member for costs resulting from a Never Event.
- 5.5 Payment for Non-Covered Services. Provider may seek payment directly from or on behalf of Members for Non-Covered Services at Provider's usual and customary charges.
- 5.6 Copayments, Coinsurance and Deductibles. Provider shall be responsible for the collection of applicable Copayments, Coinsurance and Deductibles from or on behalf of Members.
- 5.7 Overpayment / Underpayment. Provider agrees that PacificSource may deduct from any payment owed to Provider, any overpayments received due to error, improper billing, Coordination of Benefits or third party payment, which results in duplicate or excessive payment for Covered Services. PacificSource will provide written notification to Provider of such credit. All requests for a refund of an overpayment(s) or payment of amounts believe to be underpaid, by either Party, shall be paid in accordance with applicable State and/or Federal law and regulations as detailed in the PacificSource Physician and Provider Manual, as updated from time to time. A copy of the Manual is available on the web at www.pacificsource.com. Applicable state law is determined based on the location where services are provided.
- 5.8 Member Hold Harmless. Pursuant to applicable state law, Provider and all providers and facilities subcontracted with Provider agree that in no event, including but not limited to nonpayment by PacificSource, PacificSource insolvency, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, payment or reimbursement from, or have any recourse against a Member or person (other than PacificSource) acting on Member's behalf for services pursuant to this Agreement or for Covered Services where payment is denied because Provider

failed to comply with the terms of this Agreement. This provision shall not prohibit collection from Members of amounts due for Copayments, Deductibles, Coinsurance, and Non-Covered Services under the applicable health policy, which has not otherwise been paid by a primary or secondary carrier according to the terms of this Agreement. Provider agrees, in the event of PacificSource's insolvency, to continue to provide the services promised in this Agreement to Members for the duration of the period for which premiums on behalf of the Member were paid to PacificSource or until the Member's discharge from inpatient facilities, whichever time is greater. The provisions of this section shall survive termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of Members. This provision shall also supersede any oral or written contrary agreement now existing or henceforth entered into between Provider and Members or persons acting on a Member's behalf.

- 5.9 Member's Benefit Plan. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to modify the rights and benefits contained in the Member's Benefit Plan. The provisions in this section shall survive termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for benefit of Members.

VI. INSURANCE

- 6.1 Provider and PacificSource Liability Insurance. Provider and PacificSource, at each party's sole cost and expense, shall procure and maintain such policies of general liability, professional liability, and other insurance as shall be necessary to insure it and its employees, contractors, agents, shareholders, directors, and officers against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of or failure to perform any services required and provided by each party hereunder.
- 6.2 Physician and Provider Liability Insurance. Provider agrees to require each Provider to procure and maintain, at Provider's expense, appropriate general and professional liability insurance coverage as specified in the PacificSource Physician and Provider Manual. Provider shall provide PacificSource evidence of the required coverage upon request and shall give PacificSource not less than fifteen (15) days' advance written notice of any cancellation, reduction, or other material change in the amount or scope of such coverage.

VII. TERM AND TERMINATION

- 7.1 Term of Agreement. The term of this Agreement shall be for one (1) year beginning on the Effective Date, unless terminated as set forth in this Agreement. Any modification of the rates and/or arrangements reflected in this Agreement must be in compliance with Section 9.1.
- 7.2 Termination. Either Party may terminate this Agreement with or without cause by giving ninety (90) days prior written notice to the other Party. Notices of termination must be sent in compliance with Section 9.6.
- 7.3 Transfer of Records. In the event of termination of this Agreement, Provider shall submit to PacificSource, or its designee, such information and records, or copies thereof, as PacificSource may request concerning its Members.

VIII. DISPUTE RESOLUTION

- 8.1 Dispute Resolution. Controversies between Provider and PacificSource shall be resolved, to the extent possible, by informal meetings and discussions in good faith between appropriate representatives of the Parties. All disputes shall be subject to the Physician and Provider Complaint and Grievance Procedure.

- 8.2 Arbitration. In the event the Parties are unable to resolve the controversy, the parties hereto agree to submit any dispute under this Agreement to binding arbitration in Eugene, Oregon, in accordance with the Oregon Commercial Arbitration Rules of the American Arbitration Association and with discovery being governed by the Federal Rules of Civil Procedure applicable in the United States District Court for the District of Oregon. Each party will name one arbitrator and the arbitrators so chosen will name a third neutral arbitrator. Judgment upon the award rendered by the arbitrators may be entered into the judgment docket of any available court. The cost of arbitration shall be shared equally by the parties to it. Each party shall be solely responsible for its attorney's fees, if any.

IX GENERAL PROVISIONS

- 9.1 Amendment. Except as otherwise provided herein, this Agreement may not be amended by either party, unless both parties agree in writing. Any provision of an amendment, addendum or exhibit, which conflicts with any provision of this Agreement, shall take precedence and supersede the conflicting provision(s) of this Agreement. The applicable amendment(s), addendum(s) and exhibit(s) together with this Agreement, shall constitute the Agreement of the parties.
- 9.2 Confidentiality. Except to the extent that state or federal law requires disclosure, all information pertaining to the provisions of services under the Agreement will be treated in a confidential manner, and in compliance with state and federal laws. This applies to the following types of information: patient-specific information, the financial terms of the Agreement, or statistical reports shared between the parties to this Agreement.
- 9.3 Waiver. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.
- 9.4 Governing Law. This Agreement shall be governed in all respects by the laws of the State of Oregon, unless preempted by applicable state law. If this Agreement is executed by a Washington based Provider, then it shall be controlled by Washington state law.
- 9.5 Non-Assignment. Except as provided in this Agreement for Other Payors, this Agreement shall not be assigned, delegated, or transferred by either party without the written consent of the other party. Any assignment, delegation, or transfer without prior written approval shall be void.
- 9.6 Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be delivered by hand or sent by certified mail, return receipt requested, postage prepaid, to PacificSource or Provider at their respective addresses set forth on the signature page hereof or as otherwise designated in writing from time to time by the Parties; provided, however, that notice to Idaho based Providers for the purposes identified in 41-1847, Idaho Code, as allowed in this Agreement for Other Payors, shall be sent electronically.
- 9.7 Hold Harmless. The Parties agree to indemnify and hold each other harmless from and against any and all claims or suits, losses, damages, liabilities, judgments, expenses, attorney fees, and court costs in any way arising out of services or supplies that they render hereunder. In the event of alleged improper medical treatment of a Member, Provider agrees to indemnify and hold PacificSource harmless as provided in this Section 9.7.
- 9.8 Independent Entities. None of the provisions of this Agreement are intended to create, be deemed or construed to create any relationship between the parties hereto other than that of independent entities or persons contracting with each other hereunder solely for the purpose of effecting the

provisions of the Agreement. Neither of the parties hereto, nor any of their respective agents or employees, shall be construed to be the agent, employee or representative of the other.

- 9.9 Severability. If any provision of this Agreement is declared invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired, and the parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that reflects the original intentions of the parties as nearly as possible in accordance with applicable law.
- 9.10 Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.
- 9.11 Continuity of Care. It is agreed that when continuity of care is required under the health plan or by state law, the parties agree to provide such continuity of care to enrollees as provided in the health plan or state law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PACIFICSOURCE HEALTH PLANS

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

By: _____

By: _____
(Signature)

Peter McGarry

(Print or type name)

Title: Vice President – Provider Network

Title: _____

Date: _____

Date: _____

Address: PO Box 7068
Springfield, OR 97475-0068

Address: 2051 Kaen Road Suite 367
Oregon City, OR 97045

ATTACHMENT A

Clackamas County acting by and through its Health,
Housing and Human Services Department, Health
Centers Division
Effective 09/01/2013

These rates shall apply to all PacificSource Commercial Networks and Products

SERVICE/PROCEDURE	MAXIMUM ALLOWABLE
All Professional Services for MD/DO: CPT procedures categorized with an RVU as defined by the Federal Register	\$67.00 RBRVS conversion factor ^{1,2}
Laboratory: As defined by CMS Clinical Diagnostic Laboratory Fee Schedule	110% of CMS ³
Anesthesia: Service or supply with ASA value	\$48.00/unit ASA conversion factor ⁴
Other HCPCS Services/Supplies: All other HCPCS services/supplies	100% of CMS allowed for State of OR ³
Injectables, Vaccines, Immunizations: HCPCS services (J0000 - J9999 and Q0000 - Q9999 codes) Other vaccines & immunizations	106% of ASP allowed ³ 106% of ASP allowed ³
Services and Procedures without an established unit value in the stated version of the Federal Register, ASA Guide, or CMS HCPCS allowable, PacificSource Health Plans may establish such unit values for purposes of its Maximum Allowable rate determination.	PacificSource Fee Allowance ⁵

Note: Payment will be based upon the lesser of the billed amount or PacificSource negotiated rates in effect at the time the service or supplies are rendered or provided as specified above.

1. This is applicable for professional services performed by MDs and DOs. Services performed by non-MDs and non-DOs will be reimbursed consistent with PacificSource's payment policies, unless specifically noted.
2. RBRVS Relative Value Units (RVUs) as defined and instructed by the Federal Register for use in 2010. Transitional facility and non-facility RVUs shall be used and determined by the setting in which the service occurs.
3. Updates to the ASP and CMS schedules noted above shall be reviewed and updated from time to time.
4. ASA Basic Unit Value and annual updates as defined by the American Society of Anesthesiologists Relative Value Guide. Time units shall be based on fifteen (15) minute increments.
5. PacificSource may utilize The Essential RBRVS publication to supplement codes not established by the above noted methodologies.

ATTACHMENT A

Clackamas County acting by and through its Health,
Housing and Human Services Department, Health
Centers Division
Effective 09/01/2013

These rates shall apply to all PacificSource Medicare Advantage Networks and Products

SERVICE/PROCEDURE	MAXIMUM ALLOWABLE
All Professional Services CPT procedures categorized with an RVU as defined by the Federal Register	110% of local CMS ^{1,2}
Laboratory: As defined by CMS Clinical Diagnostic Laboratory Fee Schedule	100% of CMS allowed for the State of OR ³
Anesthesia: Service or supply with ASA value	100% of local CMS ⁴
Injectables, Vaccines, Immunizations: HCPCS services (J0000 - J9999 and Q0000 - Q9999 codes) Other vaccines & immunizations	100% of CMS allowed for the State of OR ³ 100% of CMS allowed for the State of OR ³
Other HCPCS Services/Supplies: All other HCPCS services/supplies	100% of CMS allowed for the State of OR ³
Services and Procedures without an established unit value in the stated version of the Federal Register, ASA Guide, or CMS HCPCS allowable, PacificSource Health Plans may establish such unit values for purposes of its Maximum Allowable rate determination.	PacificSource Fee Allowance

1. Services performed by non-MDs and non-DOs will be reimbursed consistent with CMS payment guidelines.
2. RBRVS Relative Value Units (RVUs) as defined and instructed by the most current Federal Register, facility and non-facility RVUs shall be used and determined by the setting in which the service occurs. Updates shall be in accordance to CMS.
3. Updates to the ASP and CMS schedules noted above shall be updated in accordance to CMS.
4. ASA Basic Unit Value and annual updates as defined by the American Society of Anesthesiologists Relative Value Guide. Time units shall be based on fifteen (15) minute increments.

ATTACHMENT B

Clackamas County acting by and through its Health, Housing and Human Services Department,
Health Centers Division
Effective 09/01/2013

PacificSource Physician and/or Provider Information Requirements

I. In the event that PacificSource is responsible for the credentialing of Physicians and/or Providers, the following information will be necessary to satisfy PacificSource credentialing requirements:

Completed application for each Physician and/or Provider to include:

- Physician or Provider name
- Practice name
- Specialty
- Physical Address
- Billing Address
- Tax Identification number
- DEA Number
- NPI number
- Phone (Appointment/billing)
- Fax number
- Clinical privileges at primary admitting facility
- Current valid license
- Current valid DEA certificate (if applicable)
- Education/training
- Board certification (if applicable)
- Current adequate professional liability coverage
- History of liability claims
- Work history
- Signed, dated PacificSource authorization for information release
- Signed, dated statements attesting to:
 - Lack of ability to perform the essential functions of the position, with or without accommodations
 - Lack of present illegal drug use
 - History of loss of license and/or felony convictions
 - History of loss or limitation of privileges
 - The correctness/completeness of the application

Copies of the following must accompany the application:

- Current valid license
- Valid DEA certificate
- Current professional liability face sheet

Other information needed:

- Date Physician and/or Provider approved

II. In the event that Physician and/or Provider Credentialing Delegation is included in the contract provisions, PacificSource will require the following to satisfy PacificSource credentialing requirements:

Physician and/or Provider demographics to include:

- Physician or Provider name

- Practice name
- Specialty
- Physical Address
- Billing Address
- Tax Identification number
- DEA number
- NPI number
- Phone (Appointment/billing)
- Fax number

Information verification checklist for the following items:

- IPA/Medical Group is **required** to have a file copy of the following:
 - current valid DEA certificate (if applicable)
 - current adequate malpractice insurance
 - work history
 - history of liability claims

• Primary Source Verification, including date and initials of staff in charge of verification for the following:

- Current valid license (active & good standing)
- Primary admitting facility (if applicable)
- Education/training (verification necessary only if practitioner is not board certified)
- Board certification (if applicable)
- NPDB (which includes Medicare/Medicaid Sanctions) date queried and date received
- Sanctions - Licensing Board reviewed and date of report

Note: The documentation may be received directly from the institution, or documented oral confirmation from the institution, which includes the date received, name of the person providing the information, and the signature of the person receiving the information



PacificSource
Medicare

PacificSource Community Health Plans, Inc. Addendum

Clackamas County acting by and through its Health, Housing and Human Services Department,
Health Centers Division
Effective 09/01/2013

Medicare Plan Provisions

This Addendum provides the provisions applicable to Health Plan's Medicare Advantage Plans, whereas PacificSource Community Health Plans, Inc. ("Health Plan") is a Medicare Advantage Organization contracted with the Centers for Medicare and Medicaid Services ("CMS") to offer Medicare Advantage health insurance products and ("Contractor") is contracted with Health Plan to provide certain covered services to Health Plan's Medicare beneficiaries.

CMS requires that specific terms and conditions be incorporated into the Agreement between a Medicare Advantage Organization or First Tier Entity and a First Tier Entity or Downstream Entity to comply with the Medicare laws, regulations, and CMS instructions, including, but not limited to, the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066 ("MMA"); and

Except as provided herein, all other provisions of the Agreement between Health Plan and Contractor not inconsistent herein shall remain in full force and effect. This Addendum shall supersede and replace any inconsistent provisions to such Agreement; to ensure compliance with required CMS provisions, and shall continue concurrently with the term of such Agreement.

NOW, THEREFORE, the parties agree as follows:

Definitions:

Centers for Medicare and Medicaid Services ("CMS"): The agency within the Department of Health and Human Services that administers the Medicare program.

Clean Claim: (1) A claim that has no defect, impropriety, lack of any required substantiating documentation (consistent with § 422.310(d)) or particular circumstance requiring special treatment that prevents timely payment; and (2) A claim that otherwise conforms to the clean claim requirements for equivalent claims under original Medicare.

Unclean Claim: A claim that is not a clean claim.

Completion of Audit: Completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of a Medicare Advantage Organization, Medicare Advantage Organization contractor or related entity.

Contractor: The party that is contracted with Health Plan to provide certain covered services to Health Plan's Medicare beneficiaries. A contractor may be a provider who provides health care services, or a non-provider who provides administrative services.

Downstream Entity: Any party that enters into a written arrangement, acceptable to CMS, with

persons or entities involved with the MA benefit, below the level of the arrangement between an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

Final Contract Period: The final term of the contract between CMS and the Medicare Advantage Organization.

First Tier Entity: Any party that enters into a written arrangement, acceptable to CMS, with Health Plan or applicant to provide administrative services or health care services for a Medicare eligible individual under the Health Plan program.

Health Plan: PacificSource Community Health Plans, Inc.

Medicare Advantage ("MA"): An alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.

Medicare Advantage Organization ("MA Organization"): A public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements.

Member or Enrollee: A Medicare Advantage eligible individual who has enrolled in or elected coverage through a Medicare Advantage Organization.

Provider: (1) Any individual who is engaged in the delivery of health care services in a State and is licensed or certified by the State to engage in that activity in the State; and (2) any entity that is engaged in the delivery of health care services in a State and is licensed or certified to deliver those services if such licensing or certification is required by State law or regulation.

Related Entity: Any entity that is related to the Health Plan by common ownership or control and (1) performs some of the Health Plan's management functions under contract or delegation; (2) furnishes services to Medicare enrollees under an oral or written agreement; or (3) leases real property or sells materials to the Health Plan at a cost of more than \$2,500 during a contract period.

Required Provisions for Contractor:

Contractor agrees to the following:

1. HHS, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including medical records and documentation of the first tier, downstream, and entities related to CMS' contract with Health Plan through 10 years from the final date of the final contract period of the contract entered into between CMS and Health Plan or from the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii)]
2. Contractor will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with

applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13) and 422.118]

3. Contractor agrees to not hold enrollees liable for payment of any fees that are the legal obligation of the Health Plan. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]
4. For all enrollees eligible for both Medicare and Medicaid, enrollees will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts. Provider will be informed of Medicare and Medicaid benefits and rules for enrollees eligible for Medicare and Medicaid. Provider may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under title XIX if the individual were not enrolled in such a plan. Provider will: (1) accept Health Plan's payment as payment in full, or (2) bill the appropriate State source. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]. This paragraph does not apply to Contractor who is not a Provider.
5. Any services or other activity performed in accordance with a contract or written agreement by Contractor are consistent and comply with the Health Plan's contractual obligations with CMS. [42 C.F.R. § 422.504(i)(3)(iii)]
6. Health Plan is obligated to pay Provider in accordance to the prompt payment provision for clean claims and unclean claims as contained in the provider agreement. [42 C.F.R. §§ 422.520(b)(1) and (2)]. This paragraph does not apply to Contractor who is not a Provider.
7. Contractor and any related entity, contractor or subcontractor will comply with all applicable Medicare laws, regulations, and CMS instructions. [42 C.F.R. §§ 422.504(i)(4)(v)]
8. As applicable, if Health Plan's activities or responsibilities under its contract with CMS are delegated to any first tier, downstream and related entity:
 - (i) Health Plan and Contractor acknowledge that delegated activities are clearly outlined in the Agreement, or a companion agreement specifying specific services that are delegated and the reporting responsibilities.
 - (ii) CMS and the Health Plan reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where CMS or the Health Plan determines that such parties have not performed satisfactorily.
 - (iii) Health Plan will monitor the performance of the parties on an ongoing basis.
 - (iv) The credentials of medical professionals affiliated with the party or parties will be either reviewed by the Health Plan or the credentialing process will be reviewed and approved by the Health Plan and the Health Plan must audit the credentialing process on an ongoing basis. This paragraph does not apply to Contractor who is not a Provider.

(v) If the Health Plan delegates the selection of providers, contractors, or subcontractor, the Health Plan retains the right to approve, suspend, or terminate any such arrangement. [42 C.F.R. §§ 422.504(i)(4) and (5)]

9. Contractor must comply with Health Plan's policies and procedures.
10. Health Plan may only delegate activities or functions to Contractor in a manner consistent with CMS requirements.
11. Health Plan and Contractor shall comply with the termination provision contained in the contract, which at a minimum must require both parties to provide a minimum of 60 days written notice to each other before terminating the contract without cause. This paragraph is not applicable if termination without cause is prohibited by the contract.
12. Contractor shall complete compliance and fraud, waste and abuse training and review and abide by Health Plan's Standards of Conduct and compliance policies and procedures for all of its current employees at least annually and new employees within 90 days of hire.

In the event of a conflict between the terms and conditions above and the terms of a related agreement, the terms above control.



3
COPY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

August 1, 2013

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Resolution Amending the Declaration of Necessity and Purpose
for Acquisition of Rights of Way and Easements
for the Barlow/Zimmerman Intersection Improvement Project and
Authorizing Negotiations and Eminent Domain Actions**

Purpose/Outcomes	Under ORS 35.235 and the federal Uniform Act, a local governmental agency is required to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Condemnation Resolution or amending a previously approved Condemnation Resolution prior to initiating acquisition of the easements or other property rights from abutters to the project.
Dollar Amount and Fiscal Impact	The right of way budget for the project is \$166,833 and is included within the \$2,300,000 total approved project budget.
Funding Source	Total Project Budget: Federal Revenue: \$1,697,886 High Risk Rural Roads Program: \$356,012 County Road Fund: \$246,102
Safety Impact	The project will improve the sight distance south of the intersection of Barlow Road and Zimmerman Road in Clackamas County.
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action	<p>ODOT/County High Risk Rural Roads Program Supplemental Project Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): executed by the County on 09/10/09 and by ODOT on 10/15/09.</p> <p>ODOT/County High Risk Rural Roads Program Supplemental Project Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): Amendment No. 1 executed by the County on 02/10/11 and by ODOT on 02/22/11.</p> <p>ODOT/County High Risk Rural Roads Program Supplemental Project Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): Amendment No. 2 executed by the County on 04/26/12 and by ODOT on 05/11/12.</p> <p>Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): Amendment No. 3 executed by the County on 04/25/13 and by ODOT on 05/10/13.</p> <p>ODOT/County Intergovernmental Agreement for Right of Way Services No. 25595: executed by the County on 01/07/10 and by ODOT on 01/19/10.</p> <p>Resolution Declaring the Necessity and Purpose for Acquisition of</p>

<i>(continued)</i>	Easements and Rights of Way for the Barlow Road/Zimmerman Road Intersection Project executed by the County on 4/25/13
Contact Person	Joel Howie, DTD Project Mgr @ 503-742-4658 Kath Rose, DTD Sr. Right of Way Agent @ 503-742-4713

BACKGROUND:

The Board of County Commissioners has approved funding for the Barlow/ Zimmerman Intersection Improvement Project No. 22171, which will provide for the re-construction of 600 feet of Barlow Road south of its intersection with Zimmerman Road. This project is one of the County's top safety projects and will improve the existing sight distance at the intersection. The Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or condemnation proceedings.

The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The Department of Transportation and Development (Department) shall negotiate in good faith in an attempt to reach agreement as to the amount of just compensation owed each affected property owner. To fairly determine the amount of just compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

The Department has amended the final legal descriptions required for acquisition of the rights of way and easements for the seven properties affected by the Project. Final design adjustments have modified the easement types, but not the easement areas' square footage size or configurations, and therefore brings these revisions to the Board for authorization. If during the course of the project additional design/construction modifications should effect acquisitions, staff will bring subsequent revisions to the Board for authorization.

The resolution directs the Department to resolve issues of just compensation through good faith negotiations. It requires the Director of the Department to notify the Board if exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a condemnation action.


Staff respectfully requests that the Board approve the Resolution Amending that Declaration of Necessity and Purpose for the Barlow/ Zimmerman Intersection Improvement Project for the acquisition of necessary rights of way and easements to provide for construction of the project.

The Resolution has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves the Resolution authorizing the acquisition of rights of way and easements by negotiation if possible, or condemnation, if necessary.

Sincerely,


Mike Bezner, PE
Transportation Engineering Manager

Attachment

For information on this issue or copies of attachments please contact Kath Rose, Sr. Right of Way Agent at (503) 742-4713
--

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

In the Matter of the Barlow/Zimmerman Intersection Improvement Project, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions:
Board Order No. 2013-25, dated April 25th, 2013



Order No. _____
(Page 1 of 2)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on August 1, 2013; and,

It appearing that the Board previously approved funding for the Barlow/Zimmerman Intersection Improvement Project No. 22171 ("Project"), which will provide for the re-construction of Barlow Road south of its intersection with Zimmerman road, that the Project is consistent with the powers and purposes of County government, and that the Project is necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing to the Board that revision to the easement types described in original Board Order No. 2013-25 as Tract 2 (Permanent Slope Easement) and Tract 3 (Permanent Slope Easement) at Property No. 05 shall both be amended to a "Permanent Slope and Public Utility Easement," respectively, as described in Amended Exhibit "A", attached, which is necessary to the Project and therefore is also consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and

It further appearing to the Board that revision to the easement type described in original Board Order No. 2013-25 as Tract 1 (Permanent Storm Drainage Easement) at Property No. 06 shall be amended to a "Permanent Storm Drainage, Retaining Wall, and Access Easement" as described in Amended Exhibit "A", attached, which is necessary to the Project and therefore is also consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and

It further appearing to the Board that revision to the easement types described in original Board Order No. 2013-25 as Tract 1 (Permanent Storm Drainage Easement) and Tract 2 (Permanent Slope Easement) at Property No. 07 shall be amended to a "Permanent Storm Drainage, Retaining Wall, and Access Easement" and a "Permanent Slope, Retaining Wall, and Access Easement," respectively, as described in Amended Exhibit "A", attached, which is necessary to the Project and therefore is also consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and

It further appearing to the Board that immediate possession of the rights of way and easements described in Amended Exhibit "A" may be necessary and will be in the public interest in order to commence and complete the Project in a timely manner; and,

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

In the Matter of the Barlow/Zimmerman Intersection Improvement Project, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions:
Board Order No. 2013-25, dated April 25th, 2013



Order No. _____
(Page 2 of 2)

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or eminent domain proceedings.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County immediately start acquisition of rights of way and easements described in Amended Exhibit "A", either through negotiation and agreement, purchase, or, if necessary, by commencement of eminent domain proceedings.

IT IS FURTHER ORDERED THAT:

1). The Department of Transportation and Development immediately, and in good faith, attempt to negotiate agreements as to amount of just compensation owed each owner of each property identified in Amended Exhibit "A". In so doing, the department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to fairly determine the amount of just compensation owed; and,

2). If the Director of the Department of Transportation and Development (the "Director") determines that changes to the design of the Project or unanticipated field conditions makes it necessary or desirable to modify the rights of way and easements required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending Amended Exhibit "A"; and,

3). It is the intention of the Board that the required rights of way and easements identified in Amended Exhibit "A" be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints in condemnation and take such other steps as it determines necessary for the immediate possession of required rights of way and easements and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2013.

John Ludlow, Chair

Mary Raethke, Recording Secretary

Amended Exhibit A
Project Legal Descriptions
Barlow/Zimmerman Intersection Improvement

Property No. 05; Tax Lot 41E30 02602

TRACT 2 (Permanent Slope and Public Utility Easement)

A tract of land being a portion of that property described in Quit Claim Deed Document Number 2008-048385, Clackamas County Deed Records. Said tract of land being situated in the northeast quarter of Section 30, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southeast corner of said northeast quarter of said legal subdivision; Thence, along the east line of said northeast quarter, also being the centerline of Barlow Road, County Road Number 2094, North 0°20'30" West, 615.80 feet; Thence, leaving said line, South 89°39'30" West, 30.00 feet to a point on the west right of way line of said Barlow Road, said point also being the most easterly southeast corner of said Document Number 2008-048385 tract, said point also being the true point of beginning of the herein described tract; Thence, leaving said west line and along the south line of said Document Number 2008-048385 tract, North 89°13'13" West, 20.08 feet; Thence, North 45°20'09" East, 13.77 feet; Thence, North 0°49'28" East, 124.58 feet; Thence, North 89°39'30" East, 2.60 feet; Thence, South 43°03'47" East, 7.51 feet to a point on the west right of way line of said Barlow Road; Thence, along said west line, South 0°20'30" East, 129.04 feet to the true point of beginning.

Said tract of land contains 1,251 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 3 (Permanent Slope and Public Utility Easement)

A tract of land being a portion of that property described in Quit Claim Deed Document Number 2008-048385, Clackamas County Deed Records. Said tract of land being situated in the northeast quarter of Section 30, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southeast corner of said northeast quarter of said legal subdivision; Thence, along the east line of said northeast quarter, also being the centerline of Barlow Road, County Road Number 2094, North 0°20'30" West, 787.66 feet; Thence, leaving said line, South 89°39'30" West, 30.00 feet to a point on the west right of way line of said Barlow Road, said point also being the true point of beginning of the herein described tract; Thence, leaving said west line, South 89°39'30" West, 15.09 feet; Thence, North 0°20'30" West, 88.60 feet; Thence, South 89°13'13" East, 15.09 feet to a point on the west right of way line of said Barlow Road; Thence, along said west line, South 0°20'30" East, 88.31 feet to the true point of beginning.

Said tract of land contains 1,335 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

Property No. 06; Tax Lot 41E30 02600

TRACT 1 (Permanent Storm Drainage, Retaining Wall, and Access Easement)

A tract of land being a portion of that property described in Statutory Warranty Deed Document Number 1998-007150, Clackamas County Deed Records. Said tract of land being situated in the northeast quarter of Section 30, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southeast corner of said northeast quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, along the south line of said northeast quarter, North 89°13'13" West, 30.01 feet to a point on the west right of way line of said Barlow Road, said point also being the southeast corner of said Document Number 1998-007150 tract, said point also being the true point of beginning of the herein described tract; Thence, continuing along the south line of said northeast quarter, North 89°13'13" West, 60.28 feet; Thence, leaving said south line, North 33°15'12" West, 33.85 feet; Thence, North 0°20'30" West, 52.60 feet; Thence, South 89°39'30" West, 19.27 feet; Thence, North 0°20'30" West, 102.48 feet; Thence, North 89°39'30" East, 97.93 feet to a point on the west right of way line of said Barlow Road; Thence, along said west right of way line, South 0°20'30" East, 184.68 feet to the true point of beginning.

Said tract of land contains 16,151 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

Property No. 07; Tax Lot 41E30 02700

TRACT 1 (Permanent Storm Drainage, Retaining Wall, and Access Easement)

A tract of land being a portion of that property described in Quitclaim Deed – Statutory Form Document Number 2011-021869, Clackamas County Deed Records. Said tract of land being situated in the southeast quarter of Section 30, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the northeast corner of said southeast quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, North 89°13'13" West, 30.01 feet to a point on the west right of way line of said Barlow Road, said point also being the northeast corner of said Document Number 2011-021869 tract, said point also being the true point of beginning of the herein described tract; Thence, along said west line,

South 0°19'38" East, 91.90 feet; Thence, leaving said east line, North 33°15'12" West, 110.87 feet to a point on the north line of said Document Number 2011-021869 tract; Thence, tracing said north line, South 89°13'13" East, 60.28 feet to the true point of beginning.

Said tract of land contains 2,769 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 2 (Permanent Slope, Retaining Wall, and Access Easement)

A tract of land being a portion of that property described in Quitclaim Deed – Statutory Form Document Number 2011-021869, Clackamas County Deed Records. Said tract of land being situated in the southeast quarter of Section 30, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the northeast corner of said southeast quarter of said legal subdivision, said point also being the on the centerline of Barlow Road, County Road No. 2094; Thence along said centerline, South 0°19'38" East, 91.32 feet; Thence, leaving said centerline, South 89°40'22" West, 30.00 feet to a point on the west right of way line of said Barlow Road, said point being the true point of beginning of the herein described tract; Thence, along said west right of way line, South 0°19'38" East, 210.63 feet; Thence, leaving said west line, North 7°53'53" West, 120.45 feet; Thence, North 2°15'27" West, 122.15 feet; Thence, South 33°15'12" East, 36.77 feet to the true point of beginning.

Said tract of land contains 2,825 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.



COPY
4

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

August 1, 2013

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Cooperative Improvement Agreement No. 29149
with Oregon Department of Transportation for the Sunrise Corridor Project**

Purpose/Outcomes	Defines the roles and responsibilities of the County and ODOT relating to the construction, inspection, maintenance and ownership of facilities within County right of way included as part of the Sunrise Corridor Project, as well as the construction engineering services for Minuteman Way.
Dollar Amount and Fiscal Impact	\$700,000 Fully funded by the Oregon Department of Transportation through the Jobs and Transportation Act of 2009 (JTA) Program
Funding Source	Oregon Department of Transportation – no County funds are involved
Safety Impact	The Sunrise JTA Project will reduce congestion, increase safety, and improve economic development opportunities and freight mobility in the Oregon 212/224 corridor through construction of a new road from I-205 and the Milwaukie Expressway to 122 nd Avenue, construction of local roadway connections serving the Lawnfield Industrial District, improvements to bike and pedestrian facilities, street lighting and storm drainage.
Duration	Upon execution through completion of the project
Previous Board Action	08/11/11 – Execution of IGA No. 27385 for Preliminary Engineering and Design of Industrial Way 05/01/12 – Execution of Amendment No. 1 to IGA No. 27385 05/16/12 – Execution of IGA No. 27820 for Right of Way Services for Lawnfield Road Phase 3 08/03/12 – Execution of Amendment No. 2 to IGA No. 27385 01/23/13 – Execution of Amendment No. 3 to IGA No. 27385 03/26/13 – Execution of IGA No. 28806 for Construction Funding for Lawnfield Road Phase 3 05/16/13 – Execution of IGA No. 28273 for Design of Tolbert Street: SE 82 nd Dr to Minuteman Way 07/12/13 – Execution of Amendment No. 1 to IGA No. 28273 to include right of way and construction funding
Contact Person	Terry Mungenast, Project Manager 503-742-4656

BACKGROUND:

On January 11, 2011, ODOT and Clackamas County entered into a Memorandum of Understanding (MOU) R1#00699 to address collaboration in the overall development and construction of the Sunrise system that was funded as part of the 2009 Oregon Jobs and Transportation Act (JTA).

7903

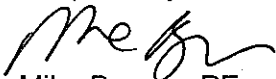
This agreement outlines the roles and responsibilities of the State and the County regarding the coordination and inspection of County facilities, storm water facility maintenance and ownership, and landscape maintenance. This agreement also includes funding for Construction Engineering for the Minuteman Way extension (Harper Houf Peterson Righellis (HHPR) is the Engineer of Record). The total anticipated expense for these activities and the consultant contract with HHPR is \$700,000, which is fully funded by ODOT through the JTA Program.

This IGA has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Cooperative Improvement Agreement for the Sunrise Corridor Project.

Respectfully submitted,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Terry Mungenast at 503-742-4656

COOPERATIVE IMPROVEMENT AGREEMENT
Oregon Jobs and Transportation Act of 2009
Sunrise Corridor Project

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

RECITALS

1. SE Lawnfield Road, SE Mather Road, SE 82nd Drive, SE 122nd Avenue, SE 125th Court, SE Ford Street, SE Herbert Court and SE Minuteman Way are all County roads under the jurisdiction and control of the County. The Sunrise Expressway and a portion of Bordeaux Lane, which are to be constructed as part of the Project identified in this Agreement, will be part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Interstate 205 (I-205), Highway 224, 82nd Avenue, Enoch Access Road are all part of the state highway system under the jurisdiction and control of the OTC.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
3. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
4. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
5. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA of 2009 Program", provides funding for preservation and modernization projects chosen by the OTC.
6. Projects named in Section 64 of 2009 Legislative Assembly, Oregon House Bill 2001, as well as projects approved by the OTC pursuant to Section 64(3), were amended into the Statewide Transportation Improvement Program (STIP), including the project identified below to construct various improvements for the Sunrise Corridor.

CLACKAMAS COUNTY/STATE
Agreement No. 29149

7. Governor Kulongoski signed HB 2001 on July 29, 2009, Chapter 865, Oregon Laws 2009. This legislation also known as the Oregon Jobs and Transportation Act, is the transportation funding plan for accountability, innovation and environmental stewardship; highway, road and street funding; and, multimodal funding. On October 21, 2009 the OTC approved projects relating to this legislation.
8. State and County entered into a Memorandum of Understanding (MOU) RA#00699 on January 11, 2011. Said MOU addressed mutual collaboration of both Parties in the overall development and construction of the Sunrise Corridor Project. Said Project is comprised of seven (7) separate project components being mutually funded and constructed with separate project agreements for each component.
9. The Sunrise Jobs and Transportation Act (JTA) Project is constructing a component of the larger Sunrise Corridor project, hereinafter referred to as "Project", to reduce congestion, increase safety, and improve economic development opportunities and freight mobility in the Oregon 212/224 corridor by constructing a new road from I-205 and the Milwaukie Expressway to 122nd Avenue, and some local roadway connections serving the Lawnfield Industrial District, including an extension of Minuteman Way from Mather Road to Lawnfield Road. The Project also includes improvements to the I-205 Multi-Use Path within the project area.
10. State, Clackamas County, and Clackamas County Development Agency (CCDA) are concurrently entering into a Project Property Agreement No. 29116 which states the terms, conditions, and permissions of the use of various properties as a result of this Project. Subsequent documentation to finalize such transactions is required.

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

TERMS OF AGREEMENT

1. Under such authority, State and County agree to State designing and constructing the Sunrise Corridor Project. A Project description, budget, and map showing the location and approximate limits of the Project are shown on Exhibits A and B, attached hereto and by this reference made a part hereof. Subject to Project constraints and availability of funds, it is anticipated that this Agreement will include, but is not limited to, the following Project elements:
 - a) County's overall coordination and inspection of County facilities at Project expense.
 - b) Storm water facility maintenance and ownership.
 - c) Utility accommodation on County right of way.
 - d) Utility reimbursement for eligible utilities.
 - e) Landscape maintenance.

CLACKAMAS COUNTY/STATE
Agreement No. 29149

- f) Potential Environmental Protection Agency (EPA) and Department of Environmental Quality (DEQ) required cleanup on Minuteman Way Extension.
 - g) Traffic Control.
 - h) Construction Engineering by Harper Houf Peterson Righellis, Inc. (HHPR) as the Engineer of Record for Minuteman Way extension work.
2. The total Project cost is estimated at \$118,000,000, which is subject to change and will be financed with funds available to the State which includes JTA funds in the amount of \$100,000,000. State shall be responsible for all costs in excess of the JTA of 2009 Program funded amount for this Project. State agrees to reimburse County for certain services, as further described in County Obligations and as shown in Exhibit B, attached hereto and by this reference made a part hereof. Said reimbursement is estimated to be \$700,000 which is part of the overall estimated Project cost. If costs are to exceed \$700,000, an amendment to this Agreement is required before any further costs are incurred and reimbursed.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by the Parties.
4. The funds available under the JTA of 2009 Program are State Highway Funds. To be eligible for reimbursement under the JTA of 2009 Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Only work begun after the effective date of this Agreement is eligible for reimbursement with funds available under the JTA of 2009 Program.

STATE OBLIGATIONS

- 1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; obtain/coordinate the acquisition of all necessary right of way; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
- 2. Aside from the property transfers addressed in Agreement No. 29116, State agrees that all right of way will be acquired according to the Uniform Relocation Assistance

CLACKAMAS COUNTY/STATE
Agreement No. 29149

and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual.

3. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the Project.
4. State shall arrange for the utility relocations and adjustments in areas lying within the jurisdiction of County. State will arrange for utility relocations and adjustments in areas lying within jurisdiction of State.
5. State shall follow State established statutes, policies, and procedures when impacts occur to privately or publicly owned utilities. Only those utility relocations which are eligible for federal-aid participation under Title 23 of the Code of Federal Regulations, Section 645A, shall be included in the total Project cost. All other utility relocations shall be at the sole expense of County.
6. State shall be responsible for 100 percent of power costs associated with the luminaires installed on State right of way as a part of this Project. State shall require the power company to send invoices directly to State.
7. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in portions of the state highway in such a manner as to provide adequate protection for said detector loops.
8. State shall be responsible for the maintenance of all state highways and signage within the highway right of way limits.
9. State agrees to be responsible for Project storm water maintenance as follows:
 - a) In the vicinity of the cul-de-sac at 125th Court north of Hwy 212, State shall convey to the County a twenty (20) foot wide permanent easement for drainage facilities running south from cul-de-sac to the manhole within State Right of Way and County will own and maintain up to the State manhole at its own expense.
 - b) In the vicinity of the Minuteman Way Extension, State shall own and maintain the 30" and 36" main storm lines and all in-line manholes (in permanent easement secured from CCDA) at its own expense including any clean up of any waste contamination during construction and maintenance activities.
 - c) The State drainage easement along the north side of Mather Road within the CCDA property and outside County right of way shall be owned and maintained by State at its own expense.

CLACKAMAS COUNTY/STATE
Agreement No. 29149

- d) In the vicinity of the newly constructed Bordeaux Lane/Mather Road Intersection, State agrees, at its own expense, to be responsible for any stormwater from within its road right of way as well as any stormwater conveyance and, if applicable, treatment facilities. The 24" pipe is owned by State. Any repairs to said pipe shall be State's responsibility at its own expense.
 - e) All storm facilities within future State owned right of way west of Union Pacific Railroad (UPRR) shall be owned and maintained by State at its own expense.
10. State shall, upon signal turn on and proper operation, perform all necessary maintenance of Project traffic signals, control the timing established for operation of the traffic signals and pay for maintenance and power costs for all of the traffic signals with the exception of the signal at the intersection of SE 122nd Avenue and OR 212/224. State shall maintain this signal at its own expense and the County will be responsible for all power costs including insuring that the power is billed directly to the County.
 11. State agrees to extend the contractor's plant establishment period to four (4) years for the Minuteman Way Extension. State will be responsible for the maintenance of all new landscaping until the end of the establishment period, upon which time all responsibility shall transfer to the County at its own expense.
 12. In consideration for the services performed by County on behalf of the Project as further described in Exhibit B, attached hereto and by this reference made a part hereof, State agrees to pay County within ten (10) days of receipt by State of the County's invoice a maximum amount of \$700,000. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall be reimbursed to County in accordance with the current State of Oregon Department of Administrative Services' rates.
 13. With regard to any work performed on County's facilities, State shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the County 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 State's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the County shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the County, be indemnified by the contractor and subcontractor from and against any and all Claims.
 14. Any such indemnification shall also provide that neither the State's contractor and subcontractor nor any attorney engaged by State's contractor and subcontractor shall defend any claim in the name of the County, nor purport to act as legal

*CLACKAMAS COUNTY/STATE
Agreement No. 29149*

representative of the County or any of its agencies, without the prior written consent of the County. The County may, at anytime at its election assume its own defense and settlement in the event that it determines that State's contractor is prohibited from defending the County, or that State's contractor is not adequately defending the County's interests, or that an important governmental principle is at issue or that it is in the best interests of the County to do so. The County reserves all rights to pursue claims it may have against State's contractor if the County elects to assume its own defense.

15. In the event that additional right of way acquisition is needed for the Project, separate from what has been addressed in Property Agreement No. 29116, State shall, upon completion of the Project, transfer properties acquired on behalf of County to County with deeds and/or documents to be prepared and filed after completion of the Project and acceptance by the County. All transfers and conveyances of property interests or other rights pursuant to this agreement will be by separate instrument or deed, duly recorded. Should the land cease to be used for its intended purposes, title to the land will automatically revert to State.
16. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
17. State's Project Manager for this Project is Nathan Potter, ODOT Region 1, Consultant Project Manager, 3700 SE 92nd Avenue, Portland, Oregon 97266; Phone: 503-731-3344; Email: Nathan.k.potter@ODOT.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

COUNTY OBLIGATIONS

1. County shall perform the work as described in Exhibit B.
2. County hereby grants State, its contractors and subcontractors, the right to enter onto County right of way, when reasonably necessary for the performance of duties as set forth in this Agreement, including all streets/roads listed in Recitals Paragraph 1, for the performance of duties as set forth in this Agreement.
3. County, by execution of this Agreement, gives its consent to closure of streets that intersect the state highway, if such closure is reasonably necessary for construction of the Project covered by this Agreement.
4. County acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished with the approval of County

CLACKAMAS COUNTY/STATE
Agreement No. 29149

5. County shall keep accurate cost accounting records. County shall prepare and submit monthly itemized, progress invoices for work described in Exhibit B directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$700,000, including all expenses. Travel expenses shall be reimbursed to County in accordance with the current State of Oregon Department of Administrative Services' rates.
6. All employers, including County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. County shall ensure that each of its contractors complies with these requirements.
7. County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, County 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.
8. County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
9. County acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of County which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
10. County agrees to be responsible for Project storm water maintenance as follows:
 - a) In the vicinity of the cul-de-sac at 125th Court north of Hwy 212, County shall own and maintain all facilities within the County Right of Way at its own expense. Also, County agrees upon State's conveyance to the County of a twenty (20) foot wide permanent easement for drainage facilities, which includes a 24" pipe

CLACKAMAS COUNTY/STATE
Agreement No. 29149

- running south from cul-de-sac to an State manhole, to own and maintain at its own expense
- b) In the vicinity of 122nd Avenue and Ford Street, south of Hwy 212, County agrees that these drainage facilities should be owned and maintained by County at its own expense.
 - c) In the vicinity of the Minuteman Way Extension, County agrees to own and maintain catch basins and connecting pipe up to main line manholes. County also agrees to maintain all other pipe and manholes within County right of way at its own expense, not in-line with the storm main or otherwise serving a State facility.
 - d) Upon completion of the Project and grant of easement from ODOT, County agrees that drainage facilities, as reconstructed by the Project, on the north side of Lawnfield Road will be County responsibility to maintain at County expense.
 - e) County agrees that the two new catch basins in County right of way at 82nd Drive west of UPRR should be owned and maintained by County at its own expense.
11. Following Project completion, County shall be responsible for 100 percent (100%) of maintenance and power costs associated with any luminaires installed within County right of way as a part of this Project and the County shall ensure that the power company sends power bills directly to County.
12. Following Project completion, County shall be responsible for 100 percent (100%) of all power costs associated with the traffic signal at the intersection of SE 122nd Avenue and OR 212/224 including insuring that the power is billed directly to the County. State shall maintain this signal at its own expense.
13. Following Project completion, County shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in County roads in such a manner as to provide adequate protection for said detector loops.
14. County agrees that upon completion of the four (4) year plant establishment period on the Minuteman Way Extension portion of the project, to be fully responsible for all landscape maintenance of the Minuteman Way Extension at its own expense.
15. County agrees, at its own expense, to continue to maintain all existing landscaping along OR212/224 in accordance with the terms outlined in State/County Agreement No. 17,397. Upon completion of contractor's plant establishment period (estimated to be four (4) years), County agrees to maintain the new landscaped sections of this Project following the same guidelines set forth in Agreement No. 17397 at its own expense.
16. In the event that additional right of way acquisition is needed for the Project, separate from what has been addressed in Property Agreement No. 29116, County

CLACKAMAS COUNTY/STATE
Agreement No. 29149

shall accept all transfers of properties acquired by State on behalf of County for Project improvements. All transfers and conveyances of property interests or other rights pursuant to this agreement will be by separate instrument or deed, duly recorded. Should the land cease to be used for its intended purposes, title to the land will automatically revert to State.

17. Upon completion of the Project, and transfer of the Minuteman Way right of way to the County, subject to the State's responsibilities in Section 9(b) of this Agreement, the County agrees that future maintenance costs within the Minuteman Way right of way associated with the Department of Environmental Quality (DEQ) wells including adjustments for paving shall be a County responsibility at its own expense. Each Party further agrees it will remain solely responsible for its own acts or omissions related to the Minuteman Way right of way, whether during the construction or maintenance thereof, and including but not limited to any acts or omissions that impact environmental conditions or that cause, contribute to or exacerbate a release of a hazardous substance within the right of way. Should a release of a hazardous substance occur within the right of way that is not caused, contributed to or exacerbated by either party, the responsibility therefore shall remain with the owner of the underlying real property on which the right of way is located, or such other third-party whose acts or omissions caused, contributed to or exacerbated the release.
18. County hereby grants State the authority to arrange for utility relocations and adjustments in areas lying within the jurisdiction of the County as needed for completion of the Project.
19. County agrees to honor State's access control and management within the access control limits established as part of the Project, unless proposed changes are agreed to by State under the provisions of OAR 734-51. No grants of access will be allowed without following the proper State process
20. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
21. County's Project Manager for this Project is Terry Mungenast, Technical Services Coordinator, Clackamas County, 150 Beaver Creek Road, Oregon City, OR 97045; 503-742-4656, terrymun@co.clackamas.or.us, or assigned designee upon individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. Both parties agree to work together and coordinate traffic in accordance with the proposed Traffic Management Plan attached hereto as Exhibit C and hereinafter made a part hereof.

CLACKAMAS COUNTY/STATE
Agreement No. 29149

2. This Agreement may be terminated by mutual written consent of both Parties.
3. State may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by State, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant

CLACKAMAS COUNTY/STATE
Agreement No. 29149

- equitable considerations. The relative fault of State on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which County is jointly liable with State (or would be if joined in the Third Party Claim); County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County'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.
 8. 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.
 9. State and County are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
 10. If County fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill County, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
 11. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
 12. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. This Agreement, however, remains subject to and is intended to work together in concert with the terms and conditions of all other executed agreements or contracts related to the Project and to which ODOT and the

*CLACKAMAS COUNTY/STATE
Agreement No. 29149*

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

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

SIGNATURE PAGE TO FOLLOW

This Project is in the 2012-2015 Statewide Transportation Improvement Program, Key #15555 that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

CLACKAMAS COUNTY/STATE
Agreement No. 29149

CLACKAMAS COUNTY, by and through its
Elected Officials

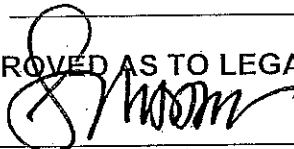
By _____
Chair

Date _____

By _____
Recording Secretary

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By  _____
County Counsel

Date 7/23/13 _____

County Contact:

Terry Mungenast, Technical Services
Coordinator, Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
503 742-4656
terrymun@co.clackamas.or.us

State Contact:

Nathan Potter, ODOT – Region 1
Consultant Project Manager
3700 SE 92nd Avenue
Portland OR 97266
503 731-3344
Nathan.K.Potter@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
Region 1 Right of Way Manager

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map

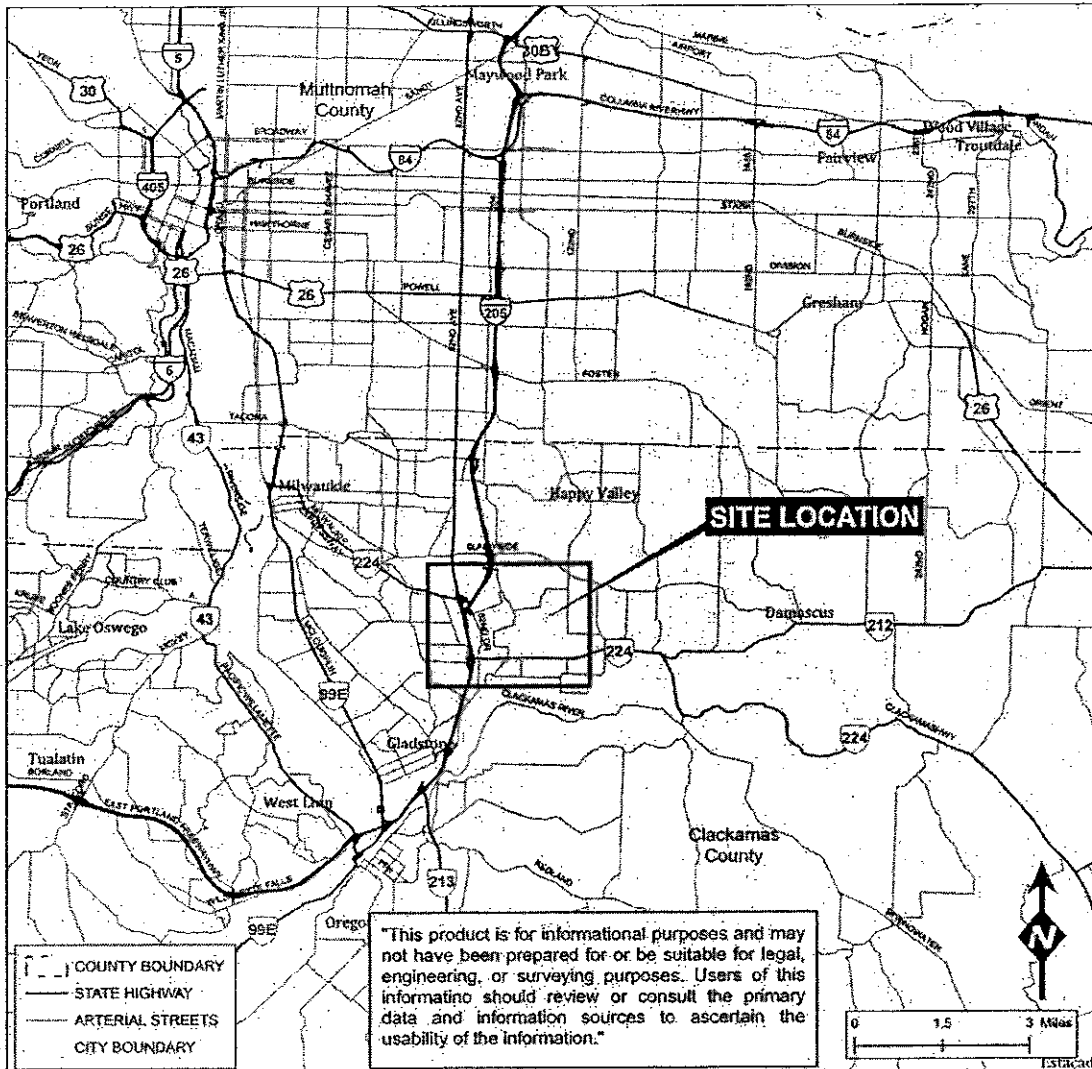


EXHIBIT A

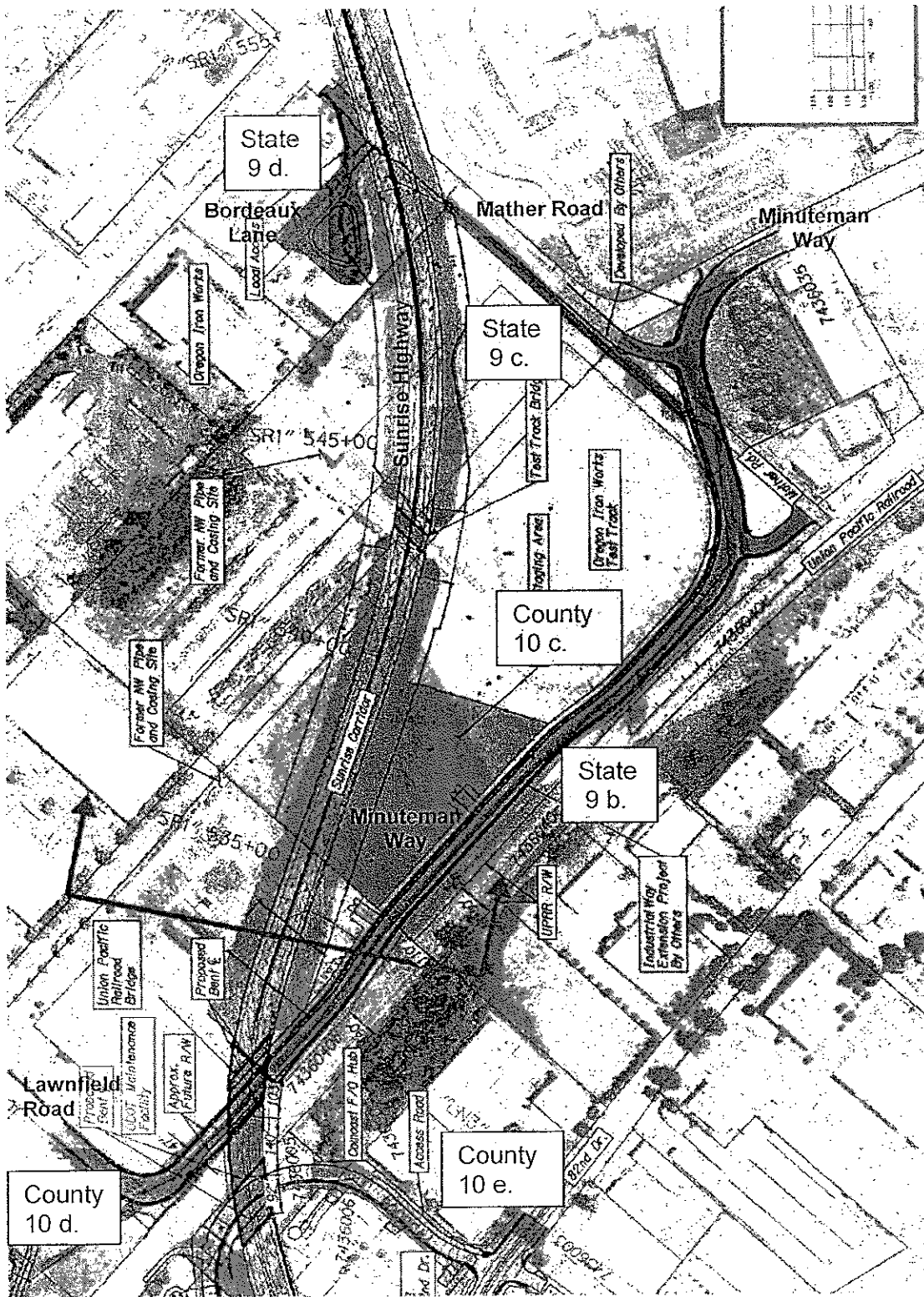


EXHIBIT B

Sunrise JTA Overall Coordination and Inspection of County Facilities – To be performed by County at Project expense:

	Project Management	Construction Inspection	Traffic Engineering	Construction Engineering
Overall Project Coordination	\$144,000		\$10,000	
Minuteman Way		\$19,000	\$6,000	\$377,000
125 th Court		\$16,000	\$2,500	
122 nd Avenue		\$16,000	\$5,000	
Mather and Bordeaux		\$10,000	\$1,500	
Contingency	\$93,000			
Total	\$237,000	\$61,000	\$25,000	\$377,000

Note: Primary inspection and documentation and construction contract management is by ODOT. County inspector shall direct all concerns to ODOT Project Manager or inspection staff

Exhibit C
Traffic Management

State Project Manager shall work with County Traffic Engineer to gain approval for the following activities:

1. Traffic Control Plans and the Closure Permits

- a. State Project Manager or Engineer shall propose dates and hours of County Road closures or State Highway closures requiring traffic to detour onto County Roads for County Traffic Engineer approval.
- b. State Project Manager or Engineer shall provide County Traffic Engineer with signing plans for County Road closures and detours or State Highway closures requiring traffic to detour onto County Roads for approval. This Agreement provides funds for County review, approval and permits.

2. I-205SB closure

- a. Vehicles will be directed to travel south across Sunnyside at 205/Sunnyside, then west on Sunnybrook.
- b. State Project Manager shall provide County Traffic Engineer public outreach plan in advance for notices of the I-205 freeway closure to inform the public and encourage travelers to avoid the area during the closure and use alternative routes.
- c. State Signal Manager will work with County's signal operations staff to utilize County's coordinated signal system timing plan for Sunnyside Road and Sunnybrook Boulevard between the I-205 ramp terminals and SE 82nd Avenue.

3. I-205NB closure

- a. State Project Manager shall provide County Traffic Engineer public outreach plan in advance for notices of the I-205 freeway closure to inform the public and encourage travelers to avoid the area during the closure and use alternative routes.
- b. State Signal Manager will work with County's signal operations staff to utilize County's coordinated signal system timing plan for Sunnyside Road and Sunnybrook Boulevard between the I-205 ramp terminals and SE 82nd Avenue.



John S. Foote, District Attorney for Clackamas County

5

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

August 1, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval to Apply for FY 2013 Supplemental Support for the Honest Opportunity Probation with Enforcement (HOPE) Demonstration Field Experiment (DFE) Program
Cooperative Agreement Number: 2011-RY-BX-K007

Purpose/Outcomes	This IGA will provide funding to extend the HOPE DFE through March 15, 2015.
Dollar Amount and Fiscal Impact	The supplemental value is \$425,000 to be used to support the HOPE DFE operations for an additional 18.5 months.
Funding Source	U.S. Department of Justice and Bureau of Justice Assistance under the Second Chance Act of 2007 (Public Law 110-199, Se 245)
Safety Impact	The HOPE DFE is intended to: (a) improve supervision strategies that will reduce recidivism; (b) promote and increase collaboration among agencies and officials who work in probation and related fields; and (c) develop and implement strategies to improve the outcomes of "high-risk" probationers that can be used throughout the nation.
Duration	The extension is from October 1, 2013 through March 15, 2015
Previous Board Action/Review	The acceptance of the HOPE DFE grant award for the amount of \$846,031 was approved by the Board of County Commissioners on September 29, 2011
Contact Person	Sarah Brown, HOPE Point of Contact – District Attorney’s Office, 503-650-3532

BACKGROUND:

Clackamas County was one of four sites selected nationally to support the Honest Opportunity Probation with Enforcement (HOPE) Demonstration Field Experiment. The initial grant of \$846,031 provided funding for one (1) FTE judicial staff, one (1) FTE project coordinator, two (2) FTE probation officers, and two (2) PT urine analysis (UA) technicians @ 20 hrs. a wk. and grant mandated travel for two-years.

The invitation to apply for supplemental funds is non-competitive and the funds are intended to support the HOPE DFE operations for an additional 18.5 months. Carryover funding from the initial grant award is projected to be \$369,000. These funds will be added to the \$425,000 supplement for a projected total of \$794,000 and will be used to fund three (3) FTE probation officers, two (2) PT UA technicians @ 30 hrs. a wk. and overtime funding to expedite the apprehension of HOPE absconders. Funding is also budgeted to compensate defense for representing HOPE defendants during warning hearings, grant mandated travel, and bus

tickets. A match for in-kind services is projected to be \$139,270 for HOPE DFE related activities that are provided by staff from the Clackamas County Circuit Court, Community Corrections, Sheriff, Jail, and District Attorney's office who as a whole, spent an average of 10 hours a month each during the past fourteen months.

RECOMMENDATION:

Staff respectfully recommend that the Board of County Commissioners approve the District Attorney's application for FY 2013 Supplemental Support for the Honest Opportunity Probation with Enforcement Demonstration Field Experiment Program Cooperative Agreement Number: 2011-RY-BX-K007

Respectfully submitted,



Sarah Brown
Administrator
District Attorney's Office

Attached: Copy of Email Invitation to Apply for HOPE DFE Supplemental Support



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

June 21, 2013

Ms. Sarah Brown
County of Clackamas
2051 Kaen Road
Oregon City, Oregon 97045

Award #: 2011-RY-BX-K007
Applicant Legal Name: County of Clackamas
State Code: OR

SENT VIA E-MAIL ONLY

RE: Invitation to Apply for FY 2013 Supplemental Support for the Honest Opportunity Probation with Enforcement (HOPE): Demonstration Field Experiment (DFE) program

Dear Ms. Brown:

The Bureau of Justice Assistance (BJA) is inviting you to submit a new funding application for FY 2013 supplemental funding to support the activities of the Honest Opportunity Probation with Enforcement (HOPE): Demonstration Field Experiment (DFE) program. This funding is intended to support your jurisdiction's HOPE operations through the completion of the evaluation. The proposed project period should be at least an additional 18 months over the current project period and the amount of supplemental federal support requested should not exceed \$425,000. Please include the cooperative agreement number "2011-RY-BX-K007" in your program narrative. Deliverables and expectations for this program include, but are not limited to:

1. Continuing to work collaboratively with the HOPE team members, the Training and Technical Assistance team from Pepperdine University, and the Project Coordinator.
2. Implementing the HOPE model with fidelity.
3. Adhering to the swift, certain, and consistent conditions of HOPE. Which includes:
 - a. Holding warning hearings for HOPE probationers,
 - b. Randomly drug testing probationers,
 - c. Holding violation hearings within 72 hours of an arrest,
 - d. Conducting expedited warrant service to ensure absconders are apprehended as quickly as possible,
 - e. Delivering sanctions that are consistent with the philosophy of the HOPE model, and
 - f. Committing resources and funding for a continuum of care.

4. Adhering to all the requirements of randomizing probationers into either (a) HOPE probation, or (b) Probation as Usual.
5. Providing access to collect and analyze program data.
6. Working collaboratively with the Research Coordinator and evaluation team from Research Triangle Institute (RTI).
7. Cooperating fully with the evaluation.

When you submit your application, please include a Project Timeline for developing documents/publications as well as all other important milestones/activities that would be covered during this project period.

Funding applications must be submitted through the Office of Justice Programs' (OJP's) electronic Grants Management System (GMS), under the **BJA Solicited - CB (Capacity Building)** category. Complete instructions for submitting your application through GMS, and the required application content and format are provided in the attached Application Guidance. You must submit your final application in the GMS by 9:00p.m. EST on Friday, July 5, 2013.

Once you have submitted your application using GMS, please send me an email to confirm that you have completed the process.

Please note that this letter is only an invitation to submit a proposal and is not an indication of project approval or an authorization to begin work on the project proposed. Funding for FY 2013 OJP programs is still undetermined as of this date, and therefore BJA cannot be certain that applications will be approved. Current or past project performance and compliance with BJA special conditions as well as training and technical assistance reporting requirements will also be a determining factor in the decision-making process.

If you have any questions or need any additional information, please contact me at (202) 307-3081 or by email at Edward.Banks@usdoj.gov.

Sincerely,

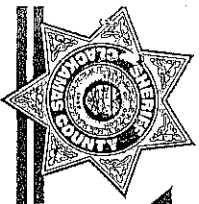


C. Edward Banks, Ph.D.
Senior Policy Advisor
Strategic Initiatives Unit
Bureau of Justice Assistance
U.S. Department of Justice

Enclosure

cc: A. Elizabeth Griffith, Associate Deputy Director, BJA
Ruby Qazilbash, Associate Deputy Director, BJA

James Simonson, Budget Director, BJA
Tracey Trautman, Deputy Director, BJA
Edison Aponte, Associate Deputy Director, BJA
Jon Faley, Associate Deputy Director, BJA
Tammy Reid, Branch Chief, BJA
Cornelia Sorensen-Sigworth, Special Assistant, BJA



Clackamas County Sheriff's Office

JRAIG ROBERTS, Sheriff

August 1, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to enter into an Annual Operating Plan & Financial Plan with the Oregon State Marine Board for the
Clackamas County Boating Safety Action Plan 2013 - 2014

Purpose/Outcome	The Sheriff's Office will provide marine patrol enforcement on all waters within Clackamas County including six lakes and six major rivers.
Dollar Amount and Fiscal Impact	The total fiscal year 2014 operating plan includes \$461,003 support from the Marine Board as well as an estimated \$321,818 Clackamas County contribution.
Funding Source	The Oregon State Marine Board is the source of funds for this agreement as billed by the Clackamas County Sheriff's Office.
Safety Impact	The funds will provide patrol services on all Clackamas County waters as well as investigate boating law violations and boating accidents, examination of boats and other services as outlined in the agreement.
Duration	Effective July 1, 2013 through June 30, 2014
Previous Board Action/Review	None.
Contact Person	Graham Phalen, Lieutenant – office (503) 785-5065
Contact No.	None listed.

BACKGROUND:

The Sheriff's Office provides marine patrol enforcement on all waters within Clackamas County including six lakes with approximately 35.5 miles of shoreline and six major rivers with about 139.5 river miles. The emphasis is on the Willamette River, the Clackamas River and the High Lakes. This is a renewal of a previous agreement but also includes an additional \$55,000 designated as one-time funds which can only be used for replacement of a boat.

Funds from the Marine Board pay for staffing to include Supervisor time, Marine Deputies, Marine Service Officers, overtime, marine fuel, training, insurance, boat maintenance and other administrative costs.

Counsel has approved this agreement.

RECOMMENDATION:

Staff recommends the Board approval of the 2013-2014 Operating Plan & Financial Plan with the Oregon State Marine Board

Respectfully submitted,

Matt Ellington, Undersheriff

For more information on this issue or copies of attachments please contact Barbara Hass at 503-785-5012



Intergovernmental Cooperative Agreement
Between
Oregon State Marine Board
&
Clackamas County

This agreement is entered into by the State of Oregon through the Oregon State Marine Board and Clackamas County under the authority of ORS 830.110 and ORS Chapter 190.

1. Cooperators

This cooperative agreement is between the Oregon State Marine Board; hereafter called SMB and Clackamas County, hereafter called Agency.

2. Term of Agreement

The period of the agreement shall be from July 1, 2013 to June 30, 2014.

3. Services Provided by Agency

Agency agrees to:

- A. Enforce the applicable provisions of the Oregon Revised Statutes, Chapters 830 and 704 and Oregon Administrative Rules, Chapter 250.
- B. Investigate complaints of boating law violations and boating accidents as specified in the SMB Policy and Procedures Manual, revised most recently in 2005, incorporated by reference herein.
- C. Alert the public to unsafe boating conditions.
- D. Assign duties under this agreement to personnel who have completed training and received certification at the Marine Law Enforcement Academy. Boating law enforcement personnel assigned by the Agency shall be mentally and physically capable of performing required duties. Standards of performance, discipline of officers and the control of personnel performing services pursuant to this agreement shall be the responsibility of the Agency. The Agency agrees that assigned personnel shall wear a Coast Guard approved personal flotation device (life jacket) while on board a boat.
- E. Provide assistance to boaters and provide search and rescue services as noted in the policy and procedures manual.
- F. Provide law enforcement examinations of boats.
- G. Carry out all aspects of the Boating Safety Action plan described in Exhibits A and B, attached hereto and incorporated by reference herein.
- H. Provide SMB with monthly activity reports to the SMB database by the end of each month.
- I. Send quarterly invoices to: Boating Safety Program Financial Analyst, Oregon State Marine Board, 435 Commercial St. NE, Salem, OR 97309. Invoices must be submitted within forty-five (45) days following the end of the quarter.
- J. Furnish and supply all necessary labor, supervision, equipment, communications, facilities and supplies necessary to provide the level of service required to fulfill this agreement.

4. Services Provided by SMB

SMB agrees to:

- A. Provide Agency an orientation to SMB policies, regulations, and administrative rules necessary to meet the purpose of this agreement.
- B. Provide required training through the Marine Law Enforcement Academy held once a year.
- C. Provide funds for the purchase of patrol boats, required equipment, fuel and boat maintenance.
- D. Provide access to and training for the use of SMB's law enforcement data base.
- E. Make payment to Agency within 30 days of receiving and approving invoice from Agency.

5. Boat Ownership

- A. The ownership of any boat purchased by the Agency during the term of this agreement shall be vested with the Agency regardless of funding source, subject to Section 5B and Section 9.
- B. During the term of this agreement and for the useful life of the boat or major piece of equipment, the Agency agrees to maintain in good working condition any boat or major piece of equipment purchased in whole or in part by the Agency with funds received from SMB, pursuant to this agreement and prior agreements between Agency and SMB. Preventative maintenance schedules for boats and trailers will be established and adhered to. Further, upon the trade-in or sale of a boat or major piece of equipment purchased, in whole or part, with funds received pursuant to this agreement, Agency shall apply any proceeds from the trade-in or sale to law enforcement activities approved by SMB, with such approval not to be unreasonably withheld. Notwithstanding Section 9, upon default of this Agreement or notice from SMB to Agency of the termination of funding described in ORS 830.140, all boats and major pieces of equipment purchased, in whole or in part, with funds received pursuant to this agreement, or previous agreement between the SMB and Agency, shall be returned to the SMB for reassignment if SMB requests that the boat or major pieces of equipment be returned to SMB. Upon SMB's request, Agency agrees to permit the transfer of a boat purchased, in whole or part, with funds received pursuant to this agreement, to another county.

6. Consideration

- A. The SMB will, upon receipt and approval of expenditure documentation, pay to the Agency an amount not to exceed \$461,003 for the agreement term. Payment requests shall be only for authorized services provided by the Agency pursuant to this agreement and for costs actually incurred by the Agency in conjunction with such services (including salaries, supplies or purchases of boats/equipment).
- B. Agency shall be responsible for providing employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

7. Insurance/Indemnification

- A. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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

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

- B. Alternative Dispute Resolution. The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- C. Indemnification by Subcontractors. The Agency shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Agency's contractor from and against any and all Claims.
- D. During the term of this agreement, the Agency shall provide insurance to cover all loss, damage or injury to the equipment purchased under this agreement, in an amount no less than the purchase price thereof. Such insurance shall be provided by the Agency through an insurer duly authorized to do business in the State of Oregon but may be provided by self-insurance. Any proceeds from insurance or self-insurance shall be applied to the repair or replacement of the damaged equipment unless the Agency received prior written direction or authorization from the SMB to otherwise dispose of the proceeds.
- E. This agreement is subject to all applicable federal Assurances specified in Attachment 1 attached hereto and by this reference made a part hereof. If applicable, Agency shall provide the SMB its Annual Comprehensive Financial Report as required in the Single Audit Act of 1984, 31 U.S.C. §§7501-7507 (1994) *as amended by* Pub.L. 104-156, §§ 1-3, 110 Stat. 1397 (1996). At the end of each fiscal year during the term of this agreement, the Agency will be notified of the amount of federal pass-through dollars included in the payments made by the SMB to the Agency during that fiscal year.

8. Access to Records

Agency shall maintain all fiscal records relating to this agreement in accordance with generally accepted accounting principles. In addition, Agency shall maintain any other records pertinent to this agreement so as to document their performance. Agency acknowledges and agrees that representatives of the SMB and the Oregon Secretary of State's Office and the federal government shall have access to fiscal records and other documents of the Agency that are pertinent to this agreement to perform examinations and audits. Agency shall retain and keep

accessible all such fiscal records and documents for a minimum of seven (7) years, or such longer period as may be required by federal 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.

9. Security Interest

Agency, in consideration of SMB's provision of services described in section 4, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants SMB a continuing security interest in and so pledges and assigns to SMB all of the rights of Agency and all proceeds and products in the boats and equipment purchased pursuant to SMB's authority under ORS 830.140, including, but not limited to this agreement ("Collateral"). Agency hereby irrevocably authorizes SMB at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any financing statements and amendments thereto to complete the attachment, perfection and first priority of, and the ability of SMB to enforce, SMB's security interest in the Collateral, including, but not limited to, causing SMB's name to be noted as secured party on any certificate of title for a titled good. Agency will not, or will not offer to, sell or otherwise dispose of the Collateral or any interest in the Collateral except with receipt of SMB's prior written approval. Upon the failure by Agency to keep, observe or perform any provision of this agreement, without any other notice to or demand upon Agency, SMB shall have in any jurisdiction in which enforcement of this agreement is sought, in addition to all other rights and remedies, all rights, privileges, powers and remedies of a secured creditor provided by the Uniform Commercial Code and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which the Collateral or a part thereof is located, at law, in equity, or otherwise, including, without limitation, its right to take immediate possession of the Collateral.

10. Termination

- A. This agreement may be terminated by mutual consent of both parties.
- B. SMB may terminate this agreement effective upon delivery of written notice to Agency under any of the following conditions.
 1. If SMB's funding is not continued at levels sufficient to allow for purchase of the specified services. The agreement may then be modified to accommodate a reduction in funds.
 2. If the Agency commits any material breach or default of any aspect of this agreement and such breach, default or failure is not cured within such 20-day period after delivery of the Board's notice.
- C. Agency may terminate this agreement if the SMB commits any material breach or default of any aspect of this Agreement and such breach, default or failure is not cured within such 20-day period after delivery of the Agency's notice.
- D. Either party may terminate this Agreement upon 60 days written notice to the other party.
- E. Sections 5, 7, 8 and 9, shall survive termination of the Agreement.

11. Force Majeure

If either Agency or SMB is rendered unable to perform its duties under this agreement due to acts of God, riot, war, terrorism, bioterrorism, civil unrest, flood, earthquake, power outage, or government fiat (a "Force Majeure Event"), then during the Force Majeure Event, but for no longer period, the obligations of such Party will be suspended (or reduced, as applicable) to the extent the Force Majeure Event makes performance impossible. During the occurrence of a Force Majeure Event, the Agency shall use best efforts to continue to perform its duties under this agreement to the maximum extent possible notwithstanding such occurrence. Upon the occurrence of a Force Majeure Event, SMB is obligated to pay only for those deliverables actually delivered and accepted by SMB. If the Force Majeure Event continues to prevent performance for a period of thirty (30) consecutive days, then SMB has the right to suspend its performance or terminate this agreement or both.

12. Amendments

The terms of this agreement shall not be waived, altered, or amended, in any matter whatsoever, except by written consent by both parties.

13. Condition of Performance

In accordance with 44 CFR 13.36(i), the SMB's performance is conditioned upon the Agency's compliance with federal, state and local laws and regulations, including but not limited to, the following:

- A. Agency shall comply and, if applicable, require a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."
- B. The applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Agency shall ensure any organization to which funds are passed comply with CFR and OMB requirements
- C. All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- D. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).
- E. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- F. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- G. The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

H. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

14. Designation of Forum and Choice of Law:

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

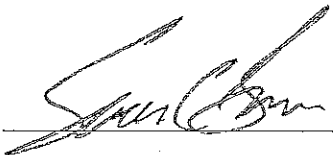
The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

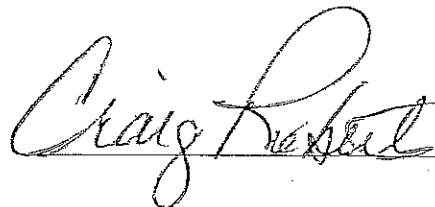
This document constitutes the entire agreement between the parties. The SMB and Agency are the only parties to this agreement and are the only parties entitled to enforce its terms. The Agency, by the signature below of its authorized representative, does acknowledge that it has read this agreement and agrees its terms and conditions.

Signatures:

State Marine Board

Clackamas County


Date 6/26/13


Date 7/16/13

APR 17 2013

Boating Safety Program Action Plan



County/Agency: Clackamas

Fiscal Year: 2013-2014

Address: 9101 SE Sunnybrook Blvd.

Preparer: Steve Thoroughman

Phone #: (503) 655-8650

Year-Round Seasonal

Patrol Hours:	2,627	Water %	Shore %
		55	45
Boating Safety Program Hours:	2,628		
Total Hours:	5,255		

Be as detailed and specific as possible in the description of your action plan.

Patrol Action Plan: 2,627 Hours	
BUII (i.e. # of saturation patrols, partnering opportunities, specific bodies of water, etc.)	We will participate in Operation Drywater for the designated weekend. We also partner with adjoining counties, Washington, Multnomah and Yamhill and send personnel to each area for additional manpower during peak wateruse periods. We also partner with OSP on the Clackamas River several times per year and target BUII, no life jacket and AIS violations. Clackamas River tube and raft traffic creates big problems and this is how we have addressed it.
AIS (i.e. compliance checks, boat inspections, etc.)	We have put more emphasis on AIS enforcement and this year we will be concentrating more on enforcement than education. We still come across boaters who claim not to know about the AIS permit but that number has shrunk quite a bit. All of our water-bodies have increased non-motorized traffic in the past few years providing opportunities for AIS and other non-motorized boat inspections.
Guide & Outfitter	For the past three years we have partnered with OSP and the Coast Guard on specific guide check missions. We plan to participate in these opportunities this year.

Directed Patrol

(i.e. water patrol, shore patrol, BERS, etc.)

The Clackamas County Sheriff's Office Marine Patrol is staffed with 1 full time sergeant and 2 full time deputies. We add another deputy and 4 Marine Service Officers from Memorial Day to Labor Day. This is our busiest time of the year and these additional personnel greatly increase our productivity.

During the winter months our activities are centered on fishing, primarily winter steelhead on the Willamette and the Clackamas Rivers. We also use this time to completely go through our boats and get them in tip top shape for the rest of the year. This year we completely went through the pumps on two of our primary patrol vessels and rebuilt the tubes on the RAIV.

In the spring we have a short sturgeon season which brings 2-3000 boats and we generally partner with OSP to bring as much patrol as possible to these days. Salmon and shad season follow shortly thereafter and they bring out quite a bit of boating traffic generally concentrated on the Willamette below the falls, and secondarily the Clackamas, Upper Willamette and Sandy Rivers.

The summer is our busiest time and involves patrol of all of County water bodies. This year we are permanently assigning a deputy to the upper Clackamas group (4), while we rotate our other personnel on a two week schedule with each deputy targeting a specific group of water bodies in a geographical location. Listed below is each body of water or district which will have one marine deputy and MSO assigned to it during the recreational season.

1. Upper Willamette (Newberg Pool)
Molalla River
Pudding River
Tualatin River
2. Willamette River Below the Falls
Lake Oswego
3. Clackamas River below Rivermill Dam
Sandy River
4. Estacada Lake
North Fork Reservoir
Timothy Lake
Harriet Lake
Upper Clackamas River
Frog Lake

River and/or Specific River Segment	Start RM#	End RM#	Start MM/YY	End MM/YY	Add'l Comments
Willamette River	16	27	07/01	06/30	Year Round, heavy fishing traffic until summer months w/ heavy recreational traffic
Willamette River (Newberg Pool)			07/01	06/30	Year Round, some fishing traffic in winter/ heavy recreational use in summer
Clackamas River (lower)			07/01	06/30	From Mouth to Rivermill Dam, year round traffic
Clackamas River (upper)			07/01	06/30	From North Fork Res. to Timothy Lake, year round float traffic
Molalla River			07/01	06/30	Fishing and recreational traffic, mostly float
Sandy River			07/01	06/30	Fishing and recreational traffic, mostly float traffic
Tualitin River			07/01	06/30	Mostly paddle traffic with a few motorized boats
Pudding River					Minor float traffic, occasional patrol
Salmon River					Minor float traffic, occasional patrol

Boating Safety Program Action Plan



County/Agency: Clackamas

Fiscal Year: 2013-2014

Program Action Plan: <u>2,628</u> Hours	
Instructor Training (i.e. # of personnel, providing training on OSMB behalf, preapproved by Training Coord.)	We have committed 3 instructor to OMLEA, one instructor to Drift Boat Operations and one instructor to Jet Boat Operations. One of the instructors is cadre and spends quite a bit of time planning the classes. This year we spent 400.5 hours of Marine Instruction and Instruction Admin time. I would estimate 400 hours this next year.
Training (i.e. # of personnel attending OSMB sponsored training events)	We will be attending the Post Season Conference with 2-3 persons this year. Total time: 60 hours We will be sending 2 persons to the Managers Meeting Total Time: 20 hours. Travel time on these will be various depending on location which has not been announced yet. Total Estimated time with Travel: 110 hours
Non-OSMB Training (i.e. CPR/First-Aid certification, Firearm certification, etc.)	We have budgeted 228 hours this year for non-OSMB Training to include firearms, defensive tactics, medical and other law enforcement required classes.
Maintenance (i.e. winterization, maintenance schedule)	We have budgeted 580 hours for maintenance this year. We do as much as possible of this ourselves including oil changes, winterization, pump repairs and other minor repairs.
Hazard Mitigation Waterway Markers (i.e. identify, assess, mitigate, investigate)	Waterway markers total Estimated Time: 80 hours. We have budgeted 20 hours for Hazard Mitigation. Total: 100 hours
Abandoned Boats (i.e. identify, assess, mitigate, investigate)	Abandoned boats can be somewhat time consuming because of the paperwork necessary to dispose of them. We average about 5 boats per year with 6-8 hours for each boat in removing them from the water and processing all the paperwork to dispose of them. 40 hours.
Education (i.e. school outreach & mand. education scheduled events)	Regular public school classes and events: 130 hours.
Trailing/Travel (if there is significant distance involved)	470 hours have been allotted to this category based on long travel times to Timothy and other upper lakes for Summer patrol.

Administrative (i.e. office time, court appearances, writing reports)	We have budgeted 676 Administrative Hours for this year.
HINS/Livery/Moorage Checks	We have budgeted 30 hours for Livery and Moorage Checks this year.
Other	<p>The total time calculations listed above are arrived at by the following formula.</p> <p>Full Time Marine Deputies - 2080 hrs. per year X 3 = 6240 Seasonal Marine Deputy - 400 hrs. Total 6640</p> <p>I deduct CCSO training, sick and vacation time and OSMB Training and instruction time and arrive at a total of hours available. I multiply that by .5 and determine the amount of patrol hours. The remaining hours are used for the program action plan.</p>

Boating Safety Program Proposed Costs



County/Agency: Clackamas

Fiscal Year: 2013-2014

Address: 9101 SE Sunnybrook Blvd.

Preparer: Steve Thoroughman

Phone #: (503) 655-8650

Year-Round Seasonal

Allocation (some may not apply)	OSMB	County/Agency Contribution
LE Allocation:	\$395,503.00	
AIS Allocation:	\$5,500.00	--
AIS Inspection Station:		--
Boat Allocation:	\$55,000.00	--
Special Emphasis:	\$5,000.00	--
Total:	\$461,003.00	\$0.00

Proposed Program Costs:

	OSMB	County/Agency Contribution
1. Personnel (Form A)	\$395,514.08	\$104,515.28
Special Emphasis (Personnel \$5,000.00)	\$5,000.00	
2. Operations and Maintenance (Form B)	\$5,488.92	\$182,301.48
3. Other (Boat)	\$55,000.00	\$35,000.00
4. Total direct BS&E Proposed Program Cost (1+2+3, should equal Total above)	\$461,003.00	\$321,817.76

County/Agency Authorized Representative:

Craig Roberts
Signature

4-8-13
Date

Craig Roberts
Typed Name

503-785-5006
Telephone

Boating Safety Program Proposed Personnel Costs – Form A



County/Agency: Clackamas

Fiscal Year: 2013-2014

Employee Compensation				Compensation		
Name	Title	# of Hours	Cost per Hour	Total	OSMB	County/ Agency Cash Contribution
1. Steve Thoroughman	Sergeant	2,080.00	\$71.84	\$149,427.20	\$134,484.48	\$14,942.72
2. Nate Thompson	Deputy	2,080.00	\$60.50	\$125,840.00	\$119,548.00	\$6,292.00
3. Morgan Guthner	Deputy	2,080.00	\$60.95	\$126,776.00	\$120,437.20	\$6,338.80
4. Rick Hilton	Seasonal Deputy	520.00	\$27.26	\$14,175.20	\$0.00	\$14,175.20
5. Hayden Sanders	MSO	520.00	\$14.20	\$7,384.00	\$7,014.80	\$369.20
6. Jeff Dupleth	MSO	520.00	\$14.20	\$7,384.00	\$7,014.80	\$369.20
7. Jared Reynolds	MSO	520.00	\$14.20	\$7,384.00	\$7,014.80	\$369.20
8. Sarah Ellington	MSO	520.00	\$14.20	\$7,384.00	\$0.00	\$7,384.00
9. Graham Phalen	Lieutenant	312.00	\$93.83	\$29,274.96	\$0.00	\$29,274.96
10.				\$0.00		
11.				\$0.00		
12.				\$0.00		
13.				\$0.00		
14.				\$0.00		
15.				\$0.00		
16.				\$0.00		
17.				\$0.00		
18.				\$0.00		
19.				\$0.00		
20.				\$0.00		
21.				\$0.00		
22.				\$0.00		
23.				\$0.00		
24.				\$0.00		
25.				\$0.00		
26. Sub-Total (lines 1 thru 25)		9,152.00	\$371.18	\$475,029.36	\$395,514.08	\$79,515.28
27. Overtime (cannot exceed 5% of OSMB's amount on line 26)						\$25,000.00
28. Total Proposed Personnel Costs (lines 26 + 27)					\$395,514.08	\$104,515.28

Boating Safety Program

Proposed Operations & Maintenance Costs – Form B



County/Agency: Clackamas

Fiscal Year: 2013-2014

Operating Supplies/Maintenance/Training Costs	Actual Expenditures		
	Total	OSMB	County/ Agency Cash Contrib.
A. Fuel: Vehicle <u>8,100.00</u> gallons @ \$ <u>3.80</u> per gallon Boat <u>5,333.00</u> gallons @ \$ <u>3.80</u> per gallon <div style="text-align: right; margin-top: 10px;">Subtotal of A:</div>	\$30,780.00 \$20,265.40 \$51,045.40	\$0.00 \$5,488.92 \$5,488.92	\$30,780.00 \$14,776.48 \$45,556.48
B. Vehicle (Lease, maintenance, minor repairs)	\$18,042.00	\$0.00	\$18,042.00
C. Moorage / Storage of Boat	\$8,040.00	\$0.00	\$8,040.00
D. Expendable Supplies – (\$500 max/each item) specify: 1. Bottled water & Office supplies 2. Uniforms 3. River Signage 4. Other Materials and Services <div style="text-align: right; margin-top: 10px;">Subtotal of D:</div>	\$175.00 \$3,275.00 \$350.00 \$23,556.00 \$27,356.00	\$0.00 \$0.00 \$0.00 \$0.00 \$0.00	\$175.00 \$3,275.00 \$350.00 \$23,556.00 \$27,356.00
E. Boat & Trailer Maintenance/Minor Repairs – Identify the boat /trailer: (\$1000/\$500 per FT program, \$500/\$250 per seasonal program) 1. North River 2. Jetcraft 3. RAIV 4. Thunderjet 5. Jet Skis 6. New Boat (to be purchased) <div style="text-align: right; margin-top: 10px;">Subtotal of E:</div>	\$3,007.00 \$3,007.00 \$3,007.00 \$3,007.00 \$3,007.00 \$3,007.00 \$18,042.00	\$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00	\$3,007.00 \$3,007.00 \$3,007.00 \$3,007.00 \$3,007.00 \$3,007.00 \$18,042.00
F. Insurance – specify: Hull and P&I & Hazzard	\$62,057.00	\$0.00	\$62,057.00
G. Non-OSMB Training – specify: 1. Hamilton Jet Pump School 2. 3. 4. <div style="text-align: right; margin-top: 10px;">Subtotal of G:</div>	\$500.00 \$500.00	\$0.00 \$0.00	\$500.00 \$500.00

<p>H. Training Attending— specify:</p> <p>1. Drift:</p> <p>2. Jet:</p> <p>3. Post Season: Conference cost, hotel + Per diem 3 deputies 3 days</p> <p>4. Academy:</p> <p>5. Other: Managers Meeting Per Deim 2 persons 1 day</p> <p style="text-align: right;">Subtotal of H:</p>	<p>\$2,620.00</p> <p>\$88.00</p> <p>\$2,708.00</p>	<p>\$0.00</p> <p>\$0.00</p> <p>\$0.00</p>	<p>\$2,620.00</p> <p>\$88.00</p> <p>\$2,708.00</p>
<p>I. Other -- specify:</p> <p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5.</p> <p>6.</p> <p>7.</p> <p>8.</p> <p>9.</p> <p>10.</p> <p style="text-align: right;">Subtotal of I:</p>	<p>\$0.00</p>	<p>\$0.00</p>	<p>\$0.00</p>
<p style="text-align: right;">Subtotal:</p>	<p>\$187,790.40</p>	<p>\$5,488.92</p>	<p>\$182,301.48</p>

Request by the Clackamas County Sheriff's Office to enter into an Annual Operating Plan & Financial Plan with the Oregon State Marine Board for the Clackamas County Boating Safety Action Plan 2013 - 2014

DATED THIS _____ DAY OF August 2013

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Approved as to form:

Humboldt A. Johnson

County Counsel

7-18-13

Date