CLACKAMAS COUNTY

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

AGENDA

Thursday October 19, 2017 - 9:45 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2017-119

CALL TO ORDER
- Roll Call
- Pledge of Allegiance

I. HOUSING AUTHORITY CONSENT AGENDA

1. Approval to Enter into a Housing Assistance Payment (HAP) Contract with Pedcor Investments-2016-CLV, Limited Partnership for the Rosewood Terrace Project

2. Approval to Submit two Applications to the US Department of Housing and Urban Development's Rental Assistance Demonstration Program

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

1. Presentation Regarding Earthquake Preparedness and the Clackamas County Shake Out Drill (Jamie Hays, Department of Disaster Management)

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

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

A. Health, Housing & Human Services

1. Approval of an Intergovernmental Agreement with the Housing Authority of Clackamas County for the Mentor Athletics Program – *Housing & Community Development*

2. Approval of an Agency Services Contract with Lifeworks NW for Early Assessment and Support Alliance (EASA) Services – *Behavioral Health*

3. Approval of Amendment No. 2 of the Intergovernmental Revenue Agreement with the Oregon Department of Education – Early Learning Division for Healthy Families Program – *Children, Youth & Families*

4. Approval of a Renewal Revenue Health Care Services Agreement with Northwest Permanente, to Provide Chemical Dependency Treatment Services to Referred Members – *Health Centers*

5. Approval of a Service Agreement with Geneva Woods Partnering and Clackamas County Health Centers Division in Participation with 340B Pharmacy Services Agreement – *Health Centers*

B. Elected Officials

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

V. DEVELOPMENT AGENCY

1. Approval of a Disposition Agreement and Post Closing Escrow and Development Agreement with Shanti Investments, LLC

2. Approval of a Cooperative Improvement Agreement with ODOT for the Boyer Drive Extension Project

3. Approval of an Intergovernmental Agreement for Right-of-Way Services with ODOT for the Boyer Drive Extension Project

VI. WATER ENVIRONMENT SERVICES
(Service District No. 1, Tri-City Service District & Surface Water Management Agency of Clackamas County)

1. Approval of a Joint Funding Agreement between Water Environment Services and the US Geological Survey for Tualatin River Monitoring

2. Approval of a Joint Funding Agreement between the Clackamas County Service District No. 1 and the US Geological Survey for Johnson Creek Monitoring

VII. COUNTY ADMINISTRATOR UPDATE

VIII. COMMISSIONERS COMMUNICATION

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

October 19, 2017

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to enter into a Housing Assistance Payment (HAP) Contract with
Pedcor Investments-2016-CLV, Limited Partnership for Rosewood Terrace Project

Purpose/Outcomes	Defines U.S. Department of Housing and Urban Development (HUD) Payment Requirements for Project Based Rental Assistance for 20 units at Rosewood Terrace Apartments located at 8810-8850 SE Otty Rd, Happy Valley, OR 97086
Dollar Amount and Fiscal Impact	$287,028/year; $4,305,420 total over 15 years
Funding Source	HUD Funds; No County General Funds used
Duration	November 1, 2017 through November 2032
Previous Board Action	The Housing Authority of Clackamas County Board of Commissioners approved the award of 20 Project Based Vouchers on October 20, 2016 through Resolution #1915
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Contact Person	Chuck Robbins - Executive Director, Housing Authority 503-650-5666
Contract No.	8525

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the of Health, Housing and Human Services Department, requests approval to enter into a Housing Assistance Payment (HAP) Contract with Pedcor Investments-2016-CLV, Limited Partnership (Pedcor) to complete the award of twenty (20) Project Based Vouchers (PBVs) for Rosewood Terrace Apartments located at 8810-8850 SE Otty Rd, Happy Valley, Oregon 97086.

On August 19, 2016, Pedcor responded to a Request for Proposals with a project proposal to build 212 units of one, two and three-bedroom units that will be affordable to households 60% or below of the area median income. The property is located close to Clackamas Town Center, transit lines and other services. The Board approved the award of 20 Project Based Voucher's units to Pedor on October 20, 2016. HACC is now prepared to enter into a HAP contract with Pedcor for the Project Based Voucher's at Rosewood Terrace Apartments. This agreement is required to secure the PBV's before construction begins and approval to enter into this contract automatically approves the final award of the 20 PBV units.

RECOMMENDATION:

Staff recommends the Board's approval to enter into the HAP Contract with Pedcor, effective November 1, 2017. Additionally, staff recommends the Board authorize Richard Swift, H3S Director, to sign on behalf of the Housing Authority of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

ROSEWOOD TERRACE AHAP

FINAL AHAP

52531 PART II

EXHIBIT A
- PEDCOR PBV Proposal

EXHIBIT B
- Work Description
- Architectural Rendering
- Description of Development
- Arch Premit Set 1 30 17

EXHIBIT C
- Description of Housing

EXHIBIT D
- HAP Contract Part I
- HAP Contract Part II

EXHIBIT E
- Multi-Stage Project

EXHIBIT F
- Waiver Request
- Waiver Approval

U.S. Department Of Housing And Urban Development
Office of Public and Indian Housing

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

PBV AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

NEW CONSTRUCTION OR REHABILITATION

PART I

1.1 Parties

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is entered into between: The Housing Authority of Clackamas County ("PHA") and

Pedcor Investments-2016-CLV, Limited Partnership ("owner").

1.2 Purpose

The owner agrees to develop the Housing Assistance Payments Contract ("HAP contract") units to in accordance with Exhibit B to comply with Housing Quality Standards ("HQS"), and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner of the contract units.

1.3 Contents of Agreement

This Agreement consists of Part I, Part II and the following Exhibits:

EXHIBIT A: The approved owner's PBV proposal. (Selection of proposals must be in accordance with 24 CFR 983.51.)

EXHIBIT B: Description of work to be performed under this Agreement, including:

- if the Agreement is for rehabilitation of units, this exhibit must include the rehabilitation work write-up and, where the PHA has determined necessary, specifications and plans.
- if the Agreement is for new construction of units, the work description must include the working drawings and specifications.
- any additional requirements beyond HQS relating to quality, design and architecture that the PHA requires.
- work items resulting from compliance with the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23.

EXHIBIT C: Description of housing, including:

- project site.
- total number of units in project covered by this Agreement.
- location of contract units on site.
- number of contract units by area (size) and number of bedrooms and bathrooms.
- services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner.
- utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant.
- estimated initial rent to owner for the contract units.

EXHIBIT D: The HAP contract.

1.4 Significant Dates

A. Effective Date of the Agreement: The Agreement must be executed promptly after PHA notice of proposal selection to the owner has been given. The PHA may not enter this Agreement with the owner until any required subsidy layering review has been performed and an environmental review has been satisfactorily completed in accordance with HUD requirements.

B. A project may either be a single-stage or multi-stage project. A single-stage project will have the same Agreement effective date for all contract units. A multi-stage project will have separate effective dates for each stage.

☐ **Single-stage project**

i. Effective Date for all contract units: _____

ii. Date of Commencement of the Work: The date for commencement of work is not later than _____ calendar days after the effective date of this Agreement.

iii. Time for Completion of Work: The date for completion of the work is not later than _____ calendar days after the effective date of this Agreement.

☒ **Multi-Stage Project**

Enter the information for each stage upon execution of the Agreement for the corresponding stage.

STAGE	NUMBER OF UNITS	EFFECTIVE DATE	DATE OF COMMENCEMENT OF WORK	TIME FOR COMPLETION OF WORK
See	Exhibit E			

1.5 Nature of the Work

☒ This Agreement is for **New Construction** of units to be assisted by the project-based voucher program.

☐ This Agreement is for **Rehabilitation** of units to be assisted by the project-based voucher program.

1.6 Schedule of Completion

A. Timely Performance of Work: The owner agrees to begin work no later than the date for commencement of work as stated in section 1.4. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.

B. Time for Completion: All work must be completed no later than the end of the period stated in section 1.4. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date and all work on all stages must be completed no later than the end of the period stated in section 1.4.

C. Delays: If there is a delay in the completion due to unforeseen factors beyond the owner's control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA in accordance with HUD requirements.

1.7 Changes in Work

A. The owner must obtain prior PHA approval for any change from the work specified in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the owner. PHA approval of any change may be conditioned on establishment of a lower initial rent to owner as determined by PHA in accordance with HUD requirements.

B. If the owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial rents to owner as determined by the PHA in accordance with HUD requirements.

C. The PHA may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit B and meets typical levels of workmanship for the area.

1.8 Work Completion

A. Conformance with Exhibit B: The work must be completed in accordance with Exhibit B. The owner is solely responsible for completion of the work.

B. Evidence of Completion: When the work in completed, the owner must provide the PHA with the following:

1. A certification by the owner that the work has been completed in accordance with the HQS and all requirements of this Agreement.

2. A certification by the owner that the owner has complied with labor standards and equal opportunity requirements in the development of the housing. (See 24 CFR 983.155(b)(1)(ii).)

3. Additional Evidence of Completion: At the discretion of the PHA, or as required by HUD, the owner may be required to submit additional documentation as evidence of completion of the housing. Check the following that apply:

☒ A certificate of occupancy or other evidence that the contract units comply with local requirements.

☐ An architect or developer's certification that the housing complies with:

- ☐ the HQS;
- ☐ State, local or other building codes;
- ☐ Zoning;
- ☐ The rehabilitation work write-up for rehabilitated housing;
- ☐ The work description for newly constructed housing; or
- ☐ Any additional design or quality requirements pursuant to this Agreement.

1.9 Inspection and Acceptance by the PHA of Completed Contract Units

A. Completion of Contract Units: Upon receipt of owner notice of completion of contract units, the PHA shall take the following steps:

1. Review all evidence of completion submitted by owner.

2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by the PHA under this Agreement.

B. Non-Acceptance: If the PHA determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, the PHA shall promptly notify the owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP contract at this point. However, work deficiencies may be corrected in accordance with Section 1.10 of this Agreement.

C. Acceptance: If the PHA determines that the work has been completed in accordance with this Agreement, and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

1.10 Acceptance Where Work Deficiencies Exist

A. If the PHA determines that work deficiencies exist, the PHA shall determine whether and to what extent the deficiencies are correctable, whether the units will be accepted after correction of the deficiencies, and the requirements and procedures (consistent with HUD requirements) for such correction and acceptance of contract units. The PHA shall notify the owner of the PHA's decision.

B. Completion in Stages: When the units will be completed in stages, the procedures of this section shall apply to each stage.

1.11 Execution of HAP Contract

A. Time and Execution: Upon acceptance of the units by the PHA, the owner and the PHA execute the HAP contract.

B. Completion in Stages: When the units will be completed in stages, the number and types of units in each stage, and the initial rents to owner for such units, shall be separately shown in the HAP contract for each stage. Upon acceptance of the first stage, the owner shall execute the HAP contract and the signature block provided in the HAP contract for that stage. Upon acceptance of each subsequent stage, the owner shall execute the signature block provided in the HAP contract for such stage.

C. Form of HAP contract: The terms of the HAP contract shall be provided in Exhibit D of this Agreement. There shall be no change in the terms of the HAP contract unless such change is approved by HUD headquarters. Prior to execution by the owner, all blank spaces in the HAP contract shall be completed by the PHA.

D. Survival of Owner Obligations: Even after execution of the HAP contract, the owner shall continue to be bound by all owner obligations under the Agreement.

1.12 Initial Determination of Rents

A. The estimated initial rent to owner shall be established in Exhibit C of this Agreement.

B. The initial rent to owner is established at the beginning of the HAP contract term.

C. The estimated and initial contract rents for each unit may in no event exceed the amount authorized in accordance with HUD requirements. Where the estimated or the initial rent to owner exceeds the amount authorized under HUD requirements, the PHA shall establish a lower estimated or initial rent to owner (as applicable), in accordance with HUD requirements.

1.13 Uniform Relocation Act

A. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

B. The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Payment of relocation assistance must be in accordance with HUD requirements.

C The acquisition of real property for a project to be assisted under the project-based voucher program is subject to the URA and 49 CFR part 24, subpart B.

D. The PHA must require the owner to comply with the URA and 49 CFR part 24.

E. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the Agreement between the owner and the PHA.

1.14 Protection of In-Place Families

A. In order to minimize displacement of in-place families, if a unit to be placed under HAP contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA's waiting list (if it is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized unit in the project.

B. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

C. The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date.

D. Assistance to in-place families may only be provided in accordance with HUD requirements.

1.15 Termination of Agreement and HAP Contract

The Agreement or HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

1.16 Rights of HUD if PHA Defaults Under Agreement

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action, to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under this Agreement, HUD may assume the PHA's rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the owner is not in

default, pay annual contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP contract.

1.17 Owner Default and PHA Remedies

A. Owner Default

Any of the following is a default by the owner under the Agreement:

1. The owner has failed to comply with any obligation under the Agreement.

2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the Agreement.

4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.

5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:

   A. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or

   B. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.

6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

B. PHA Remedies

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the Agreement.

2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.

3. The PHA's rights and remedies under the Agreement include, but are not limited to: (i) terminating the Agreement; and (ii) declining to execute the HAP contract for some or all of the units.

C. PHA Remedy is not Waived

The PHA's exercise or non-exercise of any remedy for owner breach of the Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

1.18 PHA and Owner Relation to Third Parties

A. Selection and Performance of Contractor

1. The PHA has not assumed any responsibility or liability to the owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the owner and the PHA is not involved in any relationship between the owner and any contractor, subcontractor or supplier.

2. The owner must select a competent contractor to undertake rehabilitation or construction. The owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any Federal department or agency or the Comptroller General. The owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

B. Injury Resulting from Work under the Agreement: The PHA has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the owner, or any contractor, subcontractor or supplier.

C. Legal Relationship: The owner is not the agent of the PHA and this Agreement does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractor or subcontractors used by the owner in the implementation of the Agreement.

D. Exclusion of Third Party Claims: Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to enforce any provision of this Agreement or the HAP contract, or to assert any claim against HUD, the PHA or the owner under the Agreement or the HAP contract.

E. Exclusion of Owner Claims against HUD: Nothing in this Agreement shall be construed as creating any right of the owner to assert any claim against HUD.

1.19 PHA-Owned Units

Notwithstanding Section 1.18 of this Agreement, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

1.20 Conflict of Interest

A. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials

1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the Agreement or HAP contract.

2. HUD may waive this provision for good cause.

B. Disclosure

The owner has disclosed to the PHA any interest that would be a violation of the Agreement or HAP contract. The owner must fully and promptly update such disclosures.

1.21 Interest of Member or Delegate to Congress

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of the Agreement or HAP contract or to any benefits arising from the Agreement or HAP contract.

1.22 Transfer of the Agreement, HAP Contract or Property

A. PHA Consent to Transfer

The owner agrees that the owner has not made and will not make any transfer in any form, including any sale or assignment, of the Agreement, HAP contract or the property without the prior written consent of the PHA. A change in ownership in the owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

B. Procedure for PHA Acceptance of Transferee

Where the owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of the Agreement, the HAP contract or the property, the PHA must consent to a transfer of the Agreement or HAP contract if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and HAP contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be in accordance with HUD requirements.

C. When Transfer is Prohibited

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

1.23 Exclusion from Federal Programs

A. Federal Requirements

The owner must comply with and is subject to requirements of 2 CFR part 2424.

B. Disclosure

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.

2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

1.24 Lobbying Certifications

A. The owner certifies, to the best of owner's knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the Agreement or HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.

2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Agreement or HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

1.25 Subsidy Layering

A. Owner Disclosure

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

B. Limit of Payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

1.26 Prohibition of Discrimination

A. The owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.

B. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* ; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–

1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

C. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

1.27 PHA and HUD Access to Premises and Owner Records

A. The owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.

B. The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the Agreement.

1.28 Notices and Owner Certifications

A. Where the owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.

B. Any certification or warranty by the owner pursuant to the Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

1.29 HUD Requirements

A. The Agreement and the HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements. The owner agrees to comply with all such laws and HUD requirements

B. HUD requirements are requirements that apply to the project-based voucher program. HUD requirements are issued by HUD Headquarters as regulations, Federal Register notices or other binding program directives.

1.30 Applicability of Part II provisions – Check all that apply

☒ Training, Employment and Contracting Opportunities
Section 2.1 applies if the total of the contract rents for all units under the proposed HAP contract, over the maximum term of the contract, is more than $200,000.

☒ Equal Employment Opportunity
Section 2.2 only applies to construction contracts of more than $10,000.

☒ Labor Standards Requirements
Sections 2.4, 2.8 and 2.10 apply when this Agreement covers nine or more units.

☐ Flood Insurance
Section 2.11 applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.

EXECUTION OF THE AGREEMENT

PUBLIC HOUSING AGENCY

Name (Print) Richard Swift

By: _____
Signature of Authorized Representative

Official title (Print): Director, Clackamas County Health, Housing and Human Services

Date: _____

OWNER Pedcor Investments-2016-CLV, Limited Partnership
By: Rosewood Terrace Housing Company, LLC
Its General Partner
By: Pedcor Investments, A Limited Liability Company
Its Manager

By: _____
Thomas G. Crowe, Senior Vice President

Date: 9-26-17

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

October 19, 2017

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to Submit Two Applications to the US Department of Housing and Urban Development's Rental Assistance Demonstration Program

Purpose/Outcomes	Approval to submit two applications allowing for the rehabilitation of Hillside Manor, and the redevelopment of Hillside Park. Both communities are located along 32nd Avenue in the City of Milwaukie.
Dollar Amount and Fiscal Impact	No immediate Fiscal Impact
Funding Source(s)	If applications are approved by HUD, funding sources for completion of the projects will be a mix of private mortgage and Low Income Housing Tax Credit equity.
Duration	Projects will commence in 2018 and be completed by 2022.
Previous Board Action	At a Study session on October 3rd, 2017 the Board requested HACC complete the applications for approval at a later business meeting
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Contact Person	Chuck Robbins, HACC Executive Director (503) 650-5666
Contract Number	N/A

BACKGROUND:
The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests approval to submit two applications to the Rental Assistance Demonstration program administered by the U.S. Department of Housing and Urban Development (HUD).

The Rental Assistance Demonstration (RAD) program allows Housing Authorities to convert Public Housing properties to a project based assistance model. Under this model the units move to a voucher like program and allows public housing agencies to use the rental income to leverage public and private debt and equity in order to reinvest in the public housing stock.

HACC is dedicated to a 4-for-1 replacement goal for each public housing any unit demolished though the RAD process. HACC will seek to develop 4 new housing units affordable to families at or below 80% of the Area Median Income (AMI). For the two proposed RAD projects described below, a minimum of 200 units will be available to households earning 30% of Area Median Income (AMI) or below.

The Housing Authority of Clackamas County is prepared to submit RAD applications to HUD on October 23rd for the following Public Housing communities:

1. **Hillside Manor:** HACC will ask HUD for permission to convert Hillside Manor to RAD project based assistance and to apply for funding to complete a rehabilitation of the 9 story apartment

building. If the application is approved by HUD, the Housing Authority will apply for 9% Low Income Housing Tax Credits (LIHTC) in the next competitive funding cycle, issued by Oregon Housing and Community Services (OHCS). Pending a LIHTC award, rehabilitation of Hillside Manor could commence as early as the summer of 2018. Residents in the Manor would be temporarily relocated with the assistance of a relocation counselor and expenses paid by the Housing Authority, as improvements to their units were completed. Upon completion the tenants would return to their units.

2. **Hillside Park:** HACC will ask HUD for permission to convert the 100 units at Hillside Park to RAD project based assistance and to apply for funding to complete a redevelopment of the site to provide new and increased housing opportunities. Redevelopment will be directed by a community plan which will be begin early 2018 and could take 6 months to complete. While the final design is unknown it is expected that the plan will look at creating a mixed income community where 300-400 units could be developed. Following completion of a Master Plan for the site, HACC would make an application for LIHTC financing. Redevelopment of the site could begin as early as the summer of 2019.

   It is expected that this would a phased development. As each phase is developed the residents would be temporarily relocated with the assistance of a relocation counselor and expenses covered by the Housing Authority. At completion each resident would be given first choice to return to the community.

   HACC is a finalist to receive funding through Metro's 2040 Planning and Community grant program to complete a Master Plan for the site. If funds are awarded, the Master Plan process will begin in the Spring of 2018, and will establish the design framework for redevelopment of the site into a vibrant, mixed income community.

The two Board Approval forms attached provide summaries of each RAD application. The Hillside Manor rehabilitation project is estimated to cost $23,931,333. The Hillside Park demolition and rebuild of 100 units is estimated to cost $26,128,059. Both project budgets assume a successful application to Oregon Housing and Community Services for 9% Low Income Housing Tax Credit (LIHTC) awards. The budgets presented are subject to change as the projects progress and refinements are made to overall costs and schedules.

No County General Funds are involved.

RECOMMENDATION:
Staff recommends the Board approve the submission of both Rental Assistance Demonstration applications and staff recommends the Board authorize Richard Swift, H3S Director to sign on behalf of the Housing Authority of Clackamas County.

Staff also recommends the Board authorize Chuck Robbins, HACC Executive Director, to sign Hillside Manor and Hillside Park Approval Forms from the RAD application on behalf of the Housing Authority of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services

If required, this worksheet should be printed, signed and attached as a PDF to the application email.

Identify the person who will sign the PHA Certification:

Chuck Robbins	Executive Director
Name	Title

Attachment 1A: Board Approval Form

Housing Authority of Clackamas County RAD Application for HILLSIDE PARK

AMP No:	OR001003000
Units	100

Type of Conversion

PBV (Project Based Vouchers)

Proposed Units for Conversion and De Minimis

Summary	Total Units Proposed for Conversion	Units Proposed to be Reduced
	100	0

Explanation for de minimis reduction

Not applicable- there is no proposal to reduce units at Hillside Manor

Pro Forma Sources and Uses

Sources of Funds	*Amount*	*Per Unit*
New First Mortgage Loan	$800,000	$8,000

Public Housing Operating Reserves	$0	$0
Public Housing Capital Funds	$0	$0
Replacement Housing Factor	$0	$0
Low Income Housing Tax Credit Equity- 4%	$0	$0
Low Income Housing Tax Credit Equity-9%	$10,349,797	$103,498
Deferred Developer Fee	$598,262	$5,983
Seller Financing	$11,080,000	$110,800
GAP Loan	$3,300,000	$33,000
	$0	$0
Total Sources of Funds	**$26,128,059**	**$261,281**

Uses of Funds	*Amount*	*Per Unit*
Acquisition Costs	$11,680,000	$116,800
Construction Costs	$10,815,750	$108,158
Relocation Costs	$400,000	$4,000
Professional Fees	$652,630	$6,526
Loan Fees and Costs	$1,324,155	$13,242
Reserves	$455,524	$4,555
Developer Fees	$800,000	$8,000
Total Uses of Funds	**$26,128,059**	**$261,281**

Stabilized Cash Flow Pro Forma		
	Total	*PUPA*
Gross Potential Rents for RAD Units	$667,800	$6,678
Gross Potential Rents for Other Apartment Units	$0	$0
Gross Potential Rents for Commercial	$0	N/A
Vacancy Loss and Bad Debt Loss	($46,746)	-$467
Other Income	$41,700	$417
Effective Gross Income	**$662,754**	**$6,628**

Total Operating Expenses	$503,398	$5,034
Annual Deposit to Replacement Reserve	$35,000	$350
		$0
Net Operating Income	**$124,356**	**$1,244**
		$0
First Mortgage Debt Service	($51,535)	($515)
		$0
Operating Cash Flow	**$72,821**	**$728**

PHA's Explanation of Any Relocation of Tenants (Estimated Relocation Cost is $400,000)

The Housing Authority of Clackamas County (HACC) will be utilizing the Rental Assistance Demonstration (RAD) Program for two public housing AMPS on contiguous sites, Hillside Manor and Park, which comprise the "RAD Project". Each of these sites will employ different methods of relocation. In both cases the approach to relocation will be consistent with the guidance provided in Notice H-2014-09/PIH 2014-17 issued by HUD on July 14, 2014 and further revised on January 12, 2017 in Notice PIH 2012-32 (HA) H-2017-03 REV 3. HACC will employ a third party Relocation Consultant to provide guidance and administration in relocation notices and benefits to the residents of the RAD project. In no case will physical relocation begin prior to the latter of; 1) the date of closing, 2) the effective date of the RCC and the expiration of the 30 or 90 day notice as required.

This project will be seeking additional funding through Low Income Housing Tax Credits and will require temporary relocation for each household during renovations. Households will be relocated off-site for less than 12 months and return to their existing units with site based rental assistance through a long term HAP Contract. HACC will adhere to all regulatory provisions provided by the RAD program and the Uniform Relocation Assistance and Real Estate Acquisitions Act of 1970 (URA) and the HUD Handbook 1378 and 49 CFR 24 will be followed during the duration of the project.

Discuss the capacity of the development team to undertake the proposed conversion.

The Housing Authority of Clackamas County has a development team staff of 2.0 FTE who report to the Executive Director. The team has combined experience with projects involving 4% and 9% LIHTC, HOME, CDBG and Project Based Section 8 vouchers. The scope of projects have included rehabilitation, disposition and new construction. Several projects have included aspects of relocation and the development team is well-versed in both URA and non URA relocation compliance. In addition to the in-house development team, the Housing Authority of Clackamas County has contracted consultants assisting the agency with development projects along a wide range of services.

Contracted consultant expertise includes:

David Rosen and Associates- Development and Financial advisors

Ballard Sparh- Public Housing and Section 8 regulatory advisors.

Dalla Terra Architecture- Owner's Representation advisor (architecture, engineering and construction)

DDV Consultant Services- Relocation advisory services
Rob Sullivan – Tax Credit Counsel
Hawkins, Delafield & Wood – Bond Counsel
Springsted – Municipal Advisor

PHA's Explanation of the Proposed Total Operating Cost being less then 85% of the 3 Year Historical Operating Expenses

3 Year Historical Average Comparison	Total Operating Expenses:	503,398
	Three Year Average	N/A

N/A for new construction.

PHA's Explanation of the Capital Needs and Replacement Reserves Estimates

Estimated hard construction costs for Hillside Park are based on analysis of recent projects of comparable density and construction type and account for the recent increase in construction costs in the region. The replacement reserve deposit of $350 per unit per year meets OHCS thresholds for non-senior projects and is consistent with the actual needs of projects of similar density and construction type.

Discussion of QAP timing

Oregon Housing and Community Services typically issues a NOFA for 9% LIHTC in January of each year and provides 60-90 days for an application response period. The LIHTC application timeline for Hillside Park assumes a 2018 CHAP from HUD with application to Oregon Housing and Community Services in January of 2019. A reservation award would be expected by June 2019, with a construction start time no later than 12 months after receipt of the reservation letter.

Demonstration of recent success obtaining 9% LIHTCs

The Housing Authority of Clackamas County has partnered with David Rosen and Associates (DRA) to bring added development capacity to the team related to 9% LIHTC applications. The following describes DRA's vast experitise with this funding source:

Founded in 1980, DRA has served clients in nearly 300 jurisdictions through the US and internationally. DRA Principals have placed, analyzed and valued an estimated $3 billion in LIHTC rental housing developments. DRA has a near perfect track record of applying for 9% Low Income Housing Tax Credits. We have advised clients on development, financial analysis, valuation, tax liability, asset management and syndication of LIHTC projects since the program's inception in 1986. DRA has advised Tax Credit allocating agencies on HOPE VI, public housing revitalization, sustainable development measures, and asset management practices, as well as tax credit allocation rules, policies, and underwriting. DRA helped start the first nonprofit LIHTC equity fund west of St. Louis in the late 1980s, now Merritt Community Capital, with more than $750 million in equity invested.

DRA has represented several hundred local and state agencies, developers, foundations and others in the United States. Pacific Northwest clients include the Portland Housing Bureau, the Seattle Housing Department, the Washington State Housing Finance Agency, the Housing Authority of Clackamas County, Portland METRO, Portland Community Reinvestment Investments, Bellingham, Wenatchee and Whatcom County, Washington, Vitus Development, and others.

DRA Principals have provided financial and development advisory advice on more than $9 billion of real estate transactions and portfolios associated with affordable rental and owner housing. DRA is comprehensively and authoritatively expert in all forms of affordable rental housing finance and development.

DRA's clients include lenders, investors, insurance companies, developers, and government- sponsored enterprises. FHA, HUD, Ginnie Mae, the Federal Home Loan Bank of Atlanta, are among our clients, as are other federal, state, local and regional governmental agencies, as well as Fortune 500 corporations, public and private sector development corporations, equity funds, national financial intermediary institutions and foundations.

Through more than three decades of nationwide advisory service in housing development and finance, DRA has crafted a practice that combines public policy expertise with transactional discipline and an exemplary transactional track record. DRA is known for superior economic and financial analytics, clear-eyed assessment of value, risk and mitigation, and for innovative solutions to some of the toughest problems in mortgage and housing finance, community development and neighborhood revitalization.

Likelihood of obtaining 9% LIHTCs

The 2016 Qualified Action Plan from Oregon Housing and Community Services provides several threshold and bonus selection criteria of which the Hillside Manor project will score competitively. Specifically, the project will score points in the following areas:

35% Soft Set Aside- Preservation Project; Projects with public housing units undergoing a preservation transaction involving a comprehensive recapitalization

Project Need: 20 points (maximum) for Target Population, Severity of Need, and Equitably Service Geography

Impact: 40 points for Tenant Impact, Risk of Loss, Prudence of investment, Plan Alignment, HOME Leverage, Resident Services, AFHMP, Location Efficiency, Location Preferences

Preference: 10 points for Serving Lowest Incomes and Federal Preferences

Financial Viability: 15 points

Capacity: 15 points

Maximum Total Points: 100

I hereby certify to the following: (1) that I have the requisite authority to execute this application on behalf of the owner; (2) that HUD can rely upon this certification in evaluating the Application, (3) that I acknowledge that I have read and understand PIH Notice 2012-32 (the "Notice"), which describes the Rental Assistance Demonstration (RAD) (the "Program"), and agree to comply with all requirements of the Program or Notice; (4) that all materials submitted in association with the application are accurate, complete and not misleading; (5) that the application meets all applicable eligibility requirements for the Program set forth in the Notice; (6) that the owner approves the creation of a single-asset entity of the affected project if required by the lender to facilitate financing; (7) that, if selected for award, the owner will comply with the fair housing and civil rights requirements at 24 CFR 5.105(a) (general requirements) and will affirmatively further fair housing; (8) that there are no debarments, suspensions, or Limited Denials of Participation in Federal programs lodged against the applicant, PHA Executive Director, Board members, or affiliates; (9) that this Board Approval Form has been approved by the Board of Commissioners on the date noted below; and (10) that, if selected for an award, the PHA will comply with all provisions of HUD's Commitment to Enter into a HAP (CHAP), which shall indicate the HUD-approved terms and conditions for conversion of assistance, or will indicate to HUD within 15 days that it is refusing the terms of the CHAP and withdrawing from RAD participation.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 USC Sections 1001, 1010, 1012; 31 USC Sections 3729, 3802)

PHA Certification: By Chuck Robbins (Executive Director)

Signature:

If required, this worksheet should be printed, signed and attached as a PDF to the application email.

Identify the person who will sign the PHA Certification:

Chuck Robbins — Name

Executive Director — Title

Attachment 1A: Board Approval Form

Housing Authority of Clackamas County RAD Application for HILLSIDE MANOR

AMP No:	OR001005000
Units	100

Type of Conversion

PBV (Project Based Vouchers)

Proposed Units for Conversion and De Minimis

Summary	Total Units Proposed for Conversion	Units Proposed to be Reduced
	100	0

Explanation for de minimis reduction

Not applicable- there is no proposal to reduce units at Hillside Manor

Pro Forma Sources and Uses

Sources of Funds	*Amount*	*Per Unit*
New First Mortgage Loan	$800,000	$8,000

Public Housing Operating Reserves	$0	$0
Public Housing Capital Funds	$0	$0
Replacement Housing Factor	$0	$0
Low Income Housing Tax Credit Equity- 4%	$0	$0
Low Income Housing Tax Credit Equity-9%	$11,278,872	$112,789
Construction Period Income and Deferred Developer Fee	$152,461	$1,525
Seller Financing	$11,700,000	$117,000
	$0	$0
	$0	$0
Total Sources of Funds	**$23,931,333**	**$239,313**

Uses of Funds	*Amount*	*Per Unit*
Acquisition Costs	$11,700,000	$117,000
Construction Costs	$7,590,000	$75,900
Relocation Costs	$400,000	$4,000
Professional Fees	$555,000	$5,550
Loan Fees and Costs	$998,881	$9,989
Reserves	$750,752	$7,508
Developer Fees	$1,936,700	$19,367
Total Uses of Funds	**$23,931,333**	**$239,313**

Stabilized Cash Flow Pro Forma		
	Total	*PUPA*
Gross Potential Rents for RAD Units	$685,824	$6,858
Gross Potential Rents for Other Apartment Units	$0	$0
Gross Potential Rents for Commercial	$0	N/A
Vacancy Loss and Bad Debt Loss	($48,008)	-$480
Other Income	$44,304	$443
Effective Gross Income	**$682,120**	**$6,821**

Total Operating Expenses	($529,946)	($5,299)
Annual Deposit to Replacement Reserve	($30,000)	($300)
		$0
Net Operating Income	**$122,174**	**$1,222**
		$0
First Mortgage Debt Service	($51,535)	($515)
		$0
Operating Cash Flow	**$70,639**	**$706**

PHA's Explanation of Any Relocation of Tenants (Estimated Relocation Cost is $400,000)

The Housing Authority of Clackamas County (HACC) will be utilizing the Rental Assistance Demonstration (RAD) Program for two public housing AMPS on contiguous sites, Hillside Manor and Park, which comprise the "RAD Project". Each of these sites will employ different methods of relocation. In both cases the approach to relocation will be consistent with the guidance provided in Notice H-2014-09/PIH 2014-17 issued by HUD on July 14, 2014 and further revised on January 12, 2017 in Notice PIH 2012-32 (HA) H-2017-03 REV 3. HACC will employ a third party Relocation Consultant to provide guidance and administration in relocation notices and benefits to the residents of the RAD project. In no case will physical relocation begin prior to the latter of; 1) the date of closing, 2) the effective date of the RCC and the expiration of the 30 or 90 day notice as required.

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Discuss the capacity of the development team to undertake the proposed conversion.

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Rob Sullivan – Tax Credit Counsel
Hawkins, Delafield & Wood – Bond Counsel
Springsted – Municipal Advisor

PHA's Explanation of the Proposed Total Operating Cost being less then 85% of the 3 Year Historical Operating Expenses

3 Year Historical Average Comparison	Total Operating Expenses:	532372
	Three Year Average	$547,095

N/A

PHA's Explanation of the Capital Needs and Replacement Reserves Estimates

These estimates were generated through a professional Pysical Needs Assessment completed for the property in 2016. A RAD Capital Needs Assessment will be completed at the proprerty following successful RAD application.

Discussion of QAP timing

Oregon Housing and Community Services typically issues a NOFA for 9% LIHTC in January of each year and provides 60-90 days for an application response period. The LIHTC application timeline for Hillside Manor assumes a 2017 CHAP from HUD with application to Oregon Housing and Community Services in January of 2018. A reservation award would be expected by June 2018, with a construction start time no later than 12 months after receipt of the reservation letter.

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Preference: 10 points for Serving Lowest Incomes and Federal Preferences

Financial Viability: 15 points

Capacity: 15 points

Maximum Total Points: 100

I hereby certify to the following: (1) that I have the requisite authority to execute this application on behalf of the owner; (2) that HUD can rely upon this certification in evaluating the Application, (3) that I acknowledge that I have read and understand PIH Notice 2012-32 (the "Notice"), which describes the Rental Assistance Demonstration (RAD) (the "Program"), and agree to comply with all requirements of the Program or Notice; (4) that all materials submitted in association with the application are accurate, complete and not misleading; (5) that the application meets all applicable eligibility requirements for the Program set forth in the Notice; (6) that the owner approves the creation of a single-asset entity of the affected project if required by the lender to facilitate financing; (7) that, if selected for award, the owner will comply with the fair housing and civil rights requirements at 24 CFR 5.105(a) (general requirements) and will affirmatively further fair housing; (8) that there are no debarments, suspensions, or Limited Denials of Participation in Federal programs lodged against the applicant, PHA Executive Director, Board members, or affiliates; (9) that this Board Approval Form has been approved by the Board of Commissioners on the date noted below; and (10) that, if selected for an award, the PHA will comply with all provisions of HUD's Commitment to Enter into a HAP (CHAP), which shall indicate the HUD-approved terms and conditions for conversion of assistance, or will indicate to HUD within 15 days that it is refusing the terms of the CHAP and withdrawing from RAD participation.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 USC Sections 1001, 1010, 1012; 31 USC Sections 3729, 3802)

PHA Certification: By Chuck Robbins (Executive Director)

Signature:

CLACKAMAS COUNTY

NANCY S. BUSH
DIRECTOR

DEPARTMENT OF DISASTER MANAGEMENT
COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD OREGON CITY, OR 97045

October 19, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Presentation Regarding Earthquake Preparedness and the Clackamas County Shake Out Drill

Purpose/Outcome	Awareness, safety, and protection during an earthquake.
Dollar Amount and Fiscal Impact	No direct budget impacts since this is an annual program that is shared between multiple County departments.
Funding Source	No County General Funds are involved.
Duration	Shakeout occurs on October 19 at 10:19 AM
Previous Board Action/Review	No Board Action necessary. This is an annual earthquake safety drill.
Strategic Plan Alignment	1. Coordination and Integration of Planning and Preparedness. 2. Ensure safe, healthy and secure communities.
Contact Person	Jamie Hays, Outreach and Technology Coordinator, Disaster Management, x8838
Contract No.	Not Applicable

BACKGROUND:
Oregon is earthquake country and Clackamas County knows this first hand. In March 1993, the "Spring Break" quake roused many residents from sleep, damaging numerous homes and business, including severely damaging Molalla High School. State-wide, increasing attention is being given to the Cascadia Subduction Zone off of the Oregon coast and the potential for a magnitude 9.0 great earthquake.

Clackamas County requires all employees to participate in this annual earthquake drill to practice drop, cover and hold on. Some County facilities will also practice evacuating after the drill. Residents and businesses are encouraged to take part in practicing this personal protective measure to make taking immediate action more intuitive, since earthquakes strike with no warning. We encourage residents and businesses to take time afterwards and conduct a safety inspection to identify and mitigate potential falling hazards at home or work.

RECOMMENDATION:
Presentation only, recommendation is for all County employees to participate in the October 19th Shake Out drill.

Respectfully submitted,

Nancy Bush, Director
Department of Emergency Management

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift, *Director*

October 19, 2017

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the
Housing Authority of Clackamas County for the Mentor Athletics Program

Purpose/Outcomes	Approval of this agreement would allow the Housing Authority of Clackamas County to partner with Mentor Athletics to provide services to a minimum of forty youth, age 7-16, living in Public Housing.
Dollar Amount and Fiscal Impact	$30,000 of Community Development Block Grant funds and approximately $6,000 of private donations to Mentor Athletics.
Funding Source	U.S. Department of Housing and Urban Development grant funds. No County General Funds are involved.
Safety Impact	Improved health and safety for public housing youth.
Duration	Effective 7/1/2017 to June 30, 2018.
Previous Board Action	The Board approved funding this project in 2015 and 2016. All 2017 recommended projects were approved with the 2017 Action Plan approval on May 11, 2017.
Strategic Plan Alignment	1. Provide low and moderate income persons with healthy, safe and stable housing in neighborhoods where they have improved access to services. 2. Ensure safe, healthy and secure communities.
Contact Person	Kevin Ko, Community Development Manager - (503) 655-8591
Contract No.	H3S 8474

BACKGROUND: The Housing and Community Development Division of the Health, Housing and Human Services Department requests approval of this Intergovernmental Agreement with the Housing Authority of Clackamas County for the Mentor Athletics program. The objectives of the program are: 1) Promote health and emotional wellness through lifetime activities; 2) develop positive values such as honesty, loyalty, integrity, and perseverance; 3) develop life skills such as problem solving, self-confidence, communication, conflict resolution, personal care and respect for self and others; and 4) support academic achievement. The BCC approved the funding for this project on May 11, 2017. The Intergovernmental Agreement was reviewed and approved by County Counsel on September 14, 2017.

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

Respectfully submitted,

Richard Swift, Director
Health, Housing Human Services

INTERGOVERNMENTAL AGREEMENT
BETWEEN

CLACKAMAS COUNTY DEPARTMENT OF HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT DIVISION

AND
HOUSING AUTHORITY OF CLACKAMAS COUNTY

I. Purpose

A. This agreement ("Agreement") provides the basis for a cooperative working relationship between Clackamas County Housing and Community Development Division, herein referred to as HCD, and the Housing Authority of Clackamas County, herein referred to as HACC, with the common goal of providing mentoring, life skills, athletic and recreational opportunities to empower low-income youth that are 7 to 16 years old residing in Clackamas County public housing units.

II. Scope of Cooperation

A. Under this Agreement, the responsibilities of HACC shall be as follows:

1. HACC agrees to provide staff and materials necessary for the operation of the Mentor Athletics program ("PROJECT") that enhances positive youth development by:

    1. Matching youth one-on-one with a caring adult mentor;
    2. Providing social skill development through small group mentoring; and
    3. Providing free sports and recreational opportunities.

2. Prepare and submit to HCD, an annual summary report and quarterly progress reports that detail the activities of the program including: services provided and the number of persons assisted with program services. See Attachment C.

3. HACC agrees to provide all requested program information and participate in program monitoring during the term of the Agreement.

B. Under this Agreement, the responsibilities of HCD will be as follows:

1. HCD agrees to provide and administer available Community Development Block Grant ("CDBG") funds granted by the U.S. Department of Housing and Urban Development ("HUD") to finance the HACC Mentor Athletics program.

2. HCD will monitor the performance of the HACC against goals and performance standards required herein. Substandard performance as determined by the HCD will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by HACC within ten (10) days after being notified by the HCD, the Agreement will terminate and all funding will end. HACC must return any unused funds promptly.

3. HCD agrees to conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.

III. Compensation

A. HCD agrees to pay HACC an amount not to **exceed $30,000 for FY 2017-2018** CDBG funds for the public services outlined in Section II A of this Agreement. The obligations of HCD are expressly subject to HCD receiving funds from HUD, and in no event shall HCD's financial contribution exceed the amount finally granted, released and approved by HUD.

B. HACC agrees to match the CDBG funding with at least 20% of the program budget and report those matching funds annually in the attached report. See Attachment D.

C. In the event the amount of CDBG funds granted by HUD is less than the amount budgeted, HCD and HACC shall jointly determine the effectiveness of the PROJECT in meeting its program objectives within the reduced funding limits, and will make the necessary operational adjustments.

D. Payments shall be made on requests for payment submitted to HCD on a quarterly basis. Payment requests must detail the PROJECT expenditures of allowable costs incurred during that quarter, pursuant to 24 CFR 85 and OMB Circular A-87 (effective 6/9/2004). All requests for payment are subject to the approval of HCD and shall be submitted to:

Mark Sirois, Project Coordinator
Clackamas County Community Development Division
2051 Kaen Road
Oregon City, OR 97045

IV. Liaison Responsibility

A. Jemila Hart will act as liaison from HACC. Mark Sirois will act as liaison from HCD.

V. Special Requirements

A. **Assignment and Subcontracting.** HACC shall undertake the work outlined in Attachment A and shall assign any portion of such work outside with written approval from HCD.

B. **Conflict of Interest.**

1. Interest of Officers, Employees, or Agents. No officer, employee, or agent of HCD or HACC who exercises any functions or responsibilities in connection with the planning and execution of activities under the CDBG Program, or any other person who exercises any functions or responsibilities in connection with the Program during their tenure or for one year thereafter, shall obtain a personal or financial interest in or benefit from this Agreement, or any contract, subcontract or agreement arising therefrom, either for themselves or for persons with whom

they have family or business ties without appropriate prior HUD waiver; and HACC shall take appropriate steps to assure compliance.

2. Interest of Certain Federal Officials. No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.

C. **Program Benefit**. HACC will implement the program to give maximum feasible benefit to low and moderate income families and individuals. Income guidelines applicable to this Agreement are included in Attachment A.

D. **Non Discrimination.** HACC shall comply with Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, or the presence of any mental or physical handicap. These requirements are specified in ORS Chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

E. **Non-substitution for Local Funding.** The CDBG funding made available under this Agreement shall not be utilized by HACC to reduce substantially the amount of local financial support for the Mentor Athletics program activities below the level of such support prior to the availability of funds under this Agreement.

F. **Public Information.** HCD and HACC shall cooperate in public information efforts, such as contracts with neighborhood or consumer advocacy organizations, press releases, etc. In all news releases and other public notices relating to activities under this Agreement HACC shall include information identifying the source of funds as the Clackamas County CDBG program.

G. **Evaluation.** HACC agrees to participate with HCD in any evaluation project or performance report, as designed by the HCD or the appropriate Federal department, and to make available all information required by any such evaluations process.

H. **Audits and Inspections**. HACC will insure that HCD, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this Agreement for the purpose of making surveys, audits, examinations, excerpts and transcripts. HACC shall not be required to provide any information which in any way would deny the rights of confidentiality to any low or moderate income family or individual seeking or receiving assistance from the program.

I. **Record and Fiscal Control System**. HACC agrees to comply with the policies, guidelines and requirements of 24 CFR Part 85 with respect to funds pursuant to Attachemnt B of this Agreement. All financial and programmatic records, supporting documents, statistical records, and other records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the

subject of audit findings shall be retained for a longer time until such audit findings are resolved.

J. **Citizen Participation.** HACC shall compile and maintain records including narratives or other documentation describing the process used to inform citizens concerning the program.

K. **Equal Opportunity.** HACC shall maintain and provide to HCD racial, ethnic, gender, age, head of household, and income data showing the extent to which these categories of persons have participated in, or benefited from, the activities carried out under this Agreement.

VI. Amendment

A. This Agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

A. This Agreement becomes effective when it is signed by both Parties.

B. The term of this Agreement is a period **beginning July 1, 2017 and ending June 30, 2018.**

C. This Agreement may be suspended or terminated prior to the expiration of its term by:

1. Written notice provided to HCD from HACC before any materials or services for improvements are procured, or;
2. Written notice provided by HCD in accordance with 24 CFR 85.43, included as Attachment B, resulting from material failure by HACC to comply with any term of this Agreement, or;
3. Mutual agreement by HCD and HACC in accordance with 24 CFR 85.44 included as Attachment B. Upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with HCD.

CLACKAMAS COUNTY HOUSING AND COMMUNITY DEVELOPMENT DIVISION

And

HOUSING AUTHORITY OF CLACKAMAS COUNTY

_____
Chuck Robbins, Director of HCD and HACC

_____
Date

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

Signing on Behalf of the Board.

_____
Richard Swift, Director
Department of Health, Housing and Human Services

_____
Date

Reviewed as to Form

_____
County Counsel Date

ATTACHMENT A

To achieve the objectives outlined in Section II of this Agreement, the HACC **Mentor Athletics Program** shall conduct the following activities:

1. Maintain policies and procedures for conducting Mentor Athletics program intake and activities.
2. Conduct outreach to eligible youth residing in Clackamas County public housing units. Mentor Athletics sponsors free Summer Breakfast and Lunches through the Summer Feeding Program with activities in between serving, after school activities partnering through the school district where youth are served a dinner before activities occur, and our regular Mentoring and programmed activities including golf is regularly partnered in the Spring and Autumn.
3. Maintain staff timesheets (payroll forms) and activity narratives.
4. Prepare and submit to CD, an annual summary report and quarterly progress reports that detail the activities of the program including: number of youths offered program services, number of youths assisted with program services, and ethnicity of all youths served. See Attachment C.
5. Area Median Income (AMI) limits established annually by the U.S. Department of Housing and Urban Development to determine eligibility for assistance under this program are listed below:

HUD 2017 INCOME GUIDELINES			
Family Size	Extremely Low	Very Low Income	Low Income
	30%	50%	80%
1	$15,700	$26,150	$41,850
2	$17,950	$29,900	$47,800
3	$20,420	$33,650	$53,800
4	$24,600	$37,350	$59,750
5	$28,780	$40,350	$64,550
6	$32,960	$43,350	$69,350
7	$37,140	$46,350	$74,100

ATTACHMENT B

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

ATTACHMENT C

Mentor Athletics Program Information (Quarterly Report)

I. STATISTICAL
In the three-month time period from _____ to _____:

Outreach:

	Total number of youth contacted with information/outreach materials.
	Total number of youth participating in program this quarter*

Participants:
The Total number of youth/persons participating (served) are categorized as follows:*

____*American Indian/Alaskan Native*: ____*Black/African American*: ____*Other Multi-racial*: ____*Asian:* ____*Native Hawaiian or Pacific Islander:* ____*White:* ____*Hispanic/Latino:* ____*Non-Hispanic or Non-Latino:*	Ethnicity and Race
	Total number of youth participating in the quarter.
	Youth in Female headed households
	Low Income households/persons
	Income not available households/persons
	Zero income households/persons

(List both households and number of people)

_____ Number of females
_____ Number of males
_____ Number of persons with disabilities

The Mentor Athletics Program Coordinator analyzes information collected from the measurement tools and writes a report that assesses whether the program is achieving its desired outcomes.

II. Participation Efforts: (Narrative)

_____ _____
Signature Date

_____
Organization

ATTACHMENT D

CDBG Project Matching Funds Report

For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for your CDBG project:

2014-15 CDBG Funds	$

SOURCES OF LOCAL MATCH: Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____

State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)	
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____

Private (including recipient) Funding	
Fund Raising/Cash	$ _____
Loans	$ _____

Building Value or Lease	$ _____
Donated Goods	$ _____
New Staff Salaries	$ _____
Volunteers ($5/hr)	$ _____
Volunteer Medical/Legal	$ _____
Other _____	$ _____

Prepared By:

_____ _____

Signature Date

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

October 19, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Agency Services Contract with Lifeworks NW for
Early Assessment and Support Alliance (EASA) Services

Purpose/Outcomes	To provide Early Assessment and Support Alliance (EASA) services to young people of Clackamas County experiencing symptoms of psychosis for the first time.
Dollar Amount and Fiscal Impact	Contract maximum value is $698,550.12.
Funding Source	State of Oregon through the Oregon Health Plan (OHP) and Oregon Health Authority Community Mental Health Program (CMHP) Intergovernmental Agreement. No County General Funds are involved.
Duration	Effective upon signature and terminates June 30, 2019.
Previous Board Action	The Board reviewed and approved the previous contract on June 26, 2017, agenda item 062917-A7.
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Behavioral Health Division Director (503) 742-5305
Contract No.	8212

BACKGROUND:
The Behavioral Health Division of the Health, Housing, and Human Services Department requests the approval of an Agency Service Contract with LifeWorks NW for Early Assessment and Support Alliance (EASA) programs. EASA programs provide information and support to young people who are experiencing symptoms of psychosis for the first time. LifeWorks will provide an early psychosis program for 15 to 24 year olds.

This Agency Services Contract has a maximum contract value of $698,550.12. It is effective upon signature and terminates June 30, 2019.

This contract has been reviewed and approved by County Counsel on August 17, 2017.

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

AGENCY SERVICES CONTRACT
Contract # 8212

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

CONTRACT

1.0 Engagement

COUNTY hereby engages AGENCY to provide **Early Assessment and Support Alliance (EASA)** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This contract sets forth the terms under which AGENCY will contract with COUNTY to provide early assessment and support services to clients.

2.0 Term

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

3.0 Compensation and Fiscal Records

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

Maximum Contract payment shall not exceed **$698,550.12**.

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

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

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

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this Contract available to COUNTY upon request.

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

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

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

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this Contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

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

i. Termination of this Contract, in whole or in part;

ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and

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

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

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

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

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all

taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

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

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

ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;

iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and

iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

5.0 General Conditions

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

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

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

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

5.2.1 Commercial General Liability.

☒ Required by COUNTY ☐ Not required by COUNTY

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

5.2.2 Automobile Liability.

☒ Required by COUNTY ☐ Not required by COUNTY

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

5.2.3 Professional Liability.

☒ Required by COUNTY ☐ Not required by COUNTY

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

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

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

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

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

Certificate holder should be:

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

Certificates of Insurance should be submitted electronically to:

BHContracts@co.clackamas.or.us

Or by mail to:

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

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

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

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

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

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this Contract consents to the in personal jurisdiction of said courts.

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

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

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

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

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

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

5.9.1 AGENCY shall:

i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the performance of the work provided for in this Contract.

ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this Contract.

iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.

iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to AGENCY by reason of this Contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

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

ii. for all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and

iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

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

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

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

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

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

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

6.0 Termination

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

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

6.2.1 Terms of the 2017-2019 Intergovernmental Agreement for the Financing of Community Mental Health, Substance Use Disorders, and Problem Gambling Services Agreement (CMHP) #153117 are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.

6.2.2 The termination, suspension or expiration of the 2017-2019 Intergovernmental Agreement for the Financing of Community Mental Health, Substance Use Disorders, and Problem Gambling Services Agreement (CMHP) #153117.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

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

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

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

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

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

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

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

7.0 Notices

IF TO AGENCY:
LIFEWORKS NW
14600 NW Cornell Road
Portland, OR 97229

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

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

- Exhibit A: Definitions
- Exhibit B: Scope of Work
- Exhibit C: Compensation
- Exhibit D: CMHP Required Provider Contract Provisions
- Exhibit E: CMHP Required Federal Terms and Conditions
- Exhibit F: CMHP Service Elements 26 and 26A

(signature page follows)

SIGNATURE PAGE TO AGENCY SERVICES CONTRACT

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

LIFEWORKS NW

By: _____
(Mary Monnat, CEO/President)

10/4/17
Date

14600 NW Cornell Rd
Street Address

Portland, OR 97229
City / State / Zip

(503) 645-3581 (503) 690-9605
Phone / Fax

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

Signing on Behalf of the Board:

_____
Richard Swift, Director
Health, Housing & Human Service Department

_____
Date

Approved to Form:

_____
County Counsel

8/17/17
Date

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

October 19, 2017

Board of Commissioners
Clackamas County

Approval of Amendment 2 of the Intergovernmental Revenue Agreement with Oregon Department of Education – Early Learning Division for Healthy Families Program

Purpose/Outcomes	Healthy Families programming includes home visiting services to high risk families initiated prenatally and at the time of birth to promote healthy child development and reduce the risk of child abuse/neglect.
Dollar Amount and Fiscal Impact	Amendment adds $1,724,729 for a total of $3,246,011 No impact to County
Funding Source	Oregon Department of Education Early Learning Division
Duration	October 1, 2017 through September 30, 2019
Previous Board Action	032416-A1
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF-7602

BACKGROUND:
The Children, Youth and Families Division of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Revenue Agreement with the Oregon Department of Education Early Learning Division for the Healthy Families Program. Services to be provided under this Agreement include home visitation with new parents to:

- Help them recognize and respond appropriately to their baby's needs at every developmental stage,
- Facilitate immunizations and well-baby visits,
- Screen for maternal depression and child developmental delays,
- Teach positive discipline techniques,
- Connect the families to community resources.

This Revenue Amendment adds $1,724,729 for a maximum value of $3,246,011. No county general funds are involved. It has been reviewed and approved by County Counsel and becomes effective upon signature by all parties for services starting October 1, 2017 and terminating September 30, 2019.

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

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

Contract Number 6175

Amendment #2 to
State of Oregon
Intergovernmental Agreement

This is Amendment Number 2 to Agreement Number 6175 between the State of Oregon, Department of Administrative Services, acting on behalf of the Department of Education (ODE), Early Learning Division (ELD) and the Early Learning Council (ELC) and

Clackamas County
2051 Kaen Road
Oregon City, OR 97045
Telephone: 503-650-5678
Facsimile: 503-650-5674
E-mail address: rodcoo@co.clackamas.or.us

hereinafter referred to as "County."

This Amendment is effective on the date it has been signed by every party and approved in accordance with applicable law.

New language is indicated by **BOLD UNDERLINE FONT**, deleted language is indicated by ~~strikethrough font~~.

I. The Agreement is hereby amended as follows:

Agreement, Section 1

1. Effective Date and Duration.

Upon signature by all applicable parties, this Agreement shall become effective on the later of: (i) January 1, 2016 or, (ii) when required, the date this Agreement is approved by the Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on ~~September 30, 2017~~ **September 30, 2019**. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

Agreement, Section 3

3. Consideration.

a. The maximum, not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is ~~$1,521,282.00~~ **$3,246,011.00**. ODE will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

EXHIBIT A, Part 1, Statement of Work

2. Definitions:

a. **Eligible Families:** Families prenatally through the child's third birthday and may include a transition period following the child's birthday.

~~b.~~ ~~**Family Service Units (FSU):** Family Services Units are the number of families a home visitor has on their case load per day based on a point structure outlined by Healthy Families America. For the purpose of calculating the daily number of expected FSU's for this Agreement, the number of home visitors employed by the County on any given day is multiplied by 16.~~

b ~~c~~. **Healthy Families Services:** Healthy Families Services are voluntary and non-stigmatizing services that promote the development of healthy, thriving children and strong, nurturing families. Services range from universal basic short-term services to long-term intensive home visiting for high risk families. Healthy Families Services are typically initiated prenatally and at the time of birth, and target high risk families. Healthy Families Services are offered until the child's third birthday and as needed during a transition period following the birthday to assure connection to other school readiness services for the family. Services follow evidence-based practices designed to achieve appropriate early childhood benchmarks, following the Healthy Families America model.

c ~~d~~. *Definition Effective July 1, 2017* **Indirect Costs – Federal definitions:** "Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective…"
An indirect cost rate is used to fairly and conveniently determine what proportion of indirect cost programs should bear. An indirect cost rate is the ratio between the total indirect expenses and some direct cost basis.

d ~~e~~. **Provider or Service Provider:** Any entity or individual working in early learning and development programs including but not limited to center-based and family child care providers, infant and toddler specialists, early intervention specialists and early childhood special educators, home visitors, Respite Care providers, related service providers, administrators, Head Start teachers, Early Head Start teachers, preschool and other teachers, teacher assistants, family service staff, and health coordinators.

e ~~f~~. **Service Delivery Area:** Clackamas County, the geographic area in which County will be coordinating or providing Healthy Family Services required by this Agreement.

f. **Best Practice Standards (BPS): The standards set forth by Healthy Families America (HFA), which all Healthy Families Oregon programs follow to maintain accreditation with the HFA model.**

g. **Caseload Points: Caseload Points are determined by the caseload structure outlined in the HFO Program Policy and Procedure Manual (PPPM), Standard 8. 1.0 full-time equivalent (FTE) Home Visitors, employed for 12 months or longer, must maintain a minimum caseload of 18 points. Minimum Caseload Points are "pro-rated" for home visitors who are employed less than 1.0 FTE. Programs will strive to keep a maximum caseload of 24 points per 1.0 FTE Home Visitor (pro-rated for lower FTE), with an absolute maximum of 30 points per 1.0 FTE Home Visitor. (The HFO level system is outlined in the PPPM Standard 4.)**

h. **Program Policy and Procedure Manual (PPPM): The manual of policies and practices that outline how Healthy Families Oregon implements the Healthy Families America Best Practice Standards (BPS).**

i. **Asset-based mindset: A mindset focusing not on deficits but on potential that draws upon the strengths of children, families, and communities to develop and enhance HDESD's services**

j. **Strength-based approach: Policies, practice methods, and strategies that identify and draw upon the strengths of children, families, and communities to develop and enhance County's services.**

k. **Educational Equity: The educational policies, practices, and programs necessary to:**

i. **Eliminate educational barriers for students and populations whom the education systems have placed at risk because of their race, ethnicity, income status, English proficiency, national origin, citizenship status, gender, sexual orientation, disability status, and geographic location; and**

ii. **Provide equitable educational opportunities and ensure that students Furthest from Opportunity meet the same rigorous standards for academic performance expected of all children and youth.**

l. **Service Equity: A comprehensive approach including organizational policy, practices and procedures necessary to:**

i. **Eliminate service delivery disparities for parents, providers, and others whom the systems have placed at risk because of their race, ethnicity, income status, English proficiency, national origin, citizenship status, gender, sexual orientation, disability status, and geographic location; and**

ii. **Provide equitable access and opportunities to ensure that you are creating a system that sustainably serves communities Furthest from Opportunity.**

m. **Systemic Equity Strategies: A plan of actions, a set of policies, and procedures chosen to create sustainable efforts that promote the service outcomes that result in greater access and opportunities to all services that are being provided by the County to populations identified as furthest from opportunity.**

n. **Furthest from Opportunity: Historically underserved or underrepresented populations defined as:**

- **African American**
- **Asian/Pacific Islander**
- **Children with disabilities**
- **Individuals experiencing economic disparities**
- **English language learners**
- **Geographically isolated**
- **Immigrants and refugees**
- **Latino**
- **Tribal Communities**

3. Service Requirements:

During the term of this Agreement and as further described below, County shall maintain a minimum of ~~85%~~ **95%** of the daily number of expected ~~Family Service Units (FSU) (as described in the definition of Family Service Units above)~~ **Caseload Points (CLPs)**. If County falls below ~~85%~~ **95%** of the expected ~~FSUs~~ **CLPs** in any quarter, ODE shall ~~meet~~ **confer** with the County to determine the reasons for the failure to maintain at least ~~85%~~ **95%** of the expected number of ~~FSUs~~ **CLPs**. The failure to maintain at least ~~85%~~ **95%** of the expected number of ~~FSUs~~ **CLPs** during a single quarter shall not constitute a default under this Agreement if County is able to explain the failure to ODE's reasonable

satisfaction and County takes action to remedy the failure in the following quarter. If the County fails to maintain at least ~~85%~~ **95%** of the expected number of ~~FSUs~~ **CLPs** for two consecutive quarters, County shall be in default under this Agreement and ODE may exercise any of its remedies under this Agreement, including but not limited to assisting County in curing the default through technical assistance, **which may include** putting the County on a work plan~~, or proposing an amendment to this Agreement to decrease the FSUs and associated funding~~.

Subject to the forgoing ~~FSU~~ **CLP** requirement, County shall deliver Healthy Families Services either directly or through subcontracted Providers to all Eligible Families in the Service Delivery Area seeking such services.

a. County shall design and deliver Healthy Families Services directly or through sub-contracted Providers. Healthy Families Services must be provided in accordance with the Healthy Families America model**, the Healthy Families Oregon Program Policy and Procedure Manual** and minimum standards set forth in ORS 417.795 and ORS 414-525-0005 through 414-525-0015.

b. County, to the extent it is providing Healthy Families Services under this Agreement directly, and subcontracted Providers of Healthy Families Services under this Agreement must:

   (1) Collaborate with other home visiting Providers in the Service Delivery Area to identify and build upon existing services for families and to prioritize additional services if needed (i.e.: mental health, drug and alcohol, and early intervention). As necessary, and to the extent resources are available, ODE will provide technical assistance to promote improved collaboration;

   (2) Participate in local HUB and other community efforts to implement supports and services towards the achievement of desired outcomes, working to maximize the effective use of available resources and to avoid duplication of services;

   (3) Participate in the independent statewide program evaluation;

   (4) Participate in statewide training for Healthy Families Services program managers, supervisors, home visitors and screening staff;

   (5) Participate in annual meetings and trainings for Healthy Families Services program managers;

   (6) Meet statewide performance and outcome indicators outlined in the Healthy Families Program Policy and Procedure Manual;

(7) Participate in the Healthy Families America ("HFA") site self-assessment, as part of ongoing quality assurance and HFA accreditation as required at a minimum of every 5 years;

(8) Develop site specific procedure manual, based off of the HFO PPPM, to further specify local service delivery procedures. A subcontracted Provider's local procedure manuals must be submitted to ODE at intervals specified by ODE;

(9) Obtain prior written consent from the family utilizing the Consent to Participate form before any Healthy Families Services are offered to an Eligible Family;

(10) Obtain the parent's prior written consent for release of information about the parent's child or parent;

(11) Implement the HFO program in accordance with the PPPM and Healthy Families America BPSs.

c. Healthy Families Services are voluntary and may not be included in a mandated plan for families from any Entity or Program. Mandated plans include plans developed by the Department of Human Services (DHS) Self Sufficiency and Child Welfare services.

d. New subcontracted Providers of Healthy Families Services (Providers that have not previously provided such services) must make progress toward full compliance with ORS 417.795 as operationalized by the Healthy Families: Statewide Program Policy and Procedure Manual. All subcontracted Providers of Healthy Families services must be in full compliance within one year of initial services delivery.

Note: Copies of the Healthy Families America Best Practice Standards Manual and Healthy Families Program Policy and Procedure Manual are available at:
~~http://oregonearlylearning.com/healthy-family-providers-page/~~
https://oregonearlylearning.com/health-families-oregon, or by request from the HFO Statewide Coordinator, employee of the ELD.

e. County and each subcontracted Provider shall complete an equity self-assessment by June 30, 2016 in the tool developed ELD

f. County and each subcontracted Provider shall complete a demographic analysis by June 30, 2017 in the tool developed by ELD, that compares the population demographics of the Coverage Area with the actual population served.

g. County and each subcontracted Provider shall require all staff providing direct services to complete an open source training by June 30, 2016 on structural racism. ELD will provide specific training documents.

4. Medicaid Administrative Claiming Requirements:

Under Title XIX of the Social Security Act ("the Act"), the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation ("FFP") is the federal government's share for states' Medicaid program expenditures. The State is required to share in the cost of medical assistance expenditures, and the Act permits both state and local governments to participate in the financing of the non-Federal portion of medical assistance expenditures ("State Share"). States may claim FFP for providing administrative activities that are found to be necessary by the Secretary of the U.S. Department of Health and Human Services ("DHHS"), Centers for Medicare and Medicaid Services ("CMS") for proper and efficient administration of the Title XIX Medicaid Oregon State Plan (the "State Medicaid Plan").

The Oregon Medicaid program is administered by the Oregon Health Authority ("OHA"), pursuant to ORS 409.010(3). OHA has an interagency agreement with ODE that authorizes ODE to provide for the delivery of Medicaid administrative activities for the proper and efficient administration of Oregon's Medicaid State Plan in connection with the delivery of Healthy Families Services under ORS 417.795 and to claim FFP for such activities. ODE provides for the delivery of those Medicaid administrative activities in the Service Delivery Area through this Agreement.

ODE and County desire to improve health services access and availability for children and families eligible for medical assistance under Medicaid who reside in the Service Delivery Area and, accordingly, in connection with the delivery of Healthy Families Services, County shall during the term of this Agreement, either directly or through subcontracted Providers, perform Medicaid administrative activities in the Service Delivery Area as follows:

a. **Training Requirements:** All County and subcontracted Provider staff that will perform Medicaid administrative activities under this Agreement must attend training provided in accordance with Oregon Health Authority (OHA) requirements for Medicaid Administrative Claiming by or coordinated through ODE prior to performing such activities and annually thereafter.

b. **Service Requirements <u>Specific to Medicaid Administrative Claiming</u>:**

(1) County, to the extent it is providing Healthy Families Services under this Agreement directly, and subcontracted Providers of Healthy Families Services under this Agreement must:

A. In connection with its delivery of Healthy Families Services under this Agreement, perform Medicaid administrative activities that support administration of the

State Medicaid Plan including:

i. Outreach activities to inform families about health services and benefits;

ii. Referral, coordination, monitoring and training of Medicaid OHP covered services;

iii. Medicaid OHP Transportation and Translation services;

a) Program planning, policy development/ Interagency Coordination related to Medicaid/OHP services.

B. Participate in required time studies during the four dates randomly selected as required by OHA each quarter. ODE will notify County of the week (not the specific date) of their assigned random date prior to the first day of the applicable survey period. This will allow time for staff participating in MAC utilizing the Multnomah Education Service District (MESD) electronic MAC data capture system to be trained. In addition annual training is required for employees performing Medicaid administrative activities.

C. Utilize the Activity Codes in Attachment 1 for identifying MAC activities performed and using the time study methodology to document the time spent on all activities performed during the randomly selected dates for each quarter period.

D. Comply with all requirements of 42 CFR 434.6 as applicable.

E. Counsel Medicaid eligible families that they are free to accept or reject Medicaid services and to receive such service from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by OHA.

(2) County shall notify subcontracted Providers of the time study dates for each quarter.

5. Agreement Administration:

County Responsibility for Sub-Contractor Performance

Irrespective of any agreement between County and any Sub-Contractor engaged under this agreement, County remains solely responsible for its performance under this agreement. This includes, but is not limited to, ensuring Sub-Contractor performance in the following areas:

a. If a subcontracted Provider fails to maintain at least ~~85%~~ **95%** of its expected ~~FSUs~~ **CLPs** (based on the number of **FTE (employed more than 12 months)** home visitors the Provider ~~employees~~ **employs**), County shall address the performance deficiencies with the subcontracted Provider including implementation of corrective action plans to improve performance and take corrective action as needed. If ODE provides technical assistance to a subcontracted Provider to address performance deficiencies, County shall be present at all subcontracted Provider site visits and corrective action plans will be issued directly to the County.

b. County shall monitor subcontracted Providers to ensure fiscal and programmatic integrity.

c. County shall require subcontracted Providers to provide a 60 day advance notice if for any reason the Provider of Healthy Families Services intends to stop providing the subcontracted services prior to the end of the Agreement. County shall then immediately notify ODE so that it can provide program specific training and technical assistance. County and ODE may mutually agree to a notice period of less than 60 days if necessitated by specific local circumstances.

6. Reporting:

~~a.~~ County shall submit reports to ODE in accordance with the **Quality Assurance (**QA**)** Calendar. **The** QA Calendar can be found at ~~http://oregonearlylearning.com/healthy-family-providers-page/~~ **https://oregonearlylearning.com/health-families-oregon, or by request to the HFO Statewide Coordinator, employee of ELD**. All required reports due in any given **month or** quarter must be received by the Agreement Administrator prior to any payments being released for that **month or** quarter.

~~b.~~ County shall ensure all ~~home visit completion~~ data**, as requested and communicated by ODE,** is entered into **the monthly outcomes report (provided by ODE). When ODE informs County that the** HFO statewide data system **is able to collect this data, County shall submit outcome data into the data system,** each **month or** quarter prior to any payments being released for that **month or** quarter.

~~c.~~ County must report to ODE ~~yearly~~ on the use of Medicaid Administrative Claiming (Title XIX) funds disbursed to County. **This will be done through the Medicaid Reinvestment form, provided by ODE and through the biennial budget reporting.**

~~d.~~ Equity Report: Utilizing the information provided by the equity self-assessment tool and demographic analysis, identify gaps in services by June 30, 2017 and provide a written report to ODE.

e. County shall submit a monthly program outcome report. This report will be provided by ELD and will include at a minimum; Caseload Points, number of families served, number of new families enrolled, number of families screened, and staff Home Visit Completion percentages. This report will be due to the Agreement administrator by the 15th day of the following month. The monthly outcome report must be submitted before any request for funds is approved.

f. County will submit an expenditure report either monthly or quarterly by the 30th day of the following month. An expenditure report must be submitted before funding can be released. County will communicate with Agreement administrator within 14 days of Agreement start date, if they will be submitting expenditure reports (and drawing funds) either monthly or quarterly.

8. Fiscal Requirements:

~~e.~~ ~~Local Match: County must demonstrate a 25% percent local match of the funds paid to County under this Agreement (other than Medicaid Earnings). At least 5% of the 25% percent must be cash or cash equivalent and expended on the delivery of Healthy Families Services in the Service Delivery Area, with the remaining percent in any combination of cash, cash equivalent, in-kind or volunteer hours expended on or utilized in the delivery of Healthy Families Services in the Service Delivery Area. Local match must be included as part of County's base operating budget.~~

~~d.~~ **c. Budget:**

(1) County shall submit a final initial budget for the period beginning January 1, 2016 through June 30, 2017 and July 1, 2017 through September 30, 2017 (which must include all funds anticipated to be received under this Agreement including the local match) (Medicaid Earnings should be reflected in a separate line item), by January 28, 2016, to ODE for review and final approval. The budget~~s~~ must include the expenses of all subcontracted Providers.

(2) County shall submit the approved budget template, provided by ELD, by ~~August 31, 2017~~ **October 25, 2017** for the period beginning October 1, 2017 through June 30, 2019 and July 1, 2019 through September 30, 2019**.** ~~and every August 31 thereafter~~ **A budget update is due to ELD by August 31, 2018. In each subsequent biennium, a final budget is due by August 31st of the new biennium and a budget update is due by August 31st of**

each 2nd year in the biennium (which must include all funds anticipated to be received under ~~this~~ **each** Agreement **amendment**, including the local match~~) (~~, and Medicaid Earnings should be reflected in a separate line item) for the delivery of Healthy Families Services in the Service Delivery Area to ODE utilizing the approved budget template provided by ODE. The budget must include the expenses of all subcontracted Providers.

(3) The designated program manager must be included in the development and monitoring of County's Healthy Families Services budget **as well as any subcontracted budgets, even if the Program Manager is employed by a subcontracted agency**.

(4) ~~The annual budget must limit all administrative overhead cost (including administrative overhead of subcontracted Providers) to 10% of personnel costs.~~ **The total program's administrative and indirect costs (this includes any administrative and indirect costs for the County and any subcontracts) for the General Fund portion of this Agreement are limited to 10 percent of the current biennium's award. If there is a mix of federal, general and other funds in the NTE, federal guidelines should be used for Federal Funds and ODE guidelines for General and Other Funds. This may result in different limits on administrative costs.**

~~c.~~ **d.** Oregon Cooperative Purchasing Program (ORCPP): County is encouraged to participate in the ORCPP program, which enables County to utilize available Price Agreements for purchase of good or services to support HFO

10. Equity Policy Statement/Deliverables

ODE supports all of Oregon's young children and families to learn and thrive. All of our work as a Division is in service to children, families and communities.

We know that underserved communities represent Oregon's best opportunity to improve educational outcomes. Strength-based approaches and asset-based mindsets will support our efforts to institutionalize equity. We recognize that in order for each and every child and family to learn and thrive, we have to provide differentiated, person-centered resources and support.

ODE supports culturally-responsive services that are respectful of, and relevant to, the beliefs, practices, culture and linguistic needs of diverse consumer and client populations and communities. Cultural responsiveness

refers to the capacity to respond to the issues of diverse communities. It thus requires knowledge and capacity at different levels of intervention: systemic, organizational, professional and individual.

Educational equity knowledge and practices in educational environments have evolved over time and require a comprehensive approach.

Equity strategies are planned, systemic and focus on the core of the teaching and learning process (curriculum, instruction and educational environment/culture).

Educational equity activities promote the real possibility of equity of educational results for each student and between diverse groups of students.

EQUITY OBJECTIVES
County must ensure the following:

- **County's entire organization works to build a climate that promotes acceptance, inclusion and respect of all individuals;**

- **County's staff understand the communities they serve, in a non-static manner, including the communities' culture, values, norms, history, customs, and particularly types of discrimination, marginalization and exclusion they face in this country. County must apply that knowledge to services they provide under this Agreement in a responsive, non-limiting and non-stereotyping manner;**

- **Whenever possible, County must interact with service users according to their preferred cultural norms including social greetings, family conventions, dietary preferences, welcoming culture, healing beliefs and spiritual needs;**

- **County's staff engage in continuous learning about their own biases, assumptions and stereotypes that limit their ability to be culturally responsive, and to understand how these biases affect their work with service users; and**

- **County uses data concerning needs, demographics and risks of the community in the determination of which populations to target and prioritize for services.**

County shall:

1. **Submit a report of demographic analysis from the previous Agreement year showing how the County is using the prior year's approved work plan to ensure equity of the services it provides under this Agreement are addressed across all equity domains.**

2. **Ensure all staff providing direct services to populations Furthest from Opportunity complete a training on Service Equity and its explicit intersection with racial equity. Provide to the ODE evidence that the training was completed in the form of training certificates or other documentation.**

3. **Complete a demographic analysis tool developed and provided by the ODE that compares the population demographics of the Service Delivery Area with the actual population served by County over the Agreement period. County shall provide to the ODE a written demographic analysis.**

4. **Using the information provided by the equity assessment tool and demographic analysis, County shall provide a report to the ODE that identifies gaps in services currently available within the County's service delivery area.**

5. **County shall provide an annual written work plan for ODE's review and approval. The work plan shall describe the actions that County proposes to take in order to deliver the services described in this Agreement. Once approved by ODE, County's work plan shall provide benchmarks to guide County's work under this Agreement. Notwithstanding the provisions of the work plan, County remains responsible for the delivery of all services and activities described in this Agreement.**

Deliverable	Due Date
1. Work Plan Integrating Prior Year's Information	April 1, 2018
2. Training on Service Equity	September 1, 2018
3. Annual Demographic Analysis	July 1, 2018 and September 1, 2019
4. Report on Identified Service Gaps	October 1, 2018 and September 30, 2019
5. Work plan	October 1, 2018 and September 30, 2019

EXHIBIT A, Part 2, Payment and Financial Reporting

1. Payment Provisions

a. As consideration of services provided by County during the period specified in Section 1. Effective Date and Duration, ODE will pay, in accordance with the payment provisions of this Agreement, an amount not to exceed the amount specified in Section 3.a Consideration of this Agreement, to be paid as follows:

January 1, 2016 through June 30, 2017:

HFO Services:	Up to $1,011,759.00
Family Support Services (Title IV-B2):	Up to $106,197.00
Medicaid Earnings:	Up to $186,000.00

July 1, 2017 through ~~September 30, 2017~~ June 30, 2019:

HFO Services:	Up to ~~$168,627.00~~ **$1,279,867.00**
Family Support Services (Title IV-B2):	Up to ~~$17,699.00~~ **$169,959.00**
Medicaid Earnings:	Up to ~~$31,000.00~~ **$276,000.00**

July 1, 2019 through September 30, 2019:

HFO Services:	**Up to $159,984.00**
Family Support Services (Title IV-B2):	**Up to $21,245.00**
Medicaid Earnings (Title XIX):	**Up to $35,000.00**

Other than Medicaid Earnings (which will be paid as described in Exhibit A, Part 1), interim payments will be made after the end of each calendar **month or** quarter on an expense reimbursement basis for expenses actually incurred during the prior **month or** quarter, within the Budget line items, for the delivery of Healthy Families Oregon services under this Agreement; provided, however, that interim payments of Family Support (Title IV-B2) funds will only be made to reimburse expenses actually incurred during that quarter that, in addition to the foregoing requirements, also satisfy the Family Support Services Funding Requirements set forth in Exhibit E.

County may, upon written notice to ODE, move up to 10% of the funds in any one Budget ~~line item~~ **category (Salary/Benefits, Materials & Supplies, Indirect/Administration)** (other than the Medicaid Earnings line item) to any other Budget line item (other than the Medicaid Earnings

line item). Any other Budget modifications are subject to and conditioned on ODE's written approval.

b. All payments under this Agreement (other than payment of Medicaid Earnings) are subject to ODE's receipt and approval of an invoice. County shall send all invoices to ODE at the address specified on page 1, or to any other address as ODE may indicate in writing to County. The invoice shall describe the work performed and expenses incurred during the period covered by the invoice. County's claims to ODE for overdue payments on invoices are subject to ORS 293.462

c. Payments under this Agreement are further conditioned on (1) no default by County under this Agreement, (2) entry of all ~~home visit~~ **service outcome** data for the prior **month/**quarter, and (3) ODE's receipt and approval of County's report as specified in EXHIBIT A, Part 1, Statement of Work, Section 6. Reporting.

d. ELD will use expense request reports from July 2017 – June 30, 2018 to determine if the Agency is on track to spend all general fund, and Title IV-B2 funds if allocated, before June 30, 2019. If by June 30, 2018 the Agency has not expended a minimum of 45% of general funds (and Title IV-B2 funds if allocated), ELD will further review to determine if an amendment for reduced funding is necessary. This allows ELD time to reallocate any unspent funds so that the most possible families benefit from HFO services.

2. Travel Expenses.
ODE shall not reimburse County for any travel expenses under this Agreement **that are not detailed in County's budget**.

EXHIBIT A, Part 3, Special Provisions

3. Background Checks. ~~Reserved~~ The agency conducts appropriate, legally permissible and mandated inquiries of state or provincial criminal history records on all prospective employees and volunteers who will have direct contact with children and/or access to data involving children, i.e., assessment staff, home visitors, supervisors and program managers.

5. Mandatory Reporting. ~~Reserved~~ All HFO staff are mandatory reporters, and must report any suspected abuse or neglect of a minor, following their local policy and Oregon DHS direction: http://www.oregon.gov/DHS/ABUSE/Pages/mandatory_report.aspx

II. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County

certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

III. Certification. The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

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

(2) The information shown in this Section 5., County Data and Certification , is County's true, accurate and correct information;

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

(4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: *http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf*;

(5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at *https://www.sam.gov/portal/public/SAM/* ; and

(6) County is not subject to backup withholding because:

(a) County is exempt from backup withholding;

(b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or

(c) The IRS has notified County that County is no longer subject to backup withholding.

IV. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to

ODE is true and accurate. If this information changes, County is also required to provide ODE with the new FEIN within 10 days.

V. Signatures

COUNTY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS.

Clackamas County:
By:

Authorized Signature	Title	Date

State of Oregon, acting by and through its Department of Administrative Services, Procurement Services:

By: Kelly Mix

Authorized Signature	Title: Procurement Manager	Date

State of Oregon, acting by and through its Department of Education:

By:

Authorized Signature	Title:	Date

Approved for Legal Sufficiency: By Janet Borth, via email, on 9/19/2017

Other required Signatures: Approved by Erin Deahn 09/18/2017.

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

October 19, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a renewal Revenue Health Care Services Agreement with Northwest Permanente, to provide chemical dependency treatment services to referred members

Purpose/Outcomes	Provide chemical dependency treatment services to referred members.
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.
Duration	Effective upon signature through September 30, 2019
Previous Board Action	The Board last reviewed this contract on September 12, 2013. Agenda item 091213-A3
Strategic Plan Alignment	1. To provide specialty behavioral health services to clients with substance use disorders. 2. Ensure safe, healthy and secure communities
Contact Person	Tracy Garell , Behavioral Health Clinic Manager – (503) 722-4803
Contract No.	8465

BACKGROUND:
The Clackamas County Health Centers Division – Behavioral Health Clinics (CCHCDBHC) of the Health, Housing & Human Services Department requests the approval of a renewal Revenue Agreement with NW Permanente P.C. (Kaiser). CCHCBHC has been providing chemical dependency treatment services to consumers who have been referred and are members of this insurance company. CCHCDBHC has been providing these services to those consumers since 1998.

This contract is effective upon signature through September 30, 2019. This Agreement has been reviewed by County Counsel on August 23, 2017.

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

HEALTH CARE SERVICES AGREEMENT

BETWEEN

NORTHWEST PERMANENTE, P.C.

AND

CLACKAMAS COUNTY COMMUNITY HEALTH DIVISION

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ARTICLE 8 RELATIONSHIP OF PARTIES
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9.12 No Exclusivity
9.13 No Guarantee
9.14 Remedies Cumulative
9.15 Entire Agreement

HEALTH CARE SERVICES AGREEMENT

This Health Care Services Agreement (**"Agreement"**) is entered into between Northwest Permanente, P.C. (**"Network"**) and Clackamas County Community Health Division (**"Provider"**). This Agreement is effective for Services rendered on and after October 1, 2017 (**"Effective Date"**).

WHEREAS, Kaiser Foundation Hospitals has been retained by Kaiser Foundation Health Plan of the Northwest (**"KFHP-NW"**) to provide or arrange for institutional health care services to Members (as defined below); and

WHEREAS, Northwest Permanente, P.C. has been retained by KFHP-NW to provide or arrange for professional services to Members, and together, Kaiser Foundation Hospitals, Northwest Permanente, P.C. and KFHP-NW cooperate to form the Kaiser Permanente Medical Care Program in the Northwest Region (**"KP"**); and

WHEREAS, KFHP-NW shall be the corporation responsible for the obligations of a licensed health care services contractor with respect to Members with individual or group coverage issued by KFHP-NW and regulated by the applicable state insurance commissioner; and

WHEREAS, Network desires to enter into an arrangement for Provider to render Services to Members;

NOW THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS

When used in this Agreement, these capitalized terms shall have the following meanings.

1.1 **"Clean Claim"** means a claim that (1) is completed with all data elements required by Payer, (2) if submitted electronically, is submitted using standard code sets as required by law, and (3) has no defect or error that prevents timely adjudication.

1.2 **"Covered Services"** means the health care services that a Member is entitled to receive under the terms and conditions of a Plan.

1.3 **"Kaiser Payer"** means Kaiser Foundation Hospitals, Northwest Permanente, P.C., KFHP-NW and any company controlling, controlled by, or under common control with KFHP-NW when a Member of such a company under any circumstance (such as, but not limited to, vacations, temporary work assignments, and direct referrals for specialty care), seeks care from Provider under a Plan regulated by a state insurance or managed care commissioner. With respect to applicable state laws regarding health care service contractors, KFHP-NW is responsible for the conduct of such companies and their compliance with the terms of this Agreement.

1.4 **"Member"** means an individual entitled to receive Covered Services.

1.5 **"Member Cost Share"** means a copayment, deductible, or coinsurance amount payable by a Member for Covered Services pursuant to the Member's Plan.

1.6 **"Other Payer"** means any public or private entity – including, without limitation, employers, insurers, third party administrators, labor unions, trusts, associations, and other organizations, persons, and entities – that is responsible for funding a Plan and that enters into an administrative or management service arrangement with a Kaiser Payer to administer its Plan.

1.7 **"Payer"** means a Kaiser Payer or Other Payer.

1.8 **"Plan"** means a plan of health benefits administered, issued, sponsored or underwritten by either a Kaiser Payer or an Other Payer, as set forth in the Member's summary plan description, coverage agreement, evidence of coverage, certificate of coverage, or other written coverage document.

1.9 **"Policies"** means the policies and procedures of Kaiser Payer and Other Payers that relate to this Agreement including, but not limited to: (1) quality improvement/management; (2) utilization management and referral and authorization processes; (3) pre-admission testing guidelines; (4) claims submission, review and payment; (5) member grievances; (6) provider credentialing; and (7) electronic transmission of data. Policies include those policies and procedures set forth in manuals, bulletins, and newsletters, whether made available by postal mail, electronic mail, web site, or other media.

1.10 **"Proprietary Information"** means all information, whether prepared by Provider, Network, Plan, Payer, or their representatives, relating to itself or the development, execution or performance of this Agreement whether furnished or obtained prior to or after the Effective Date. Proprietary Information includes, but is not limited to, pricing, financial information, rate schedules, and Member information collected by Plans and Payers not otherwise set forth in medical records; provided, however, the following shall not constitute Proprietary Information: (1) information known prior to receipt from the other party; (2) information previously available to the public prior to receipt; or (3) Proprietary Information that subsequently becomes available to the public through no fault or omission on the part of the party receiving the Proprietary Information.

1.11 **"Services"** means those services, supplies and other resources described in Exhibit "Compensation and Services" that Provider customarily provides to its general patient population.

ARTICLE 2
PROVIDER'S RESPONSIBILITIES

2.1 **Provision of Services**. Provider shall make available to and provide Members with Services, along with any related facilities, equipment, personnel or other resources necessary to provide Services, according to generally accepted standards of practice. Services shall be readily available and accessible to Members and provided in a prompt and efficient manner without unreasonable delays.

2.2 **Non-Discrimination**. Provider shall provide Services to Members without discrimination on the basis of race, ethnicity, color, gender, sex, creed, religion, national origin, age, health status, physical or mental disability, genetic information, veteran's status, marital status, sexual orientation, gender identity, income, source of payment, participation in a government program, evidence of insurability, medical condition, claims experience, receipt of

health care, conditions arising out of acts of domestic violence, status as a Member, or any other status protected by applicable law; and Provider shall ensure that Provider's facilities and equipment are accessible to persons with disabilities. Provider shall make Services available to all classes of Members, in the same manner, in accordance with the same standards, and with the same availability, as with respect to Provider's other patients.

2.3 **Licensure and Credentials**. Provider represents and warrants that it (together with its employees, agents, and contractors providing Services) shall throughout the term of this Agreement: possess and maintain, without restriction, all applicable federal, state and local licenses, permits, certificates, approvals and authorizations required to render Services to Members (including, if applicable, medical staff membership and clinical privileges at facilities designated by Network); comply with KP credentialing requirements, as described in Policies; remain accredited or certified by the organizations designated by Network; be enrolled in, participate in, meet coverage conditions for and, where applicable under Centers for Medicare and Medicaid Services rules, be certified by the Medicare and Medicaid programs; and not (i) be "opted out" of Medicare, (ii) be sanctioned, debarred, suspended or excluded from any federal program, including Medicare or Medicaid, or (iii) be identified on any federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control. Provider shall comply with the standards of any organization accrediting KP as they apply to Services rendered to Members.

2.4 **Subcontracts**. If Provider arranges for the provision of Services to a Member by any individual or entity not a bona fide employee of Provider (**"Subcontractor"**), Provider shall enter into a written contract with such Subcontractor prior to the provision of Services to Members by the Subcontractor. Such contract shall require the Subcontractor to comply with the same terms applicable to Provider under this Agreement. Upon request, Provider shall promptly provide access to and copies of all contracts with Subcontractors. Unless otherwise required by law or arranged with Network, Provider shall retain responsibility for paying its Subcontractors (in accordance with any law applicable to subcontractors of health care service contractors), and such Subcontractors shall not seek reimbursement from or have any recourse against a Payer for Subcontractor's services provided to Members.

2.5 **Information**. Provider shall notify Network Promptly (as defined below) upon Provider's knowledge of any of the following involving Provider or any employee, agent or Subcontractor providing Services: (1) the revocation, suspension, restriction, or expiration of any license, permit, certification, approval, authorization, medical staff membership or clinical privilege required to render Services to Members or of any accreditation or certification specified in Section 2.3 (Licensure and Credentials); (2) sanction by or debarment, exclusion, suspension or "opt out" from any federal program, including Medicare or Medicaid, or identification on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (3) the submission of a formal report to a professional board, licensing agency, or the National Practitioner Data Bank of adverse credentialing or peer review action; (4) a material change in credentialing or privilege status; (5) any change in operations that will likely materially affect the manner in which Services are provided to Members; (6) any unusual occurrence involving a Member that is reported or

required to be reported to a regulatory body or an accreditation organization; (7) any change in legal status, tax identification number, or Medicare or Medicaid number; (8) any material change in ownership, control, name, or location; (9) the initiation of any legal action, accreditation organization action, or, regulatory or governmental action that is likely to materially and adversely affect Provider's or a Subcontractor's ability to perform its obligations under this Agreement; (10) any professional liability claim or other legal action filed or asserted by a Member against Provider or an employee, agent, or Subcontractor of Provider; (11) any event or circumstance that is likely to materially impair the ability to provide Services to Members, and (12) bankruptcy, dissolution or receivership of Provider, or an assignment by Provider for the benefit of creditors. However, Provider shall not be required to waive legal privilege in order to comply with subsections (3), (6), (9) and (10) of this Section, provided that Provider shall notify Network pursuant to these subsections to the extent Provider can do so without waiving legal privilege. "Promptly" means within 2 business days for subsections (1), (2), (3) and (6) and within 10 business days for the other subsections in this Section.

2.6 **Policies**. Provider shall cooperate and comply with Policies of which Provider knows or reasonably should have known. Policies may be modified by Payers from time to time, but no Policy change shall be retroactive without the express consent of Provider. In the event of any inconsistency between a Policy and this Agreement, this Agreement shall prevail.

A. Provider shall cooperate and comply with Payers' quality assurance and utilization management activities (including pre-service, concurrent and retrospective reviews), case management and disease management services, preauthorization steps required for Covered Services, member and provider grievance and appeals processes, pharmaceutical formularies, claims submission and payment procedures.

2.7 **Law**. Provider shall comply with all laws, rules and regulations applicable to Provider and Services under this Agreement, including those set forth in Exhibits.

ARTICLE 3
NETWORK'S RESPONSIBILITIES

Network and KFHP-NW shall ensure that Payers (a) provide Members with sufficient information to permit Provider to determine Plan benefits, Member eligibility for Plan benefits, and other necessary Plan information, and (b) appropriately designate Provider in directories.

ARTICLE 4
BILLING AND PAYMENT

4.1 **Compensation**. Compensation to Provider for Services that are Covered Services to Members shall be paid at the lesser of Provider's billed charges or the rates set forth in Exhibit "Compensation and Services," less any Member Cost Share. Provider accepts such amount as payment in full for all Services that are Covered Services and acknowledges that compliance with Section 2.3 (Licensure and Credentials) is a precondition to payment. Pursuant to the procedures in Section 4.4 (Member Billing), Provider shall also accept from the Member payment at the rates set forth in Exhibit "Compensation and Services" as payment in full for all Services that are not Covered Services.

4.2 **Claims**. Provider shall submit to the applicable Payer a Clean Claim for Covered Services rendered to Members. Provider shall maximize the use of electronic claims rather than paper claims. Provider agrees that Payers shall not be obligated to make payments for billings received more than 365 days from (1) the date of service or (2), when a Payer is the secondary payer, from the date of receipt by Payer of the primary payer's explanation of benefits. This requirement may be waived, in the discretion of the applicable Payer, in the event Provider provides notice and appropriate evidence to the Payer of extraordinary circumstances outside the control of Provider that resulted in the delayed submission. If Provider does not timely submit a claim, or does not timely dispute any alleged underpayment, Provider's claim for payment shall be deemed waived, and Provider shall not seek payment from the Plan, Payer, Network, or Member.

4.3 **Prompt Payment**. Within 30 days of receipt of a Clean Claim from Provider, Network shall (1) cause Kaiser Payer to pay Provider for Services that are Covered Services rendered to Members of Kaiser Payer and (2) to the extent permitted by law, notify Other Payers to authorize payment to Provider for Services that are Covered Services rendered to an Other Payer's Members; provided, that such period shall be extended as reasonably necessary where benefits must be coordinated with another health plan. Network is not responsible for the promptness or ultimate payment of claims for services rendered to Members of any Plan other than KFHP-NW. Network shall, however, reasonably assist Provider in collecting delinquent or underpayments from Payers.

4.4 **Member Billing**. Provider shall bill Members for applicable Member Cost Share. Provider may bill Members, subject to Section 4.1 (Compensation), for Services that are not Covered Services if prior to the services being rendered, the Member agreed in writing to pay for such services after being advised the services may not be Covered Services. Provider may not bill Members for Services that are Covered Services where payment is denied based upon utilization management decisions of Payers or where Provider failed to comply with the terms or conditions of this Agreement. Provider may bill or charge individuals who were not Members at the time that services were rendered.

4.5 **Member Hold Harmless**. In no event including, but not limited to, nonpayment by or insolvency of Network, KFHP-NW or a Payer, or breach of this Agreement, shall Provider bill; charge; collect a deposit from; seek compensation, reimbursement, or remuneration from; impose surcharges; or have any recourse against any Member, person acting on the Member's behalf, or any person other than the responsible Payer for Covered Services provided under this Agreement, except for Member Cost Share payment. The terms of this Section shall survive the termination or expiration of this Agreement regardless of the cause giving rise to termination, shall be construed to be for the benefit of Members, and shall supersede any oral or written agreement to the contrary now existing or hereafter entered into between Provider and the Member or persons acting on the Member's behalf.

4.6 **Coordination of Benefits**. When a Payer accessing the rates under this Agreement is the primary payer under applicable coordination of benefit principles, that Payer shall pay in accordance with this Agreement. When such Payer is secondary under applicable coordination of benefit principles, Provider is owed an amount that, when added to the amount payable by the primary payer, equals the amount that would be owed under this Agreement without coordination of benefits, unless otherwise required by law. However, if Provider provides

services for an employment-related injury or illness compensable under workers' compensation or employment liability law, Provider shall look to the applicable workers' compensation carrier or responsible employer for compensation and shall not be entitled to additional payment under this Agreement for such services paid under workers' compensation or employment liability law.

4.7 **Liens and Third Party Claims**. In instances of third party liability claims (involving, for example, liability carriers), Provider shall accept the amount payable under this Agreement as payment in full. Provider shall not, directly or indirectly through assignment or otherwise, assert any lien claim, subrogation claim, or any other claim against a Member, or any other person or organization against which a Member may hold a potential claim for personal injury, or against the proceeds of a Member's personal injury recovery based on Services provided to a Member for an injury or illness allegedly caused by a third party.

4.8 **Audit, Recoupment, and Offset**. Unless otherwise required by law, Network, Provider, Plan, Payer, and their authorized agents may audit paid claims to verify the appropriateness and amount of payment so long as such audit takes place within two years of the date of payment or denial (or such longer period as may be set forth in an Other Payer's Plan or as required by a government program), except in cases of fraud, for which no time limit applies. Unless otherwise required by law, a refund or payment to correct an undisputed overpayment or underpayment shall be due upon demand, and failure to make such payment within 30 days of receipt of a demand shall entitle the Payer to offset, recoup or deduct the amount owed from any other amounts owed to Provider. To the maximum extent permitted by law, Payers are authorized to offset and recoup the amount of any debt owed by Provider to Payer against any debt or money owed Provider. This Section shall survive the termination or expiration of this Agreement.

ARTICLE 5
TERM AND TERMINATION

5.1 **Term**. This Agreement shall begin on the Effective Date and, subject to earlier termination as described in this Article 5, shall continue for a term of two year(s); provided, that the number of years chosen not be greater than three. This Agreement shall not renew, but shall terminate at the end of this term.

5.2 **Termination Without Cause**. Notwithstanding Section 5.1 (Term), this Agreement may be terminated by a party without cause at any time by giving the other party prior written notice of no less than ninety (90) days.

5.3 **Termination With Cause**. This Agreement may be terminated upon written notice by a party for material breach by the other party, provided that (a) such non-breaching party gives at least 60 days prior written notice of termination to the party in breach and a description of the other party's breach, and (b) such material breach is not cured during the 60 day notice period. Provider's failure to comply with Section 2.3 (Licensure and Credentials) or Section 2.6 (Policies) shall be deemed a material breach.

5.4 **Immediate Termination**. Any of the following events shall, at the sole discretion of Network, result in the immediate termination or suspension of this Agreement, upon written notice to Provider: (1) the withdrawal, debarment, suspension, expiration, restriction or non-

renewal of any federal, state or local license, certificate, approval or authorization of Provider required to render Services; (2) the bankruptcy, dissolution or receivership of Provider, or an assignment by Provider for the benefit of creditors; (3) the loss or material limitation of Provider's liability insurance described in this Agreement; (4) a determination by Network that Provider's continued participation in this Agreement could result in imminent and substantial harm to Members; (5) sanction under, debarment, suspension, exclusion or "opt out" of Provider from participation in any governmental sponsored program including, but not limited to, Medicare or Medicaid, or identification of Provider on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (6) the conviction of Provider of any crime; (7) the revocation or suspension of Provider's accreditation or credentialing status; or (8) a change of ownership or control of Provider.

5.5 **Effect of Termination**.

A. **Cooperation in Transfer of Members**. Upon termination or expiration of this Agreement, Provider shall cooperate in the timely and efficient transfer of Members to other facilities designated by the Payer. Network shall arrange for timely notification of Members of the termination or expiration of this Agreement.

B. **Survival**. Termination or expiration shall not affect those rights, powers, remedies, liabilities, and obligations that accrued or arose before termination or expiration. Termination or expiration shall also not affect those provisions of this Agreement expressly stated to survive termination or expiration.

C. **Continuation of Care**. Upon termination or expiration of this Agreement, Provider shall continue to provide (and Payer shall continue to compensate Provider for) Services pursuant to this Agreement and the Policies to Members who are under the care of Provider at the time of termination or expiration until the later to occur of the discharge or transfer of the Member in accordance with an appropriate professional standard of care or such time period as may be prescribed by applicable law.

5.6 **Suspension of Participation**. Any of the following events may result in Network's immediate suspension, until cured to Network's satisfaction, of a practitioner or site of Provider providing Services under this Agreement from participation in this Agreement (without terminating or suspending the Agreement), upon written notice to Provider: (1) the withdrawal, debarment, suspension, expiration, restriction or non-renewal of any federal, state or local license, certificate, approval, or authorization of such practitioner or site required to render Services; (2) the failure of the practitioner or site to comply with KP's credentialing requirements, and if applicable to practitioner, the loss or restriction of practitioner's medical staff membership or clinical privileges (3) sanction under, debarment, suspension, or exclusion of practitioner or site from participation in any governmental sponsored program including Medicare or Medicaid, "opt out" from any federal program including Medicare or Medicaid, or identification on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (4) the conviction of practitioner or site of any crime; (5) failure of practitioner or site to comply with law or Policies

following a reasonable request for compliance by Network; or (6) a determination by Network that practitioner's or site's continued participation in this Agreement could result in imminent and substantial harm to Members.

ARTICLE 6
DISPUTE RESOLUTION

6.1 **Member Grievance**. Provider agrees to (1) cooperate with and participate in Member appeal, grievance and external review procedures; (2) provide the Plan with the information necessary to conduct Member appeal, grievance and external review procedures; and (3) abide by decisions of Member appeals, grievance and review committees.

6.2 **Provider Appeals Process**. Each Plan shall provide an internal mechanism whereby Provider may raise issues, concerns, controversies or claims arising from or related to this Agreement. Specifically, each Plan shall maintain an appeals process pursuant to which Provider may seek to resolve disputes arising from this Agreement. This appeals process shall be exhausted before Provider may pursue further action against a Plan or Payer.

6.3 **Disputes Between the Parties**.

A. **Arbitration**. With respect to disputes, controversies, or claims arising from or related to this Agreement (**"Disputes"**), and except as stated in Section 6.3B below, Provider hereby waives the right to civil trial of any Dispute and agrees to bind itself to arbitration of such Disputes to the extent allowed by applicable law. Likewise, and except as stated in Section 6.3B below, Network shall waive the right to civil trial of any Dispute and agrees to bind itself to arbitration of such Disputes to the extent allowed by applicable law. Provider or Network may, by written notice to the other party, submit any Dispute to confidential arbitration administered by an Alternative Dispute Resolution (**"ADR"**) organization to which they mutually agree, including, but not limited to, JAMS. A party may initiate confidential arbitration by providing a written arbitration demand (**"Demand"**) to the other party by stating the nature of the Dispute and the damages sought. Upon tender of the Demand, the parties shall use their best efforts to agree on an ADR organization to administer the confidential arbitration. If the parties to the Dispute cannot agree on an ADR organization to administer the confidential arbitration within 30 calendar days from the date on which the Demand was tendered, the Dispute shall be administered by JAMS in accordance with the JAMS Comprehensive Arbitration Rules & Procedures, except this Agreement shall control should it conflict with the JAMS Rules. The parties shall sign a confidentiality agreement before arbitration that shall make the entire Dispute confidential (except as required by law). The Dispute shall be arbitrated before a single arbitrator, who may be chosen by the parties. If the parties are unable to agree on an arbitrator, the arbitrator shall be chosen pursuant to the rules of the ADR organization to which they have mutually agreed or, if there is no such agreement, the JAMS Comprehensive Arbitration Rule 15. In such instance where the parties are unable to agree upon an arbitrator, the potential arbitrators shall be retired judges; if no such retired judges are available, the potential arbitrators may be attorneys with at least fifteen (15) years of experience including some experience in managed health care and integrated health care delivery systems. The parties shall be responsible for their own attorneys' fees and costs incurred in preparing for and attending the arbitration. The parties to the arbitration (including, but not limited to, proper parties joined in the arbitration) shall share equally the fees of the arbitrator and the ADR process. The parties agree that any and all proper

parties may be joined in the arbitration, but the parties agree to proceed with arbitration of all Disputes between them even if other parties refuse to participate. The arbitrator shall prepare the award in writing, including factual findings and the legal basis and other reasons on which the award is based. The decision and award shall be reviewable only pursuant to the Federal Arbitration Act or its state law equivalent. Judgment upon the award rendered may be entered in any court of competent jurisdiction. This provision shall survive the termination or expiration of this Agreement.

B. **Injunction**. Notwithstanding Section 6.3A, the parties agree that Disputes involving certain breaches of the Agreement, including without limitation a breach of the confidentiality obligations, would cause irreparable injury to the injured party that could not be compensated adequately in damages. The parties further agree that such injured party shall be entitled (in addition to any other remedies or damages) to remedies of injunction, specific performance, or restraining orders, which remedies do not require arbitration as a prerequisite. In such instance, the parties agree that the injured party may seek remedies of injunction, specific performance, or restraining orders in a civil court of competent jurisdiction.

ARTICLE 7
RECORDS AND CONFIDENTIALITY

7.1 **Maintenance of Records**. Provider shall maintain its financial, accounting, administrative, and patient medical records in a current, detailed, organized and comprehensive manner in accordance with prudent industry practice, applicable laws, and accreditation standards. All Member medical records shall be treated by Provider as confidential in accordance with applicable laws. Provider shall maintain these records with respect to a Member for the longer of six years after the last date Services were provided to the Member or the period required by law. Should Provider experience a disclosure of Member information impermissible under state privacy laws or the privacy rules of the Health Insurance Portability and Accountability Act, Provider shall notify Network of the nature of the disclosure and the identity of the Members involved and shall take all steps required by law and reasonable business practice to remedy, mitigate and report the disclosure. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

7.2 **Access to Records**. In accordance with applicable law, Network, KP, the applicable Plan and Payer, their authorized agents, and authorized government and accreditation officials shall have access to (including electronic access where practicable), a right to photocopy, and upon reasonable notice, a right to perform site visits related to, all financial, accounting, administrative, and patient medical records (including electronic images that are part of medical records) pertaining to Members for the purpose of meeting legal, regulatory and accreditation requirements applicable to the Plans; assessing quality of care, conducting medical evaluations and audits; performing utilization management functions; verifying the accuracy of amounts paid or payable to Provider; and other functions of a Plan. In addition, Provider shall supply periodic reports pertaining to Services provided to Members as the parties may, from time to time, agree or as otherwise required for Plans to meet their legal and accreditation requirements. Photocopies of medical records and other files, reports, books, and records shall be without charge to Network, Payers and Plans unless otherwise required by law. Provider agrees to allow

access to or supply copies of such records, as requested, within 14 days of the receipt of a request, where practicable, and in no event later than the date required by any applicable law or regulatory or accreditation authority. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

ARTICLE 8
RELATIONSHIP OF PARTIES

8.1 **Communication with Members**. Nothing in this Agreement shall be construed to limit Provider's ability to freely communicate with a Member or the Member's authorized representative about the Member's treatment options.

8.2 **Independent Contractor**. Provider is an independent contractor to Network. Nothing in this Agreement is intended to create, nor shall it be construed to create, between Network and Provider a relationship of principal, agent, employee, partnership, joint venture or association. Network and Provider have no authorization to enter into any contracts, assume any obligations, or make any warranties or representations on behalf of the other. No individual through whom Provider renders Services shall be entitled to or shall receive from Network compensation for employment, employee welfare and pension benefits, fringe benefits, or workers' compensation, life or disability insurance or any other benefits of employment, in connection with providing Services. Provider represents and warrants that it shall be responsible for all legally required tax withholding for itself and its employees.

8.3 **Government Contractor**. As an organization with federal government contracts, Network and the Kaiser Payers are subject to various federal laws, regulations and executive orders (such as regarding equal opportunity and affirmative action), which may apply to Network's subcontractors. Notice of such laws, regulations, and executive orders is provided in Exhibit "Federal Program Compliance" in the Section on the Federal Employee Health Benefits Program. If Provider is not otherwise subject to compliance with such laws, regulations and executive orders, their reference in this Agreement shall not be deemed to impose such requirements upon Provider.

8.4 **Proprietary Information**. Provider and Network agree the Proprietary Information of the other is the exclusive property of the other and that they have no right, title or interest in the Proprietary Information of the other. Provider and Network agree to keep Proprietary Information strictly confidential and agree not to disclose any Proprietary Information to any third party, except (i) to governmental or accreditation authorities having jurisdiction, (ii) as required in legal proceedings or government administrative proceedings, (iii) in the case of Network's disclosure, to Members, Plans, Payers, affiliates in the Kaiser Permanente Medical Care Program, consultants and vendors under contract with Network, or (iv) as otherwise directed by the other party in writing. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

8.5 **Insurance**.

A. **Provider's Insurance**. Provider, at Provider's sole cost and expense, shall procure and maintain such policies of general and professional liability and other insurance (or programs of self insurance that are adequately funded according to sound actuarial principles) at minimum levels required from time to time by Network, but in no event less than $1,000,000 per

claim/ $3,000,000 annual aggregate for professional liability insurance and $1,000,000 per claim/ $2,000,000 annual aggregate for comprehensive general liability insurance. Such insurance coverage shall cover the acts and omissions of Provider as well as those of Provider's agents and employees. Provider may obtain one or more claims-made policies to fulfill its obligations under this Section so long as Provider obtains any extended reporting endorsements (tail coverage) for such policies as may be necessary to provide continuous coverage without interruption throughout the term of this Agreement and for at least ten (10) years following termination or expiration of this Agreement. Provider shall also procure and maintain workers' compensation insurance and unemployment insurance to the extent required by law, as well as a fidelity bond to the extent Provider renders Services in Members' homes or custodial care locations. Provider agrees to deliver memorandum copies of such policies to Network upon request. Provider agrees to make best efforts to provide to Network at least 30 days advance notice, and in any event shall provide notice as soon as reasonably practicable, of any cancellation or material modification of these policies.

B. **Network's Insurance**. Network, at its sole cost and expense, shall procure and maintain such policies of general and professional liability and other insurance (or programs of self-insurance that are adequately funded according to sound actuarial principles) as shall be necessary to insure itself and its employees 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 any service by Network under this Agreement.

8.6 **Mutual Indemnification**.

A. **Provider**. Provider shall indemnify and hold harmless Kaiser Foundation Hospitals, Northwest Permanente, P.C., KFHP-NW and their officers, agents and employees from and against all claims and damages for or in connection with, injury (including death) or damage to any person or property to the extent resulting from the negligent or otherwise wrongful act or failure to act or willful misconduct of Provider.

B. **Network**. Network shall indemnify and hold harmless Provider and its officers, agents, employees and partners from and against all claims and damages for or in connection with, injury (including death) or damage to any person or property to the extent resulting from the negligent or otherwise wrongful act or failure to act or willful misconduct of Network.

ARTICLE 9
MISCELLANEOUS

9.1 **Notice**. Any notices to be given under this Agreement shall be in writing, signed by an authorized signatory, and shall be deemed given upon receipt if sent to the addresses listed below as follows: (1) personally delivered; (2) sent by United States Postal Service, postage prepaid, certified, and return receipt requested; or (3) sent by a commercial delivery service with proof of delivery. Any party may change its address for notice purposes by written notice to the other party.

NETWORK

Director of Provider Contracting
Northwest Permanente, P.C.
500 N.E. Multnomah Street, Suite 100
Portland, Oregon 97232

PROVIDER

Administrator
2051 Kaen Rd Suite 367
Oregon City, Oregon 97045

9.2 **Assignment and Delegation**. Except as otherwise provided in this Agreement, Provider shall not assign this Agreement, subcontract or delegate any of its duties and obligations under this Agreement without the prior written consent of Network. Any change of ownership or control of Provider shall be deemed an assignment. Any succession or assignment shall not relieve or otherwise affect the liability of Provider, which shall remain jointly and severally liable with the successor or assignee.

9.3 **No Third Party Beneficiaries**. With the exception of Section 4.5 (Member Hold Harmless) and with respect to KP and Payers, nothing in this Agreement shall be construed to give any person other than Provider or Network any benefits, rights or remedies.

9.4 **Force Majeure**. The parties shall be excused from any inability to meet their obligations under this Agreement due to extraordinary circumstances beyond their reasonable control occasioned by war, acts of government, labor disputes, acts of terrorism, fire, flood, earthquake, extreme weather or other acts of nature. The affected party shall give notice to the other party as soon as practicable of any such circumstance.

9.5 **Use of Name**. Each party reserves to itself the right to, and the control of the use of, its own names, symbols, trademarks and service marks, presently existing or hereafter established, and no party shall use another party's names, symbols, trademarks or service marks in any advertising or promotional materials or communication of any type or otherwise without the latter party's prior written consent; provided, however, Network and Plans may use the name, address and telephone number of Provider in lists of contracting providers and other marketing materials.

9.6 **Governing Law**. Except as preempted by federal law, this Agreement shall be governed by the laws of the state in which Provider is located, without application of the conflict of laws provisions of such state.

9.7 **Severability**. Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable shall not affect the validity, legality, and enforceability of such provision in any other instance, or the validity, legality or enforceability of any other provision of this Agreement.

9.8 **Waiver**. A failure of any party to exercise any provision of this Agreement shall not be deemed a waiver. To be effective, any waiver of any provision of this Agreement shall be in

writing and signed by the party against whom the waiver is sought to be enforced. Any such waiver shall not operate or be construed as a waiver of any other provision of this Agreement or a future waiver of the same provision.

9.9 **Amendment**. This Agreement constitutes the entire understanding of the parties, and no changes, amendments or alterations shall be effective unless in a writing signed by the parties. Notwithstanding any other provision of the Agreement, if either party reasonably determines that a modification of this Agreement is necessary to cause it to be in compliance with state or federal law or the requirements of an accrediting or regulatory agency or a government contract, that party shall give the other party written notice of the proposed modification, the justification for the modification, and the date on which it is to go into effect, which shall not be less than 30 days following the date of the notice (unless a shorter period of time is required by law). The modification shall go into effect on that date. The party providing notice shall consider any objection made by the other party concerning the proposed modification during the notice period.

9.10 **Interpretation**. The headings contained in this Agreement are included for purposes of convenience only, and shall not affect in any way the meaning or interpretation of any of the terms or provisions of this Agreement. This Agreement shall be interpreted according to its fair intent and not for or against any one party on the basis of whether such party drafted the Agreement. All references to "including" or "include(s)" shall mean "including, without limitation" and "include(s) without limitation," respectively. The omission of a particular example or the inclusion of any examples shall not be construed to broaden or limit the effect of the language. Any reference to a statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization refers to the statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization as amended from time to time, and to any successor statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization. References to Provider shall include references to Provider, any employees or agents of Provider, and any Subcontractors.

9.11 **Counterparts**. This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, and each of which, when so executed, shall be deemed an original and all together constitute and be one of the same instrument. Facsimile or electronic signatures shall be as valid as original signatures.

9.12 **No Exclusivity**. This is not an exclusive agreement. Provider and Network may enter into similar agreements with other parties.

9.13 **No Guarantee**. There is no representation, warranty, guarantee, or covenant that any minimum volume or value of business will be referred to Provider. Provider does not have a right to participate in any particular Plan, line of business, product, or network of a Plan.

9.14 **Remedies Cumulative**. The rights and remedies of this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

9.15 **Entire Agreement**. This Agreement and its Exhibits constitute the complete and sole contract between the parties regarding the subject hereof and supersede all prior or contemporaneous oral or written representations, communications, proposals, or agreements not expressly included herein. This Agreement and its Exhibits may not be contradicted or varied by

evidence of prior, contemporaneous or subsequent oral representations, communications, proposals, agreements, prior course of dealings or discussions of the parties. There are no oral agreements among the parties. Provider has not relied on any data, financial analysis, reports, notes, proposals, conclusions or projections, whether made orally or in writing, made by Network or any of its representatives, agents, employees or advisors, in connection with negotiation, acceptance, execution or delivery of this Agreement by Provider.

[next page is signature page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

NETWORK	**PROVIDER**
Northwest Permanente, P.C.	**Clackamas County Community Health Division**
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

October 19, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Service Agreement with Geneva Woods partnering with Clackamas County Health Centers Division in participation with 340B Pharmacy Services Agreement

Purpose/Outcomes	The intent of the Service Agreement is to facilitate Clackamas County Health Centers Division (CCHCD) participation in the federal 340B Drug Program.
Dollar Amount and Fiscal Impact	The Agreement has no maximum value as it will generate revenue for Clackamas County's Federally Qualified Health Center (FQHC). This will enter CCHCD and Geneva Woods into a "ship to/bill to" arrangement wherein Geneva Woods will dispense prescription drugs on behalf of CCHCD, and then charge and collect fees for such drugs.
Funding Source	No County General Funds are involved. This is revenue generating through the 340B Drug Program.
Duration	Effective upon signature and terminates with the Third Party Drug Administrator Agreement (NEC Network, 12/31/18).
Strategic Plan Alignment	1. Provide patient-centered health center services to vulnerable populations so they can experience improved health. 2. Ensure safe, healthy and secure communities
Previous Board Action	There has been no previous board action on this item.
Contact Person	Deborah Cockrell, FQHC Director – 503-742-5495
Contract No.	8431

BACKGROUND:
The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of a Service Agreement for the addition of a pharmacy that provides the delivery of prescription drugs to patients who cannot, or choose not, to physically fill their drug prescriptions at a pharmacy. The prescription drugs are delivered to the patients' residence through a mail delivery system that the patient orders via their phone. Participation in the 340B Drug Program allows the purchase of prescription drugs for CCHCD patients at favorable discounts.

This Agreement is effective upon signature and continues through December 31, 2018, (termination of the Third Party Administrator Agreement, NEC Network). County Counsel approved this Agreement on August 8, 2017.

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

340B PHARMACY SERVICES AGREEMENT

#8431

THIS 340B PHARMACY SERVICES AGREEMENT ("**AGREEMENT**") is made and entered into upon signature ("**EFFECTIVE DATE**") by and between Clackamas County, by and through its Health, Housing and Human Services, Health Centers Administration ("**CLINIC**") and Geneva Woods Pharmacy ("**PHARMACY**").

WHEREAS, the 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, including CLINIC, as COVERED ENTITIES eligible to purchase outpatient prescription drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("**DHHS**").

WHEREAS, CLINIC and PHARMACY mutually desire to enter into a "ship to/bill to" arrangement under which PHARMACY will dispense such drugs on behalf of CLINIC only to eligible CLINIC outpatients, charge and collect for such drugs, all on CLINIC's behalf, receive drug shipments from CLINIC or its agents to replace inventory of PHARMACY, and CLINIC will be billed by wholesaler and will pay for such drugs, in compliance with applicable laws and regulations.

WHEREAS, CLINIC has retained a third party administrator or "Pharmacy Benefits Manager" to coordinate, manage, and facilitate: member eligibility and claims adjudication, formulary, 340B drug price management, co-payments, payments to PHARMACY, collections from PHARMACY, 340B drug inventory control and ordering for PHARMACY replenishment, disbursements to CLINIC, and other related pharmacy benefits management services.

WHEREAS, CLINIC and PHARMACY mutually acknowledge that their intent in entering into this Agreement is solely to facilitate CLINIC's participation in the 340B drug purchasing program, without having to establish and operate its own pharmacy. The services provided each to the other are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The Parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b.

NOW, THEREFORE, in consideration of the promises, covenants and agreements hereinafter set forth, CLINIC and PHARMACY hereby agree to the following terms and conditions:

DEFINITIONS

340B DRUG PRICE

The term "340B DRUG PRICE" refers to the cost of a prescription drug or medication from the CLINIC's drug wholesaler's United States Department of Health and Human Services, Public Health Service 340B Drug Vendor Program. The Parties agree to verify and adjust pricing to reflect true pass through pricing as to mark up or down for COVERED DRUGS.

FDDC ® CO-PAYMENTS

"CO-PAYMENT" means such amounts required to be collected by PHARMACY(s) from ELIGIBLE MEMBERS using the Federal Drug Discount Card – FDDC®, pursuant to the policies of the CLINIC. CO-PAYMENTS may include a zero (0) CO-PAYMENT, partial CO-PAYMENT, and a one hundred (100%) CO-PAYMENT meaning patient pays the entire prescription fee. Any and all CO-PAYMENTS shall be previously disclosed to PHARMACY by CLINIC prior to the dispensing of COVERED DRUGS.

CLINIC and COVERED ENTITY

"CLINIC" and "COVERED ENTITY" refers to those entities that are eligible to purchase drugs at 340B DRUG PRICE defined in the 1992 Veteran's Health Care Act, Section 340B of the Public Health Services Act.

COVERED DRUGS

"COVERED DRUGS" refer to drugs that are approved by CLINIC's Pharmacy Benefits Manager for an ELIGIBLE MEMBER and dispensed by a PHARMACY(s) and replenished by drugs purchased at 340B drug prices. For clarity, purchased at 340B drug prices is literal and COVERED DRUGS do not include non-340B drugs that are acquired by CLINIC pursuant to its 340B program with the wholesaler except for Prime Vendor contracted drugs.

ELIGIBLE MEMBERS

"ELIGIBLE MEMBERS" shall refer to those individuals who CLINIC warrants meet the statutory Patient Definition and are entitled to prescription services for COVERED DRUGS through the CLINIC and the CLINIC's Pharmacy Benefits Manager.

FILL FEE PAYMENTS

The term "FILL FEE" means that amount established by agreement between CLINIC and PHARMACY on date of execution hereof, and modified thereafter by agreement between PHARMACY and CLINIC, as the standard Participating Pharmacy fee for filling a single prescription which shall be paid at least twice a month to PHARMACY.

PAYMENT BATCH and PAYMENT BATCH PERIOD

The term "PAYMENT BATCH" and "PAYMENT BATCH PERIOD" refers to the CLAIMS and the time in which CLAIMS are compiled by CLINIC's Pharmacy Benefits Manager. A PAYMENT BATCH is compiled no greater than two business days after the close of a "PAYMENT BATCH PERIOD" which includes CLAIMS half of the month's days.

PROCESSED CLAIMS OR CLAIM FORMS

"CLAIMS" or "CLAIM FORMS" shall refer to the procedure for transmitting information to CLINIC's Pharmacy Benefits Manager and its claims processor via on-line point-of-sale (**"POS"**), Universal Claim Form (**"UCF"**), magnetic tape, or diskette by the PHARMACY(s), and the content thereof, indicating among other things that a prescription has been submitted for payment.

REPLENISHMENT
"REPLENISHMENT" refers to the process by which the CLINIC's Pharmacy Benefits Manager acts as the CLINIC's agent for purchases of drugs from the CLINIC's drug wholesaler at 340B drug prices to replace PHARMACY(s) own drug inventory used to fulfill the CLINIC's prescription request for ELIGIBLE MEMBERS. Unless otherwise agreed to by PHARMACY, all REPLENISHMENTS shall be made by matching the eleven (11) digit NDC number for the COVERED DRUGS in compliance with applicable law.

THIRD PARTY CLAIMS and PAYMENTS
The term "THIRD PARTY CLAIMS" and "THIRD PARTY PAYMENTS" refers to prescriptions of COVERED DRUGS submitted by PHARMACY(s) for CLINIC's ELIGIBLE MEMBERS to payers other than CLINIC, Medicare, State Medicaid, and payments received by PHARMACY(s) from these payers. For clarity, Third Party Payers **do not** include fee-for-service State Medicaid. However, Third Party Payers **do** include Medicare Part D Programs.

1. OBLIGATION OF PHARMACY. During the term of this Agreement, PHARMACY shall:

A. Pharmacy Benefits Management Contract. – PHARMACY must contract with CLINIC's designated "Pharmacy Benefits Manager," **National Extended Care Networks LLC, of San Antonio, Texas** and the **"CaptureRx® *340BNet Pharmacy Network Agreement*"** and any other related processing contract necessary to process and adjudicate CLINIC's ELIGIBLE MEMBER claims.

B. Office Of Pharmacy Affairs Self Certification – PHARMACY, in conjunction with CLINIC, will submit to the Office of Pharmacy Affairs, the "OPA Self Certification Form," after PHARMACY and CLINIC have signed this Agreement. The Original signed OPA Self Certification Form must be sent to: Office of Pharmacy Affairs at 5600 Fishers Lane, Parklawn Building, Mail Stop 10C-03 Rockville, MD 20857.

C. Render Pharmacy Services and COVERED DRUGS. – PHARMACY shall provide pharmacy services to CLINIC ELIGIBLE MEMBERS by stocking and dispensing **"COVERED DRUGS", WHICH ARE: 1)** "Legend Drugs," that is those drugs which by federal law can be dispensed only pursuant to a prescription and are required to bear the Legend "Caution – Federal Law prohibits dispensing without a prescription.", **AND 2)** Ordered prescriptions by CLINIC medical staff and other legally qualified health care providers affiliated with CLINIC, **AND 3)** Approved by CLINIC's designated Pharmacy Benefits Manager. The COVERED DRUGS ordered for REPLENISHMENT by CLINIC, subject to this Agreement, are the property of the CLINIC less those amounts which have been dispensed by the PHARMACY from PHARMACY's own drug stock.

D. Pharmaceutical Services Charges. – PHARMACY shall render pharmaceutical services to CLINIC's ELIGIBLE MEMBERS and charge for such services in accordance with the rate set forth in Schedule A of this Agreement, such schedule to have addendums attached from time to time, after receiving written approval by both Parties to this Agreement. PHARMACY will charge the FILL FEE and/or CO-PAYMENT(s) set forth in Schedule A of the Agreement, and shall not bill any CLINIC ELIGIBLE MEMBER for covered benefits except to the extent of any deductible or CO-PAYMENTS. Any and all switch or transaction charges may be deducted from reimbursements as stated in Schedule A of this Agreement.

E. Claims Submission. – PHARMACY shall submit by electronic on-line systems using prevailing NCPDP (National Council for Prescription Drug Programs) standards. All claim submissions must also include patient demographic information, but not limited to, patient first name, patient last name, patient date of birth, and patient sex.

F. Acceptance Of REPLENISHMENT Orders. – PHARMACY shall accept all inventory REPLENISHMENTS of COVERED DRUGS from the wholesaler designated by CLINIC. PHARMACY is not responsible for any fee associated with the delivery of COVERED DRUGS from wholesaler.

G. Collection of FDDC® CO-PAYMENTS – As defined in Schedule A of this Agreement, PHARMACY shall allow CLINIC and its Pharmacy Benefits Manager, to collect any and all CO-PAYMENTS paid to PHARMACY by CLINIC ELIGIBLE MEMBERS for COVERED DRUGS. Any CO-PAYMENTS shall be collected and submitted to CLINIC by PHARMACY on a semi-monthly basis. The method and process of collection shall be defined in Schedule A of this Agreement.

H. Collection of THIRD PARTY PAYMENTS and CO-PAYMENTS. – As defined in Schedule A of this Agreement, PHARMACY shall allow CLINIC and its Pharmacy Benefits Manager, to collect any and all payments received by Third Party Payers for COVERED DRUGS for CLINIC patients, and any Third Party Payer CO-PAYMENTS paid by CLINIC ELIGIBLE MEMBERS for COVERED DRUGS to PHARMACY less subsequent payment to PHARMACY of PHARMACY FILL FEES as set forth in Schedule A of this Agreement. Any collected THIRD PARTY PAYMENTS and CO-PAYMENTS shall be submitted to CLINIC by PHARMACY on at least monthly basis. The method and process of collection shall be defined in Schedule A of this Agreement. Under no circumstances will Third Party Payers include any fee-for-service State Medicaid.

I. Maintenance of Records & Logs. – PHARMACY agrees to maintain accurate, complete, up-to-date, and otherwise in conformance with generally accepted standards and good pharmacy practice auditable records for eligible persons, so as to permit effective patient care and quality review. PHARMACY agrees to retain such records for a period of five (5) years from the date of service. PHARMACY shall require CLINIC patients to sign a signature log at the delivery of COVERED DRUGS prescription, and shall maintain such signatures on file. Notwithstanding the foregoing, as permitted by Law, in lieu of a signature log, Pharmacy may maintain an electronic tracking system or use its POS to record and confirm the receipt of COVERED DRUGS in accordance with industry standards.

J. Audits – CLINIC, drug manufacturers, and the Office of Pharmacy Affairs, a division of the U.S. Health Resources and Services Administration, and their authorized agents respectively, shall be permitted access during the PHARMACY's regular business hours, at CLINIC's sole cost and expense, and upon reasonable notice, to review such books, records, invoices and prescription files of the PHARMACY as may be reasonably necessary to perform an audit under the terms of this Agreement, following generally accepted auditing procedures. It is understood that such audits may be made at any time during the term of this Agreement and within one year after its expiration. Should such audit determine that a claim(s) was (were) submitted which resulted in overpayment to PHARMACY and/or diversion of COVERED DRUGS, CLINIC shall have the right to recover the amount that was overpaid or such COVERED DRUGS in PHARMACY's stock by submitting written notice to PHARMACY of the amount of the purported overpayment. PHARMACY shall have fourteen (14) days to dispute the overpayment or COVERED DRUG diversion. The Parties will then use "best efforts" to resolve the dispute within 30 days. If the dispute cannot be resolved, the dispute will be submitted to binding arbitration. No deduction or withholding shall be made until the dispute is resolved. Under no circumstance shall CLINIC, Pharmacy Benefit Manager or their respective agent require PHARMACY to be bound by extrapolation as a basis for calculating adjustments to claims previously paid without PHARMACY's prior written approval of the extrapolation methodology; absent such prior approval, adjustments to claims previously paid shall be based only on actual identifiable error(s) in the submission, processing or payment of a particular claim(s). CLINIC is liable to the drug manufacturers of the COVERED DRUGS in the amount equal to any reduction, overpayment, rebate or recoupment related to the price of the COVERED DRUGS.

K. Compliance with Laws – PHARMACY shall be solely responsible for all professional advice and prescription drug services rendered by it for CLINIC's ELIGIBLE MEMBERS. PHARMACY is responsible for and agrees to render services as herein provided in accordance with the rules and regulations of its State Board of Pharmacy, all laws of its State, and all applicable laws and regulations resulting from the Veteran's Health Care Act of 1992 (P.L. 102-585, sec 602). It is expressly understood that relations between the CLINIC patients and PHARMACY shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. PHARMACY shall be solely responsible, without interference from the CLINIC or its agents, to said CLINIC patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations. PHARMACY will comply with all applicable requirements and restrictions of Section 340B of the Public Health Service Act and any accompanying regulations or guidelines, including, but not limited to, the prohibitions on duplicate discounts/rebates, and drug diversion. PHARMACY agrees to be in compliance with the provisions of the Contract Pharmacy Services Guidelines as set forth in the Federal Register, Vol. 75, No. 43, March 5, 2010, which can be found at ftp://ftp.hrsa.gov/bphc/pdf/opa/FR08231996.pdf. The Parties acknowledge and agree that the benefits to PHARMACY hereunder do not require, are not payment for and are not in any way contingent upon the referral, admission or any other arrangement for the provision of any item or service. The Parties further acknowledge and agree that, notwithstanding anything herein to the contrary, neither Party is required to refer any patient to any health care provider or purchase pharmacy services from any source. The Parties further acknowledge and agree that this Agreement shall not be construed to induce or encourage the referral of patients or the purchase of pharmacy services or supplies.

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

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

ii. Any tax provisions imposed by a political subdivision of this state that applied to PHARMACY, to PHARMACY's to AGENCY'S property, operations, receipts, or income, or to PHARMACY'S performance of or compensation for any work performed by PHARMACY;

iii. Any tax provisions imposed by a political subdivision of this state that applied to PHARMACY, or to goods, services, or property, whether tangible or intangible, provided by PHARMACY; and

iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

L. Insurance – PHARMACY shall maintain appropriate Professional Malpractice and General Liability insurance including blanket contractual liability in amounts not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. PHARMACY shall provide CLINIC, or its agent, evidence of such insurance upon request during the term of this Agreement and shall notify CLINIC, or its agent, of any changes, modifications, or cancellations of such coverage.

Upon request, PHARMACY shall issue to CLINIC, or its agent, certificates of coverage, including for each renewal, in the foregoing amounts. PHARMACY hereby acknowledges that it shall return the signed Agreement along with a copy of its license and current insurance certificates. Under no circumstances shall the failure of CLINIC, or its agent, to collect such certificates of coverage be construed or deemed as a waiver of the obligation of PHARMACY to maintain such insurance coverage.

M. Medicaid Prescriptions - Notwithstanding anything herein to the contrary, PHARMACY will not use COVERED DRUGS to dispense prescriptions paid for by fee-for-service state Medicaid, but will use its non-340B inventory, and bill and collect Medicaid on its own account.

N. Prohibition on Resale or Transfer – PHARMACY agrees that it will not resell or transfer a COVERED DRUG, less those amounts which have been dispensed by the PHARMACY from PHARMACY's own drug stock, to an individual who is not an ELIGIBLE MEMBER and has not been approved by the CLINIC's Pharmacy Benefits Manager.

O. Patient Choice – PHARMACY understands and agrees that CLINIC patients may elect not to use PHARMACY for pharmacy services. In the event that CLINIC patient elects not to use PHARMACY for such services, the patient may obtain the prescription from the pharmacy provider of his or her choice. Subject to a patient's freedom to choose a provider of pharmacy services, CLINIC will inform patients that they may be eligible for a discount on prescription drugs ordered by CLINIC, other than Medicaid prescriptions, and advise them that such discount has been arranged for only at PHARMACY.

P. HIPAA Compliance – The Parties recognize that each may be a healthcare provider and a "covered entity" within the meaning of the federal Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), and therefore responsible for compliance with HIPAA standards. The Parties agree to protect and respect the rights of the patients of CLINIC and PHARMACY to privacy and confidentiality concerning their medical and pharmaceutical records, and to protect all individually identifiable health information as protected health information from misuse or disclosure, in compliance with all applicable state and federal law. Without limiting the generality of the foregoing, the Parties agree to use patient's specific information only for permitted treatment, billing and related record-keeping purposes, and to protect patient-specific information from unnecessary disclosure to persons not employed or contracted for by the Parties, and from their own employees and contractors unless they have a need to know and agree to maintain the confidentiality of patient specific information. In the event that any patient information created, maintained or transmitted in connection with this Agreement is to be transmitted electronically, the Parties agree that they shall comply in all respects with the requirements of HIPAA governing electronic transmissions of protected health information. Failure by either Party to abide by these requirements shall be a basis for immediate termination of this Agreement.

Q. CLINIC Location(s) Serviced - PHARMACY agrees it will provide pharmacy services contracted for under this Agreement as specified in Schedule A.

2. OBLIGATION OF CLINIC. During the term of this Agreement, CLINIC shall:

A. Eligibility and Adjudication – CLINIC shall contract with a Pharmacy Benefits Manager to approve COVERED DRUGS dispensed by PHARMACY for CLINIC ELIGIBLE MEMBERS. PHARMACY may provide Pharmacy Benefits Manager with a list of prohibited third party payers whose members and/or claims may not be processed in any event as CLINIC ELIGIBLE MEMBERS or COVERED DRUGS, respectively. If CLINIC disagrees with PHARMACY list of prohibited third party payers, CLINIC has the right to terminate Agreement.

B. Inventory Management and Tracking – The Parties to this Agreement understand that, pursuant to Section 340B, CLINIC is liable to the drug manufacturers of the COVERED DRUGS in the amount equal to the reduction in the price of the COVERED DRUGS in the event that the COVERED DRUG is sold or otherwise transferred to a non-CLINIC ELIGIBLE MEMBER. CLINIC and or its designated wholesaler and or Pharmacy Benefits Manager shall establish and maintain a tracking system of COVERED DRUGS inventory at PHARMACY.

C. REPLENISHMENT of PHARMACY Drug Stock. – CLINIC shall purchase Drug Stock for REPLENISHMENT of COVERED DRUGS dispensed by PHARMACY for ELIGIBLE MEMBERS and approved by CLINIC's Pharmacy Benefits Manager. REPLENISHMENT of PHARMACY's inventory shall be by eleven (11) digit NDC (National Drug Code) Number ("**NDC#**") and quantity used. REPLENISHMENT begins after the total quantity unit(s) of a bottle, package or vial has been filled by PHARMACY for CLINIC ELIGIBLE MEMBERS and approved by CLINIC's Pharmacy Benefits Manager. Any quantity unit overage or underage by NDC#, shall be managed under Section 2, Paragraph B. "Inventory Management & Tracking" of this Agreement. Delivery of replenished stock shall be defined by the in Schedule A of this Agreement. Delivery shall be provided by a drug wholesaler designated and contracted by CLINIC. All payments of drug wholesaler invoices are the sole responsibility of the CLINIC. In the event a COVERED DRUG is out of stock or no longer available in the marketplace ("**UNAVAILABLE DRUG**"), CLINIC shall be required to immediately pay PHARMACY the actual cost of such UNAVAILABLE DRUG or, if agreed upon by PHARMACY, replenish PHARMACY's inventory with a similarly rated biochemical drug matching the nine digit NDC#. For UNAVAILABLE DRUGS, actual cost will be determined using CaptureRx® 's global acquisition cost unless the PHARMACY provides proof of its Actual Acquisition Cost (AAC).

D. Payments of FILL FEES to PHARMACY by CLINIC. – CLINIC and its Pharmacy Benefits Manager shall make any and all FILL FEE payments to PHARMACY as set forth in Schedule A of this Agreement. Payments shall be made to PHARMACY after each PAYMENT BATCH.

E. Inventory Remediation for PHARMACY – No less than once per month, CLINIC and its Pharmacy Benefits Manager will conduct Inventory Remediation by which the balance of any and all NDC# drug items and their quantities that are owed to the PHARMACY that have not had any order activity for three (3) months or more, shall be set to zero and the value of this balance of these drug items shall be paid to PHARMACY as outlined in Schedule A.

F. Reports to PHARMACY – CLINIC and its Pharmacy Benefits Manager shall provide after each PAYMENT BATCH to PHARMACY the following reports, including but not limited to: (These reports may also be provided to PHARMACY to review by on-line systems and in an editable agreed upon electronic format)

i. EOB Pharmacy Report (Approved 340B Claims)
ii. 340B Inventory Pending Balances Report
iii. 340B Inventory Replenishment Order Report
iv. Pharmacy Account Ledger
v. Filling Fee Reconciliation Report (Invoice)

G. CaptureRx® ™ On-Line System – CLINIC and its Pharmacy Benefits Manager shall provide access to CaptureRx® ™ On-Line System which determines 340B eligibility and what are COVERED DRUGS, tracks and manages inventory, places orders for REPLENISHMENT, creates and manages PAYMENT BATCHES, and allows for reporting and exportation of data.

H. Recoupment of Retroactive Denials. – CLINIC and its Pharmacy Benefits Manager, CaptureRx® , shall be jointly and severally responsible for any and all recoupments from PHARMACY resulting from an audit or retroactive denial (e.g.: for Medicaid or commercial conflicts). PHARMACY will notify CaptureRx® and/or CLINIC regarding any retroactive recoupment to ensure timely payment to the third party payor by CLINIC. Upon receipt of a report from PHARMACY to CLINIC and its Pharmacy Benefits Manager, identifying any COVERED DRUGS' THIRD PARTY PAYMENTS and COPAYMENTS previously collected by CLINIC and its Pharmacy Benefits Manager that were neither partially nor fully paid or charged-back against PHARMACY by either third party or CLINIC patient, CLINIC and its Pharmacy Benefits Manager shall recalculate the claim and credit or debit PHARMACY any difference in payments within 30 days of receipt of report from PHARMACY.

I. Compliance with Laws. – CLINIC shall be solely responsible for all professional advice and health care services rendered by it for ELIGIBLE MEMBERS. CLINIC will comply with all of the requirements and restrictions of Section 340B of the Public Health Service Act and any accompanying regulations or guidelines, including, but not limited to, the prohibitions on duplicate discounts/rebates, and drug diversion. CLINIC agrees to be in compliance with the provisions of the Contract Pharmacy Services Guidelines as set forth in the Federal Register, Vol. 75, No. 43, March 5, 2010, which can be found at ftp://ftp.hrsa.gov/bphc/pdf/opa/FR08231996.pdf, as well as applicable healthcare laws, including but not limited to HIPAA. CLINIC agrees to notify the Office of Pharmacy Affairs, in writing, of any changes in the contract arrangement. The Parties acknowledge and agree that the benefits to CLINIC hereunder do not require, are not payment for and are not in any way contingent upon the referral, admission or any other arrangement for the provision of any item or service. The Parties further acknowledge and agree that, notwithstanding anything herein to the contrary, neither Party is required to refer any patient to any health care provider or purchase pharmacy services from any source. The Parties further acknowledge and agree that this Agreement shall not be construed to induce or encourage the referral of patients or the purchase of pharmacy services or supplies.

J. Medicaid – CLINIC shall be responsible for determining and identifying CLINIC patients who are Medicaid beneficiaries and prohibiting the designation of any such patients as ELIGIBLE MEMBERS. For CLINIC patients who are Medicaid beneficiaries, CLINIC will take all reasonable steps necessary to obtain coverage from the appropriate payor, including activities necessary for requesting a Treatment Authorization Request from Medicaid.

3. TERM AND TERMINATION. This Agreement shall commence on the EFFECTIVE DATE, and shall continue for a period of one year until the first anniversary of the EFFECTIVE DATE, or until earlier terminated by:

3.1. Mutual agreement of the Parties;
3.2. Sixty (60) days prior written notice by either Party;
3.3. CLINIC, immediately and without prior notice, upon a material breach of this Agreement by PHARMACY. Without limiting CLINIC's right to assert any other act or failure to act as constituting a material breach by PHARMACY, PHARMACY's dispensing of a COVERED DRUG to an individual who is not an ELIGIBLE MEMBER or any other diversion of a COVERED DRUG shall be deemed to be a material breach if such breach cannot be reconciled under Section 1 Paragraph J. CLINIC's failure to take action with respect to PHARMACY's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of CLINIC's right to insist on future compliance with such term or provision.
3.4. PHARMACY, immediately and without prior notice, upon a material breach of this Agreement by CLINIC or its Pharmacy Benefits Manager. Without limiting PHARMACY's right to assert any other act or failure

to act as constituting a material breach by CLINIC, CLINIC's failure to timely restock COVERED DRUGS dispensed by PHARMACY or prescribing of a COVERED DRUG to an individual who is not an ELIGIBLE MEMBER or any other diversion of a COVERED DRUG shall be deemed to be a material breach. PHARMACY's failure to take action with respect to CLINIC's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of PHARMACY's right to insist on future compliance with such term or provision.

3.5. Either Party, immediately upon written notice to the other, for material breach of patient confidentiality requirements under HIPAA, as specified under Section 1 Paragraph P of this Agreement, or failure to comply with applicable laws as set forth in this Agreement.

4. EFFECT OF TERMINATION. COVERED DRUGS ordered for REPLENISHMENT by CLINIC, subject to this Agreement, are the properties of the CLINIC less those amounts which have been dispensed by the PHARMACY from PHARMACY own drug stock. Therefore, COVERED DRUGS which are the property of the CLINIC upon termination of this AGREEMENT must be returned to CLINIC or CLINIC's designated agent, within thirty (30) days of termination of this AGREEMENT. Reconciliation of any and all FILL FEE payments to and/or CO-PAYMENT collections from PHARMACY shall also be completed within thirty (30) days of termination of this Agreement. COVERED DRUGS which are property of CLINIC which can not be returned to CLINIC or accounted for by PHARMACY as destroyed outdated drugs or drugs previously released to CLINIC for its own use shall be reconciled under Section 2 Paragraph B except PHARMACY will be considered to have fulfilled reconciliation for such underage by payment by PHARMACY to CLINIC of the difference between the invoice 340B cost for such COVERED DRUGS and the actual retail cost as determined using CaptureRx® 's global acquisition cost unless the PHARMACY provides proof of its actual retail costs, for CLINIC to return to Manufacturer when such underage cannot be cured because of unavailability of the exact NDC#.

5. NOTICES. All notices provided for in this Agreement shall be in writing sent by facsimile or email followed by regular U.S. mail or shall be sent by registered or certified mail followed by facsimile addressed to the other Party at the address shown in this Agreement, or such other address as may be provided to the other Party in the same manner as that provided for the giving of any notice. All notices shall be deemed to have been received on the third (3rd) day after the date said notice was mailed or one business day following the time of said notice if sent by facsimile or email, followed by regular mailing.

6. REPRESENTATIONS. PHARMACY represents and warrants that he or it, as the case may be, is the owner of the pharmacy named herein and that he has full right, power, and authority to make this offer. PHARMACY warrants that professional pharmaceutical services shall only be rendered by licensed pharmacists to eligible persons, warrants that each prescription ordered shall be dispensed in accordance with a lawful prescriber's directions, and warrants that it is a pharmacy duly licensed under the pharmacy laws of the state in which it operates, and that the pharmacy hereby states that it is not on probation with any State Board of Pharmacy. PHARMACY represents and warrants that it can legally dispense prescriptions for Medicare and Medicaid healthcare programs; and that it is not currently subject to exclusion, suspension or debarment from the Medicare, Medicaid or other government healthcare programs. No representations or warranties have been made or relied upon other than those expressly set forth in this Agreement. CLINIC and CaptureRx® hereby represent and warrant that each will screen and remove any fee-for-service Medicaid patients prior to such patient being deemed a CLINIC ELIGIBLE MEMBER.

7. RELATIONSHIP BETWEEN PARTIES. PHARMACY shall perform all professional and other services under the terms of this Agreement as an independent contractor. It shall exercise its own professional judgment on all questions of professional practice. Nothing in this Agreement shall be construed to negate an existing Agreement to provide prescription services between PHARMACY and CLINIC or to prevent PHARMACY from marketing CLINIC to directly contract for similar services from PHARMACY upon pending expiration of a Term under the Agreement or Termination by any Party under the Agreement.

8. ENTIRE AGREEMENT. This Agreement, together with referenced implementing documents, constitutes the entire understanding between the Parties hereto and shall not be altered or amended except in writing signed by both Parties. Notwithstanding any other provision in this Agreement, to the extent PHARMACY and CLINIC have a previous contractual relationship the PHARMACY shall have the choice in its sole discretion as to whether the terms of such contract are determinative or to enter this Agreement.

9. CONFIDENTIALITY. Disclosure of this Agreement, along with any amendments or schedules, to include pricing, methods, and terms; is prohibited unless granted permission in writing by the other Party. This prohibition shall survive after the expiration and or termination of this Agreement.

10. MISCELLANEOUS PROVISIONS. Any and all controversies in connection with and or arising out of this Agreement shall be exclusively settled by binding arbitration in accordance with the Rules of the American Arbitration Association. The award of the arbiter shall be final and binding on the Parties hereto having jurisdiction thereof. Arbitration under this provision shall be conducted in the State in which the CLINIC resides unless otherwise agreed to by the Parties. Time is of the essence in the performance of each and every obligation herein imposed. This Agreement, when accepted by CLINIC, constitutes the entire understanding between the Parties hereto. In the event any provision or part thereof contained in the Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability or any other provision or part thereof contained herein.

11. ATTACHMENTS. Schedule A shall be attached hereto and incorporated herein as referenced.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this 340B Pharmacy Services Agreement as of the Effective Date.

Clackamas County

Print Name:Richard Swift, Director

Health, Housing and Human Services

Signature:

Title:

Date:

Address: 2051 Kaen Rd. #367 Oregon City, OR 97045

PHARMACY: Geneva Woods

Print Name: Dan Afrasiabi

Signature:

Title: CEO

Date: 10/1/17

Address: 6600 NE 112th Court, Vancouver, WA 98662

DRAFT

Approval of Previous Business Meeting Minutes:

September 28, 2017

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at http://www.clackamas.us/bcc/business.html

Thursday, September 28, 2017 – 10:00 AM
Public Services Building
2051 Kaen Rd., Oregon City, OR 97045

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

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION

1. Presentation and Video of the T2 Program: Technology for Teaching

David Cummings, Clackamas County Technology Services presented the staff report and video.

~Board Discussion~

II. CITIZEN COMMUNICATION

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

1. Les Poole, Gladstone – Gave kudos to Counties Technology Service Department, Light Rail Orange Line and Land Use.

~Board Discussion~

III. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title,
Commissioner Humberston had a question on item E.1. Commissioner Fischer discussed a clarification with item A.3. Chair Bernard spoke on item C.1.
~Board Discussion~ http://www.clackamas.us/bcc/business.html
Chair Bernard then asked for a motion.

MOTION:

Commissioner Humberston:	I move we approve the consent agenda.
Commissioner Fischer:	Second.
all those in favor/opposed:	
Commissioner Fischer:	Aye.
Commissioner Humberston:	Aye.
Chair Bernard:	Aye – the Ayes have it, the motion passes 3-0.

A. Health, Housing & Human Services

1. Approval of an Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority, for Choice Model Services – *Behavioral Health*

2. Approval of a Facility Lease Agreement with North Clackamas School District No. 12 for the Wichita Community Services Building for Women, Infants, and Children (WIC) Program – *Public Health*

3. Approval of an Agency Services Agreement with Youth M.O.V.E. Oregon for a Drop-In Center and Peer Support for Youth/Young Adults in Transition – *Behavioral Health*

4. Approval of a Subrecipient Agreement with LifeWorks Northwest for Evidence-based Parenting Education Classes – *Children, Youth & Families*

5. Approval of Intergovernmental Agreement No.155318 with the State of Oregon, Department of Human Services (DHS), for the operation of the Supplemental Nutrition Assistance Program (SNAP) Employment & Training – *Community Solutions*

B. Elected Officials

1. Approval of Amendment No. 2 and Renewal No. 3 for the Contract Documents between Sendit Direct Mail and Fulfillment, Inc. and Clackamas County Clerk's Office for Ballot Mailing and Envelope Storage Services – *Clerk via Procurement*

C. Public & Government Affairs

1. **Board Order No. 2017-112** Approving an Extension of the Cable Television Franchise with Comcast of Oregon II, Inc., Comcast of Tualatin Valley, Inc., and Comcast of Illinois/Ohio/Oregon, LLC

D. Juvenile Department

1. Approval of Intergovernmental Agreement and Amendment No. 3 with the State of Oregon for Title IV-E Funding for Youth at Risk

2. Approval of Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Department of Education, Youth Development Division for Juvenile Crime Prevention Funding

E. Business & Community Services

1. **Board Order No. 2017-113** Approving a Tax Foreclosed Property for Declaration as Surplus and Established Minimum Bid Amounts – *Property Resources*

F. Department of Communications (C-Com)

1. Approval of an Intergovernmental Agreement Establishing Clackamas County as a fiscal Agent for Grant Funds for Regional 911 Projects

G. Technology Services

1. Approval to Enter into a Service Level Agreement between Clackamas Broadband eXchange and the Summit Learning Charter for a Dark Fiber Connection

H. Tourism & Cultural Affairs

1. Approval of a Contract with Borders Perrin Norrander (BPN) for Marketing Agency of Record Services for the Tourism & Cultural Affairs Department - *Procurement*

IV. COUNTY ADMINISTRATOR UPDATE
http://www.clackamas.us/bcc/business.html

V. COMMISSIONERS COMMUNICATION
http://www.clackamas.us/bcc/business.html

Meeting Adjourned 10:53am

CLACKAMAS COUNTY

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

October 19, 2017

Board of County Commissioners
Development Agency Board

Members of the Board:

Approval of a Disposition Agreement with Shanti Investments, LLC

Purpose/Outcomes	Authorization for the Chair to execute a Disposition Agreement to convey real property from the Clackamas County Development Agency to Shanti Investments, LLC
Dollar Amount and Fiscal Impact	The agreement stipulates sale of the property for $630,000
Funding Source	Not Applicable. No funding considered as a part of this property transaction
Duration	Establishes a due diligence period of 120 days, closing within 30 days of due diligence and substantial completion of the project within 30 months
Previous Board Action	Executive Session
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Program Supervisor – Development Agency 503-742-4322 or davidque@co.clackamas.or.us

BACKGROUND:

The Development Agency owns a 0.97 acre parcel located at the northwest corner of 92nd Avenue and Johnson Creek Boulevard. Shanti Investments, LLC presented a proposal to the Agency to acquire the property for redevelopment purposes, which was presented to the Board for consideration in Executive Session. The Board directed staff to proceed with negotiations for disposition of the property to Shanti Investments, LLC subject to terms agreeable by the Board.

The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition Agreement dictate purchase of the property for $630,000 and consistency with the development proposal as presented at the Executive Session.

County Counsel has reviewed and approved this Agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Disposition Agreement with Shanti Investments, LLC
- Delegate authority to the Chair to execute the aforementioned Agreement, inclusive of any non-material changes, and any other necessary documents on behalf of the Development Agency Board at closing
- Delegate staff authority to act on behalf of the Agency at closing
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency

Respectfully submitted,

David Queener
Program Supervisor, Development Agency

DISPOSITION AGREEMENT

THIS DISPOSITION AGREEMENT (this "**Agreement**") is by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), and SHANTI INVESTMENTS, LLC, an Oregon limited liability company (the "**Developer**"). The latest date on which this Agreement is signed by Agency and Developer (as indicated below their signatures herein) is referred to in this Agreement as the "**Effective Date**."

RECITALS

A. This Agreement is entered into by the Agency in furtherance of its objectives under the Clackamas Town Center Area Development Plan ("**Plan**") by providing for the disposition of certain real property and the development of the "Property" (as hereinafter defined) as provided in this Agreement. The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the "**County**") and the Plan and the health safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. The Plan was originally approved and adopted on December 30, 1980 by Order No. 80-2685 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

C. Agency desires to sell the Property to Developer, and Developer desires to purchase the Property from Agency, on and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: The Property.

The "**Property**" consists of approximately 0.97 acres of land owned by the Agency located on the northwest corner of the SE 92th Avenue and Johnson Creek Boulevard intersection, as more particularly shown on the map attached hereto as **Exhibit "A"** and more particularly described in the legal description attached hereto as **Exhibit "B."**

Section 1.2: Post-Closing Agreement.

At Closing, Agency and Developer will enter into that Post-Closing Escrow and Development Agreement in the form attached hereto as **Exhibit "C"** (the "**Post-Closing Agreement**"). Among other things, the Post-Closing Agreement provides for Developer to meet certain site and building improvement goals, as more specifically described therein.

Section 1.3: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term "**Agency**" as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
c/o Development Agency Program Supervisor
150 Beavercreek Road
Oregon City, OR 97045
Attn: Dave Queener
Email: DavidQue@co.clackamas.or.us

Section 1.4: The Developer.

The term "**Developer**" as used in this Agreement is Shanti Investments, LLC or any permitted assignee of Developer, as provided in Section 1.6 below. The principal office and mailing address of the Developer for purposes of this Agreement is:

Shanti Investments, LLC
PO Box 1900
Clackamas, OR 97015
Attn: Jayanti Patel
Email: jaymadras@hotmail.com

Section 1.5: Escrow Officer/Title Company.

The principal office and mailing address of the Escrow Officer and Title Company for purposes of this Agreement is:

Chicago Title Company of Oregon
10151 SE Sunnyside Road, Suite 300
Clackamas, OR 97015
Attn:
Email:

Section 1.6: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer and its Manager are of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein. All assignments of this Agreement shall require written consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the notice and opportunity to cure provisions set forth in Section 7 below, this Agreement may be terminated by Agency at its option before Closing if there is any change (voluntary or involuntary) in the ownership, management or control of Developer or any successor-in-interest of Developer inconsistent with this Agreement.

ARTICLE 2: DEVELOPER'S DUE DILIGENCE

Section 2.1: Title Commitment.

Within twenty (20) days after the Effective Date, Agency will cause the Title Company (defined in Section 3.3 below) to furnish to Developer its preliminary title report on the Property (the "**Preliminary Commitment**"), along with copies of all documents that give rise to exceptions listed in the Preliminary Commitment (the "**Underlying Documents**"). Within thirty (30) days of receiving the last of the Preliminary Commitment, the Underlying Documents and the Initial Survey (defined in Section 2.2 below), Developer will give Agency written notice setting forth the title exceptions that are not acceptable to Developer (the "**Unacceptable Exceptions**"). All exceptions other than those timely objected to will be deemed acceptable to Developer as "**Permitted Exceptions**." Agency will have twenty (20) days after receiving Developer's notice within which to notify Developer in writing whether Agency is willing or able to eliminate the Unacceptable Exceptions. If Agency agrees to eliminate the Unacceptable Exceptions, Agency will be obligated to do so on or before Closing (defined in Section 3.3 below) at its cost. If Agency is unwilling or unable to eliminate the Unacceptable Exceptions, Developer may terminate this Agreement or elect to accept the Unacceptable Exceptions and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its objections to the Unacceptable Exceptions and all of the Unacceptable Exceptions shall become Permitted Exceptions. Developer shall have the same rights as set forth above to approve (or disapprove and terminate this Agreement with respect to) any subsequent title matters or exceptions that are disclosed in any subsequent title reports that may be issued after the receipt of the initial Preliminary Commitment. Upon termination of this Agreement by Developer as provided in this Section 2.1, the Earnest Money shall be refunded to Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.2: Survey.

Within thirty (30) days after the Effective Date, Agency shall deliver the most recent survey, if any, in its possession to Developer (the "**Initial Survey**"). At its option and expense, Developer may order an update to the Survey (or a new survey) (the Initial Survey, as updated or a new survey, as applicable, is referred to herein as the "**Survey**"). If applicable, Developer shall deliver a copy of any new or updated survey to Agency promptly upon receipt. Within thirty (30) days after receipt of the Initial Survey, Developer may deliver to Agency, in writing, any objections to any matters shown on the Survey (the "**Objections**"). Developer's failure to timely object to any such matters shall be deemed to constitute Developer's approval thereof and such shall then become Permitted Exceptions, as defined in Article 2. If Developer timely objects to any matters shown on the Survey, then Agency shall have the right, but not the obligation, to agree in writing to cure before Closing such Objections, or to decline to cure such Objections. Agency will have twenty (20) days after receiving Developer's Objections within which to notify Developer in writing whether Agency is willing or able to cure the Objections. If Agency agrees

to cure the Objections, Agency will be obligated to do so by Closing at its cost. If Agency is unwilling or unable to cure the Objections, Developer may terminate this Agreement or elect to accept the Objections and proceed to close escrow by giving written notice to Agency within 10 (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Objections and all of the Objections shall become Permitted Exceptions. Notwithstanding anything to the contrary above, although Developer may elect to update the Initial Survey or obtain a new survey, Developer is not obligated to do so. Upon termination of this Agreement by Developer as provided above, the Earnest Money shall be refunded to Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.3: Property Documents.

Within twenty (20) days after the Effective Date, Agency shall deliver all documents and materials which Agency has in its possession (or access to) which concern the Property or its development, including but not limited to: tax and assessment documents, existing surveys, environmental assessments; soils or geotechnical reports; wetland reports, analyses and permits; traffic studies; development feasibility studies; copies of use and development permits; and any easements, covenants, conditions, restrictions, maintenance agreements, development standards applicable to the Property and not otherwise set forth herein (except those that appear in zoning codes, comprehensive plans or other readily available government planning documents).

Section 2.4: Due Diligence Period.

Subject to extension as provided herein, Developer shall have a period of one hundred twenty (120) days after the Effective Date (the "**Initial Due Diligence Period**", which period, as may be extended by mutual agreement of the parties, is referred to herein as the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer's intended uses, including without limitation the physical condition of the Property, zoning, access, utilities, and all legal rights, titles, and interests. During the period from the Effective Date until the earlier of Closing or termination of this Agreement, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. Developer agrees to provide the Agency with copies of all third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the

Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide Agency with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Developer at its option may provide notice to Agency of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval notice were given to Agency prior to expiration of the Due Diligence Period. In the event of termination (or deemed termination), except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

Section 2.5: Design Drawings.

The Developer shall prepare and submit to the Agency architectural design development drawings of the Developer's proposed improvements ("**Design Drawings**"), or any portion thereof, for Agency review and written approval within the Due Diligence Period. The Design Drawings shall be generally consistent with the Scope of Development, attached hereto as **Exhibit "F."** The plans and documents as may be required shall also be submitted to the County for the purposes of compliance with all codes, regulations and other requirements in connection with the construction of the Developer's proposed improvements. Agency shall diligently, in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development as proposed by the Developer and shall issue its decision within twenty (20) days after receipt of same. Failure of Agency to notify Developer within such period of time shall be deemed to be approval by Agency. If Agency does not approve the Design Drawings, Agency shall specify, in writing, its specific objections to same, and Developer shall have a reasonable opportunity to revise the Design Drawings. After any such resubmission of the Design Drawings, Agency shall issue its decision within ten (10) days after receipt of same. Agency approval shall not be deemed approval by the County Design Review Board or any other agency or department.

Section 2.6: Governmental Approvals.

Prior to the Closing Date, Agency agrees to join in executing any applications reasonably required by Developer in connection with its attempts to obtain governmental permits and approvals for its intended development or use of the Property. Developer shall reimburse Agency for its actual, reasonable out-of-pocket expenses (if any) incurred in cooperating with Developer's attempts to obtain governmental permits or approvals; provided Agency gives Developer notice of the amount and purpose of all such expenses prior to their being incurred by Agency. Agency's agreement to cooperate with Developer in connection with Developer's governmental approvals and any other provision of this Agreement shall not be construed as making either party an agent or partner of the other party.

Section 2.7: No Liens.

Prior to Closing, the Developer shall not place or allow to be placed on the Property or any part thereof any mortgage, trust deed, encumbrance or lien, unless specifically pre-approved in writing by the Agency. The Developer shall remove or have removed any levy, lien or attachment made on the Property, or any part thereof, or provide assurance of the satisfaction therein within a reasonable time, but in any case no later than thirty (30) days of such levy, lien or attachment coming into existence without permission prior to Closing. Developer may contest or challenge the validity or amount of any such lien or encumbrance provided such challenge or contest is taken in accordance with applicable law and within a reasonable time, so long as Developer provides security satisfactory to Agency protecting the Agency's interests, or (in the case of construction liens) bonds against the liens as permitted by statute.

ARTICLE 3: DISPOSITION OF PROPERTY

Section 3.1: Purchase and Sale of the Property; Total Purchase Price.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, or Developer's permitted assignee of this Agreement, and Developer agrees to purchase from Agency, the Property, for the amount of Six Hundred Thirty Thousand and no/100 Dollars ($630,000.00) (the "**Purchase Price**").

Section 3.2: Earnest Money Deposit.

Developer shall, within three (3) business days after the Effective Date, deliver to the Title Company (defined below) the sum of Twenty Five Thousand and no/100 Dollars ($25,000.00) as earnest money in cash or by wire transfer of immediately available funds (the "**Earnest Money**") to be held and applied in accordance with the terms of this Agreement. The Earnest Money promissory note shall be redeemable on demand in cash, or other immediately available funds, upon expiration of the Due Diligence Period set forth above. If Developer fails to timely deposit the Earnest Money as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. The Earnest

Money, once redeemed, will be held in an interest bearing account approved by Developer, and all interest earned thereon shall be added to and become part of the Earnest Money. The Earnest Money will be applied to the Purchase Price due by Developer at Closing. If this Agreement terminates prior to expiration of the Due Diligence Period for any reason, except the default of Developer under the terms of this Agreement, the Earnest Money and any accrued interest shall be fully and immediately refunded to Developer. Upon expiration of Developer's Due Diligence Period, the Earnest Money, and any accrued interest, shall become nonrefundable, but shall be credited toward payment of the Purchase Price at Closing.

Section 3.3: Closing.

This transaction shall close (the "**Closing**") on a date to be selected by Developer and reasonably acceptable to Agency that is on or before thirty (30) days after the expiration of the Due Diligence Period (as may be extended as provided herein, the "**Closing Date**"). Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the "**Escrow Officer**") of Chicago Title Insurance Company of Oregon, 10151 SE Sunnyside Rd. #300, Clackamas, OR 97015 (the "**Title Company**"), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Property and pay to Agency at Closing the Purchase Price for the Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Earnest Money. The Agency and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the Agency and the Developer.

Section 3.4: Deed Form.

At Closing, the Agency shall convey to Developer fee simple title to the Property by Bargain and Sale Deed, duly executed, acknowledged and delivered in the form of **Exhibit "D"** attached hereto (the "**Deed**"), free and clear of all liens, claims and encumbrances other than the Permitted Exceptions. Conveyance of title to the Property to Developer shall conclusively establish satisfaction or waiver of all closing conditions set forth in Article 4 herein.

Section 3.5: Title Insurance; Prorations; Adjustments; Commissions.

3.5.1 Developer shall be responsible for obtaining any and all title insurance for the Property, including additional premiums for extended coverage and additional title endorsements. At Developer's request, Agency will execute and deliver at Closing an affidavit certifying that there are no unrecorded leases or agreements affecting the Property, there are no parties in possession of the Property, that there are no mechanic's or statutory liens against the Property, and as to such other matters as may be reasonably requested by the Title Company or Developer for issuance of extended coverage title insurance in favor of Developer.

3.5.2 Real property taxes and assessments and other Property expenses for the current year (if any) shall be prorated and adjusted between the parties as of the Closing Date. Agency shall be responsible for any and all real property taxes for the period of time prior to the recording of the Deed and the Developer shall be responsible for such taxes for the period of time on and subsequent thereto. Escrow fees shall be paid by Developer. Recording fees shall be paid by the Agency. Developer shall be responsible for all professional fees incurred by Developer in connection with its investigation of the Property, and payment of its respective legal fees and expenses. Agency shall pay the costs of its own attorneys, consultants and advisors with respect to this transaction.

Section 3.6: Events of Closing.

Provided the Escrow Officer has received sums equal to the Purchase Price and the security deposit, as set forth in Section 3.6.10, as well as any costs, prorations and adjustments as provided herein, and is in a position to cause the title insurance policy to be issued as described herein, this transaction shall be closed on the Closing Date as follows:

3.6.1 The Escrow Officer shall perform the prorations and adjustments described in Section 3.5, and the parties shall be charged and credited accordingly.

3.6.2 Developer shall pay the entire Purchase Price to Agency by wire transfer or cashier's check of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Agreement, including a credit for the Earnest Money.

3.6.3 Any liens required to be paid by Agency at closing shall be paid and satisfied of record at Agency's expense.

3.6.4 Agency shall convey the real property to Developer by execution and delivery of the Deed, subject only to the Permitted Exceptions.

3.6.5 The Title Company shall be irrevocably committed to issue the policy described in Section 4.2.5, upon recordation of the Deed.

3.6.6 Agency shall deliver Agency's Certification of Nonforeign Status as provided in Section 8.14 herein.

3.6.7 The parties shall execute and deliver the Post-Closing Escrow and Development Agreement in the form attached hereto as **Exhibit "C."**

3.6.8 The parties shall execute and deliver, with notary acknowledgment, a Memorandum of Post-Closing Agreement in the form attached hereto as **Exhibit "E"** (the "**Memorandum**").

3.6.9 The Escrow Officer shall record the following documents in the following order: (i) Deed and (ii) Memorandum.

3.6.10 Developer shall deposit the additional sum of Twenty Five Thousand Dollars ($25,000) by wire transfer of immediately available funds, as a security deposit, to be held by the Title Company pursuant to the terms of the Post-Closing Escrow and Development Agreement, attached hereto as **Exhibit "C."**

3.6.11 The parties will take such further actions and execute and deliver such other instruments as may be reasonably necessary or desirable to consummate the transactions contemplated by this Agreement.

Section 3.7: Possession.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title on the Closing Date. The Developer shall accept title and possession on the Closing Date, unless such date is extended as provided herein.

Section 3.8: Conditions of the Property.

The Developer acknowledges that it is purchasing the Property "As Is," except as provided otherwise herein

ARTICLE 4: CLOSING CONDITIONS

Section 4.1: Agency's Closing Conditions.

Agency's obligations to convey the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.1.1 The fulfillment by Developer of all its obligations and covenants under this Agreement to be performed on or before the Closing Date, including but not limited to the deposit of the Purchase Price required for conveyance of the Property and the deposit of the security deposit as set forth in Section 3.6.10 with the Title Company at or before Closing, and the attachment of all exhibits to the Post-Closing Agreement as of that time.

4.1.2 Design Drawings (as defined in Section 2.5) for the Developer Improvements have been prepared and submitted by Developer in accordance with the terms of this Agreement and have been reviewed and approved by Agency, such approval not to be unreasonably withheld, conditioned or delayed, within twenty (20) days after receipt of such Design Drawings, as being in accordance with the Plan and this Agreement; and Developer shall have completed its design review process and the Design Drawings shall have been approved by the County Design Review Board or any subsequent appellate body and such approval is not subject to further appeal under Oregon land use law. The Developer shall complete the process with the County Design Review Board, and any subsequent appeal ("**Design Approval**"), within the Due Diligence Period, as it may be extended pursuant to Section 2.4. Design Drawings for the purpose of Agency's review shall mean architectural design development drawings of the site improvements.

4.1.3 That all of Developer's representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

The foregoing conditions may be waived only by Agency. If any one or more of such conditions are not satisfied as of the Closing Date, Agency at its option may terminate this Agreement, in which event the Earnest Money shall be refunded to Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination), except to the extent such condition is not satisfied solely as a result of a breach of this Agreement by Developer, in which case the provisions of Section 7.1 below shall apply.

Section 4.2: Developer's Closing Conditions.

Developer's obligations to close the purchase of the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.2.1 Developer giving the Approval Notice, or being deemed to have given its approval pursuant to Section 2.4.

4.2.2 The fulfillment by Agency of all its obligations and covenants under this Agreement to be performed on or before the Closing Date.

4.2.3 That all of Agency's representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

4.2.4 There being no change in the condition or legal requirements of the Property, whether directly or indirectly, including any dumping of refuse or environmental contamination, after Effective Date, and that no legal action or proceeding (including condemnation) affecting the Property or Developer's intended use thereof shall have been threatened or commenced.

4.2.5 That the Title Company shall be irrevocably committed to issue an owner's title insurance policy as described in Section 3.5 above insuring that fee simple title is vested in Developer as of the Closing Date, in the amount of the Purchase Price, subject only to the Permitted Exceptions.

The foregoing conditions may be waived only by Developer. If any one or more of such conditions are not satisfied as of the Closing Date, Developer at its option may terminate this Agreement, in which event the Earnest Money shall be refunded to Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination), except to the extent such condition is not satisfied solely as a result of a breach of this Agreement by Agency, in which case the provisions of Section 7.2 below shall apply.

ARTICLE 5: RESERVED

Reserved

ARTICLE 6: REPRESENTATIONS AND WARRANTIES

Section 6.1: Developer's Representations and Covenants.

Developer represents, warrants and covenants as follows:

6.1.1: Developer is an Oregon limited liability company, duly organized and validly existing, and is qualified to do business in the state in which the Property is located. Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby;

6.1.2: There is no agreement to which Developer is a party or which, to Developer's knowledge, is binding on Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to Developer's knowledge, threatened against Developer which challenges or impairs Developer's ability to execute or perform its obligations under this Agreement;

6.1.3: Developer has the financial capacity to cause those improvements set forth in the Post-Closing and Development Agreement to be constructed;

6.1.4: Jayanti Patel, in his capacity as the Member of Developer, is individually authorized to act on behalf of, and bind, the Developer;

6.1.5: To the best of Developer's knowledge (without any requirement of further investigation), all information, documents and instruments delivered to Agency by Developer in connection with this Agreement are complete and true copies of such documents or original counterparts thereof;

6.1.6: Developer has not obligated itself in any manner to convey, transfer, or otherwise encumber the Property after the Closing to any party that may reasonably be expected to impair performance under the Post-Closing Agreement in any material respect, and further Developer promises not to enter into an agreement with any other party that could reasonably be expected to negatively impact or impair Developer's performance under the Post-Closing Agreement in any material respect;

6.1.7: Developer is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code; and

6.1.8: To the best of Developer's knowledge, Developer, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with (i) all applicable tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Developer, to Developer's property, operations, receipts, or income, or to Developer's performance of or compensation for any work performed by Developer; (iii) any tax provisions imposed by a political subdivision of this state that applied to Developer, or to goods, services,

or property, whether tangible or intangible, provided by Developer; and (iv) any applicable rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

6.1.9 Developer has not engaged a real estate broker or agent for purposes of negotiating this transaction and no agreements have been executed by Developer which would obligate a third-party to be paid out of the proceeds of the sale of the Property.

Section 6.2: Agency's Representations and Covenants.

Agency represents, warrants and covenants as follows:

6.2.1 Agency has been duly organized and is validly existing as a corporate body politic, in good standing in the State of Oregon. Agency has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby;

6.2.2 To the best of Agency's knowledge (without any requirement of further investigation), there are no actions, suits, claims, legal proceedings, condemnation or eminent domain proceedings, or any other proceedings affecting the Property, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign, nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the Property for Developer's intended purpose, the value of the Property, or adversely affect the ability of Agency to perform its obligations under this Agreement; provided, however, that Agency makes no representation or warranty regarding the use of the Property under current or future land use codes, building codes, or other generally applicable laws and regulations, and Developer acknowledges their obligation to investigate the same as part of their due diligence process;

6.2.3 To the best of Agency's knowledge (without any requirement of further investigation), there are no liens, bonds, encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property except as disclosed in the Preliminary Commitment, and Agency has not received notice and has no knowledge of any pending liens or special assessments to be made against the Property;

6.2.4 From the Effective Date until the Closing Date, Agency shall use commercially reasonable efforts to properly maintain the Property in its current condition as of the Effective Date less reasonable impact of natural conditions and Developer's due diligence efforts;

6.2.5 To the best of Agency's knowledge (without any requirement of further investigation), all Property information, documents and instruments delivered to Developer by Agency are complete and true copies of such documents or original counterparts thereof;

6.2.6 To the best of Agency's knowledge (without any requirement of further investigation), other than this Agreement, the documents to be executed and delivered hereunder at Closing and the Permitted Exceptions, there are no contracts or agreements of any kind

relating to the Property to which Agency or its agents is a party and which would be binding on Developer after Closing;

6.2.7 Agency has not obligated itself in any manner to sell the Property to any party other than Developer and promises not to enter into an agreement with any other party for the sale or lease of any portion of the Property while this Agreement is in effect;

6.2.8 Agency is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code;

6.2.9 To the best of Agency's knowledge (without any requirement of further investigation), Agency is not (and is not engaged in this transaction on behalf of) a person or entity with which Developer is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; Executive Order 13224; the Bank Secrecy Act; the Trading with the Enemy Act; the International Emergency Economic Powers Act; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 U.S.C Sections 1956 and 1957;

6.2.10 To the best of Agency's knowledge (without any requirement of further investigation), Agency's sale of the Property is not subject to any federal, state or local withholding obligation of Developer under the tax laws applicable to Agency or the Property;

6.2.11 Agency has received no written notice of and has no knowledge of any material violations or investigations of violations of any applicable laws or ordinances affecting the Property that have not been corrected or resolved;

6.2.12 To the best of Agency's knowledge (without any requirement of further investigation), no hazardous substances exist at the Property in any material concentration or quantity;

6.2.13 Agency has not engaged a real estate broker or agent for purposes of negotiating this transaction and no agreements have been executed by Agency which would obligate a third-party to be paid out of the proceeds of the sale of the Property.

6.2.14 To the best of Agency's knowledge (without any requirement of further investigation), the Property is in compliance with all applicable environmental laws, there are no material concentrations of hazardous wastes or hazardous substances on, in or under the Property, and there are no underground storage tanks within the Property. As used in this Agreement, the term "environmental laws" includes any and all state, federal and local statutes, regulations, and ordinances to which the Property is subject and relating to the protection of human health and the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to same; and the term "hazardous substances" includes all hazardous and toxic substances, wastes, or materials, including without limitation all substances, wastes, and materials containing either petroleum, including crude oil or any fraction thereof, or any of the substances referenced in Section

101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601(14), and similar or comparable state or local laws.

For the purposes of this Agreement, "Agency's knowledge" is defined as the knowledge of Mr. Dan Johnson and Mr. David Queener.

Section 6.3: Survival.

All representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and shall survive Closing and not be merged into any documents delivered at Closing. The parties agree to disclose any material change in the representations and warranties contained in this Agreement.

ARTICLE 7: DEFAULTS AND REMEDIES

Section 7.1: Agency's Remedies.

In the event that this transaction fails to close solely on account of a default by Developer under this Agreement, this Agreement shall terminate and the Earnest Money, any accrued interest, and any extension fees paid by Developer pursuant to Section 2.4 shall be forfeited by Developer and retained by Agency as liquidated damages as Agency's sole remedy for such default. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for Developer's default, since the precise amount of such compensation would be difficult to determine. For any default by Developer that does not cause the transaction to fail, but which nevertheless causes damage to the Agency, the Agency shall be entitled to such remedies as may be available under applicable law.

In the event that any of the following occur prior to the conveyance of title to the Property, then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or the Property, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event the Earnest Money (and any interest earned thereon) shall be retained by the Agency as liquidated damages and as its property without any deduction, offset or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

7.1.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;

7.1.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.6 hereof;

7.1.3 The Developer does not submit Design Drawings as required by this Agreement in the manner and by the dates respectively provided in this Agreement therefore; or

7.1.4 The Developer does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after the satisfaction or waiver of all of Developer's Closing Conditions set forth in Section 4.2

Section 7.2: Developer's Remedies.

If this transaction fails to close because of Agency's default hereunder, the Earnest Money, and any accrued interest, shall be returned to Developer. Developer shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

Section 7.3: Default.

Except for the parties' wrongful failure to close or satisfy a condition to Closing by the Closing Date, neither party shall be deemed in default under this Agreement unless such party is given written notice of its failure to comply with this Agreement and such failure continues for a period of five (5) days following the date such notice is given.

ARTICLE 8: GENERAL PROVISIONS

Section 8.1: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

Section 8.2: Attorney Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 8.3: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Program Supervisor of the Agency, as set forth in Section 1.3, or in such other manner as may be provided by law. In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made on the individual identified in Section 1.4, or in such other manner as may be provided by law.

Section 8.4: Notice, Demands and Communications Between the Parties.

All notices given pursuant to this Agreement shall be in writing sent to the addresses shown in Section 1.3 and Section 1.4 of this Agreement and to the attention of the person

indicated, and shall be either: (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by local or national courier.

Any notice (i) sent by mail in the manner specified in this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, and (ii) delivered in person or by local or national courier shall be deemed served or given upon receipt or refusal of delivery. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender. Each party may change its address for notice by giving not less than ten (10) days' prior notice of such change to the other party in the manner set forth above.

Section 8.5: Nonliability of Officials and Employees.

No member, manager, shareholder, director, officer, elected official, employee, affiliate, agent, or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 8.6: Merger.

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

Section 8.7: Headings.

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

Section 8.8: Time of Essence.

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

Section 8.9: Severability.

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

Section 8.10: No Partnership.

Neither anything in this Agreement or the documents delivered in connection herewith nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

Section 8.11: Nonwaiver of Government Rights.

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

Section 8.12: Entire Agreement; Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in a writing signed by the appropriate authorities by the Agency and the Developer.

Section 8.13: Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Section 8.14: Non-Foreign Persons.

The parties agree to comply with the terms of Internal Revenue Code Section 1445 and at Closing, Agency shall execute and deliver to Developer and Title Company a non-foreign person affidavit in a form mutually acceptable to the parties. Agency represents and warrants that it is not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and Agency agrees to furnish Developer with any necessary documentation to that effect.

Section 8.15: Waiver.

Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Section 8.16: Weekends and Holidays.

If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

Section 8.17: Neutral Construction.

This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party by virtue of which party drafted all or any part of this Agreement.

Section 8.18: Exhibits.

All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

Section 8.19: Dispute Resolution.

Each party waives its rights to trial by jury in any claim, action, suit, or proceeding arising out of this Agreement or the transactions relating to its subject matter.

ARTICLE 9: SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns.

ARTICLE 10: STATUTORY DISCLAIMER

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL,

TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[SIGNATURE PAGE FOLLOWS]

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

"AGENCY" CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____
Chair
Date: _____, 2017

"DEVELOPER" SHANTI INVESTMENTS, LLC, an Oregon limited liability company and/or assigns

By: _____

Date: _____, 2017

LIST OF EXHIBITS

EXHIBIT A	Property Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Post-Closing Agreement
EXHIBIT D	Form of Bargain and Sale Deed
EXHIBIT E	Memorandum of Post-Closing Agreement
EXHIBIT F	Scope of Development

EXHIBIT A

Property Map

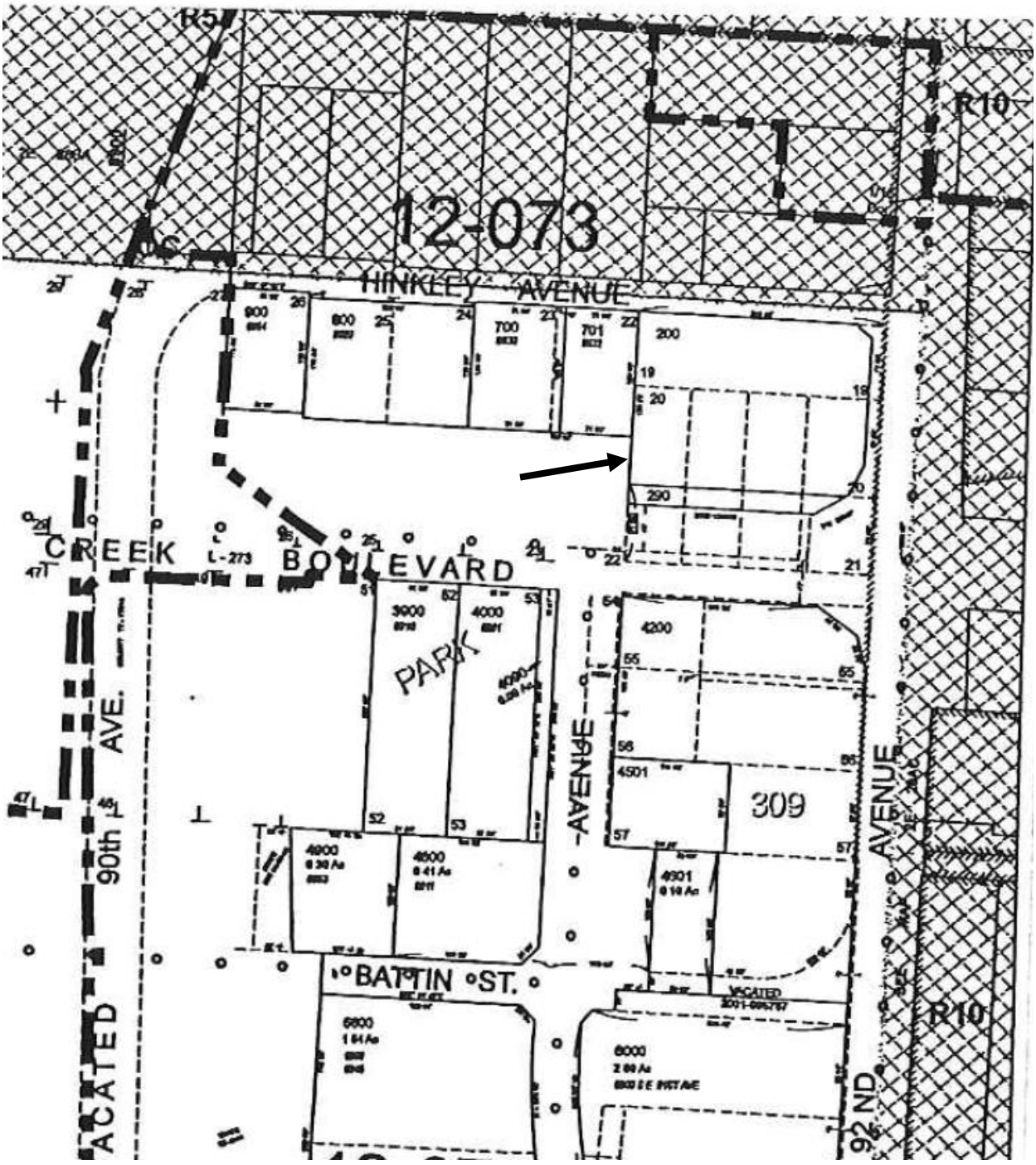

EXHIBIT B

Legal Description - Property

Lots 19, 20 and 21, BARWELL PARK, in the County of Clackamas and State of Oregon.

EXCEEPTING THEREFROM that portion conveyed to Clackamas County by Deed recorded October 31, 1996 as Recorder's Fee No. 9081256, Clackamas County Deed Records.

ALSO EXCEPTING THEREFROM that portion conveyed to Clackamas County by Deed recorded December 10, 2002 as Recorder's Fee No. 2002120866, Clackamas County Deed Records.

EXHIBIT C

Post-Closing Agreement

POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**") and **SHANTI INVESTMENTS, LLC** an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE COMPANY OF OREGON**, an Oregon corporation ("**Escrow Holder**"). The latest date on which this Agreement is signed by Agency and Developer (as indicated below by their signatures herein) is referred to in this Agreement as the "**Effective Date**."

RECITALS

A. Pursuant to that Disposition Agreement effective _____, 2017 (the "**DA**"), Developer acquired from Agency that certain real property, containing approximately 0.97 acres, owned by the Agency located on the northwest corner of the SE 92th Avenue and Johnson Creek Road intersection in Clackamas County, Oregon, as more particularly described in Exhibit "B" of the DA (the "**Property**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. In connection with the DA and in furtherance of the Plan, Agency desires that Developer construct the Building Improvements (defined below), and Developer wishes to do so subject to the terms and conditions of this Agreement. As used herein, the "**Building Improvements**" means the 27,762 square foot hotel building and associated improvements on the Property as described in **Exhibit "A,"** attached hereto.

C. In addition, the parties desire to establish at Closing an escrow account (the "**Account**") in the total amount of Twenty-Five Thousand and No/100 Dollars ($25,000.00) (the "**Funds**"), payable at Closing by the Developer, to be held by the Escrow Holder as security for satisfaction of the obligation of the Developer to complete the development goals, as described in Section 1 of this Agreement.

D. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

AGREEMENT

1. **DEVELOPMENT GOALS**. Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion (defined below) of the Building Improvements in accordance with and within the limitations specified in **Exhibit "A,"** "Scope of Development," attached hereto and made a part hereof, within twenty-four (24) months after the Effective Date, subject to delays due to force majeure, delays caused by the Agency or its elected officials,

officers, directors, shareholders, members, managers, employees, affiliates, agents, successors, assigns, and/or any other person or entity acting on its behalf or under its direction or control, and any other causes beyond the reasonable control of Developer or that could not have been foreseen or provided against. For purposes of this Agreement, delays caused by the action or inaction of the Agency shall not include the passage of time attributable to any permit or development review procedure, or other standard decision-making process that could be associated with the Agency's function as a public entity. As used in this Agreement, "Substantial Completion" of a work or improvement shall mean that the applicable work or improvement has been completed to the point that it can be used or occupied for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called "punch list." The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Building Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards and codes and requirements, including those of the County and the State of Oregon.

2. **CONSTRUCTION SCHEDULE**. Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Building Improvements within the time specified in the Schedule of Performance, specified in **Exhibit "B,"** attached hereto and made a part hereof, except as otherwise permitted herein.

3. **GOVERNMENTAL PERMITS**. Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Building Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

4. **TERM**. The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

5. **ACCOUNT**.

5.1 **Appointment**. Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

5.2 **Account Deposit**. On the date hereof, Developer shall deposit the Funds in the Account. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**" or the "**Security Deposit**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

5.3 **Investment of Funds**. Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest earned on Account Funds shall automatically be added to and become part of the Account Funds.

5.4 **Disbursement of Account Funds**. Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements under the conditions set forth above in Section 1, all Account Funds shall be disbursed to Developer following written request by Developer that is approved in writing by Agency, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Security Deposit to Developer is the Substantial Completion of the Building Improvements under the conditions set forth above in Section 1. Notwithstanding the foregoing, if the Building Improvements are not substantially completed within twenty-four (24) months after the Effective Date, the entire Security Deposit shall be automatically disbursed to Agency, and Developer waives any right to object to release of the Security Deposit to Agency under these circumstances. The Security Deposit shall be disbursed by a single payment, and shall not be paid on a pro rata basis or otherwise disbursed in installments.

5.5 **Disbursements**. Escrow Holder shall disburse to the payee within three (3) business days after receipt of a written request of a party, pursuant to the terms of Section 5.4. With respect to any disbursement request of a party that is subject to the approval of the other party, such approval shall be deemed given if the other party fails to give notice of disapproval to the requesting party within twenty (20) business days of receipt of the request.

5.6 **Termination of Account**. The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

6. **LIMITATION OF LIABILITY**. Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, members, managers, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date. As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitrative, or administrative actions or proceedings or otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

7. **ESCROW HOLDER**.

7.1 **Duties of Escrow Holder**. Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

7.2 **Claims of Escrow Holder**. Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

7.3 **Resignation of Escrow Holder**.

(a) Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in the Portland, Oregon metropolitan area, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

(b) If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

7.4 **Instructions to Escrow Holder**. All instructions to Escrow Holder shall be submitted in writing, signed by an authorized representative of the submitting party, with a simultaneous copy to the other party. Once submitted, instructions may not be withdrawn or altered without the consent of both the Agency and the Developer.

7.5 **Escrow Fees**. Escrow fees shall be shared equally by Developer and the Agency.

8. **DEVELOPER OBLIGATIONS UNDER THE PLAN**. Pursuant to Section 630 and 900 of the Plan, Developer agrees as follows:

8.1 The Property shall be used for the purposes designated in the Plan, and shall develop and use the Property in accordance with the land use provisions and building requirements specified in the Plan.

8.2 Developer shall begin and complete the development of the Property within the time periods set forth in this Agreement, which the Agency deems to be a reasonable period of time for redevelopment of the Property.

8.3 The Developer shall submit all plans and specifications for the construction of the Building Improvements to the Agency for review and approval to determine compliance of such plans and specifications with the Plan.

8.4 Developer covenants that it will not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

8.5 Developer shall maintain the Property in a clean, neat and safe condition.

8.6 The foregoing covenants shall be binding upon and run for the benefit of the parties hereto and their respective assigns and successors in interest, subject to Section 9.12. In the event the Developer or any of its lessees, licensees, agents or other occupants, uses the Property in a manner inconsistent with Section 8 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

9. **GENERAL PROVISIONS**.

9.1 **Attorneys' Fees**. The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

9.2 **Notice**.

(a) All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier.

(b) Any notice (i) sent by mail in the manner specified in subsection (a) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, and (ii) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day). Notice given to party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

(c) The address of each party to this Agreement for purposes of notice shall be as follows:

AGENCY: Clackamas County Development Agency
c/o Development Agency Manager
150 Beavercreek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.clackamas.or.us

DEVELOPER:

Shanti Investments, LLC
PO Box 1900
Clackamas, OR 97015
Attn: Jayanti Patel
Email: jaymadras@hotmail.com

ESCROW HOLDER:

Chicago Title Company of Oregon
10151 SE Sunnyside Road, Suite 300
Clackamas, Oregon 97015
Attn: _____
Email: _____

9.3 **Nonliability of Officials and Employees**. No member, manager, shareholder, director, officer, elected official, employee, affiliate, agent, or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

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

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

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

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

9.8 **Nonwaiver of Government Rights**. Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

9.9 **Non-Integration**. This Agreement supplements the obligations of the parties under the DA, all of which shall be construed to be consistent with one another to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All

waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

9.10 **Further Assurances**. The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

9.11 **Counterparts; Facsimile and Electronic Signatures**. This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

9.12 **Binding Effect**. Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 9.12, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing provisions of this Section 9.12 or any other terms or provisions of this Agreement, Agency may assign this Agreement and all associated agreements, rights, and obligations, to an affiliated governmental entity.

9.13 **Force Majeure**.

(a) Event of Force Majeure. The time for performing obligations under this Agreement shall be extended, on a day-for-day basis, due to, and a party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement, to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming party; provided that such event is not caused by or attributable to the negligence or fault of, or breach of its obligations hereunder by, such party, and could not have been avoided by prudent commercial practices (any such event, a "Force Majeure Event").

(b) Notice of Force Majeure Events. As a condition to claiming a Force Majeure Event, the claiming party shall promptly give the other party a written notice describing the particulars of the Force Majeure Event of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties hereto agree to use reasonable efforts to notify each other of potential Force Majeure Events and update each other on developments regarding potential Force Majeure Events.

(c) Mitigation. Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and no longer duration than is reasonably required by such Force Majeure Event. The party claiming

a Force Majeure Event, where reasonably possible, shall have a duty to alleviate and mitigate the cause and effect arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement promptly after being able to do so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

9.14 **Exhibits**. All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

9.15 **Saturday, Sunday and Legal Holidays**. If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

9.16 **Neutral Construction**. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

9.17 **Applicable Law**. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

9.18 **Waiver**. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

9.19 **Memorandum of Agreement**. On or about the Effective Date, the parties will execute and deliver a memorandum of this Agreement in mutually acceptable form, which shall be recorded in the official records of Clackamas County, Oregon. This Agreement shall not be recorded. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective assigns and successors in interest. Upon termination of this Agreement, the parties shall execute and record at Developer's expense an instrument in mutually acceptable form evidencing such termination.

9.20 **Dispute Resolution.** Each party waives its rights to trial by jury in any claim, action, suit, or proceeding arising out of this Agreement or the transactions relating to its subject matter.

[SIGNATURES START ON NEXT PAGE]

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:
Shanti Investments, LLC
an Oregon limited liability company

By:_____
Name:_____
Date of Execution: _____

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

AGENCY:
Clackamas County Development Agency
a corporate body politic

By:_____
Name:_____
Title:_____
Date of Execution: _____

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

ESCROW HOLDER:
Chicago Title Company of Oregon
an Oregon corporation

By:_____
Name:_____
Title:_____
Date of Execution: _____

List of Exhibits

Exhibit A Scope of Development
Exhibit B Schedule of Performance

EXHIBIT A

Scope of Development

The Development consist of a new hotel located at the northwest corner of Se Johnson creek Boulevard and Se 92nd Avenue in Clackamas County. The property is approximately +/- 0.97 acres.

The Development will include a new multi-story hotel building with 52 or more rooms as driven by parking requirements and associated improvements that may include:

- Landscaping
- Required sidewalk, roadway and lighting within the right of way
- Bicycle and pedestrian amenities as required
- Landscaped automobile parking area

EXHIBIT B

Schedule of Performance

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Due Diligence	Complete by March 2018
Design Review and Conditional Use	Complete by October 2018
Construction Documents	Complete by January 2019
Permitting	by March 2019
Begin Construction	March 2019
Complete Construction	May 2020

EXHIBIT D

Form of Bargain and Sale Deed

AFTER RECORDING SEND TO:

_____
_____
_____

**UNTIL A CHANGE IS REQUESTED
ALL TAX STATEMENTS SHALL
BE SENT TO:**

_____
_____
_____

STATUTORY BARGAIN AND SALE DEED

CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic ("Grantor") conveys to **SHANTI INVESTMENTS, LLC** an Oregon limited liability company ("Grantee") all of Grantor's interest in that certain real property located in Clackamas County, Oregon, as more particularly described on Exhibit A attached hereto.

The true consideration for this conveyance is Six Hundred Thirty Thousand and no/100 Dollars ($630,000.00).

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property subject to this conveyance.

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

OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED as of _____, 201__.

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____
Name:
Its:

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on _____, 201__, by _____, as _____ of Clackamas County Development Agency, a corporate body politic.

_____
Notary Public for Oregon
My commission expires:

EXHIBIT A to Bargain and Sale Deed

Legal Description

Lots 19, 20 and 21, BARWELL PARK, in the County of Clackamas and State of Oregon.

EXCEEPTING THEREFROM that portion conveyed to Clackamas County by Deed recorded October 31, 1996 as Recorder's Fee No. 9081256, Clackamas County Deed Records.

ALSO EXCEPTING THEREFROM that portion conveyed to Clackamas County by Deed recorded December 10, 2002 as Recorder's Fee No. 2002120866, Clackamas County Deed Records.

EXHIBIT E

Memorandum of Post-Closing Agreement

When Recorded Return To:

_____
_____
_____
_____

MEMORANDUM OF POST-CLOSING AGREEMENT

This Memorandum of Post-Closing Agreement (this "**Memorandum**") is made and dated as of _____, 201__ (the "**Effective Date**"), by **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), and **SHANTI INVESTMENTS, LLC**, an Oregon limited liability company (the "**Developer**").

The Developer acquired that certain real property described on attached Exhibit A (the "**Property**") from the Agency.

In connection with the acquisition of the Property, the Agency and the Developer entered into that certain Post-Closing Escrow and Development Agreement dated as of _____, 201__ (the "**Post-Closing Agreement**"). Capitalized terms used in this Memorandum without definition will have the meanings given in the Post-Closing Agreement.

The Post-Closing Agreement, among other things, provides for Developer to make certain improvements to or for the Property, including construction of a hotel with approximately 27,762 square feet of total building floor area.

This Memorandum is solely for recording purposes and shall not be construed to in any way alter, modify, amend, or supplement the Post-Closing Agreement or any term or condition thereof.

This Memorandum may be executed in one or more counterparts, all of which shall be considered one and the same Memorandum and shall be effective when one or more counterparts have been signed and delivered by the Owners.

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

"AGENCY"

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____
Name:
Its:

STATE OF OREGON)
) ss.
COUNTY OF _____)

On _____, 2017 before me personally appeared _____ as the _____ of Clackamas County Development Agency, a corporate body politic, who executed the within and foregoing instrument, and acknowledged said instrument to be the voluntary act and deed of said agency.

WITNESS my hand and official seal.

_____
Notary Public for the State of Oregon
My commission expires:_____

"DEVELOPER"

SHANTI INVESTMENTS, LLC, an Oregon limited liability company

By:_____
Name:
Title:

STATE OF OREGON)
) ss.
COUNTY OF _____)

On _____, 2017 before me personally appeared _____ as the _____ of G Properties, LLC, an Oregon limited liability company, who executed the within and foregoing instrument, and acknowledged said instrument to be the voluntary act and deed of said cooperative.

WITNESS my hand and official seal.

_____
Notary Public for the State of Oregon
My commission expires:_____

EXHIBIT A to Memorandum of
Post-Closing Agreement

Property Description

Lots 19, 20 and 21, BARWELL PARK, in the County of Clackamas and State of Oregon.

EXCEEPTING THEREFROM that portion conveyed to Clackamas County by Deed recorded October 31, 1996 as Recorder's Fee No. 9081256, Clackamas County Deed Records.

ALSO EXCEPTING THEREFROM that portion conveyed to Clackamas County by Deed recorded December 10, 2002 as Recorder's Fee No. 2002120866, Clackamas County Deed Records.

EXHIBIT F

Scope of Development

The Development consist of a new hotel located at the northwest corner of Se Johnson creek Boulevard and Se 92nd Avenue in Clackamas County. The property is approximately +/- 0.97 acres.

The Development will include a new multi-story hotel building with 52 or more rooms as driven by parking requirements and associated improvements that may include:

- Landscaping
- Required sidewalk, roadway and lighting within the right of way
- Bicycle and pedestrian amenities as required
- Landscaped automobile parking area

CLACKAMAS COUNTY

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

October 19, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Cooperative Improvement Agreement with the Oregon Department of Transportation for the Boyer Drive Extension Project

Purpose/Outcomes	This agreement memorializes roles and responsibilities as agreed to by all parties related to construction and maintenance for the Boyer Drive extension project.
Dollar Amount and Fiscal Impact	The Agency will reimburse ODOT up to $16,000 for costs associated with inspection of the project. County will be responsible for its share of maintenance costs related to the improvements.
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District for inspection costs. County funds for maintenance.
Duration	This Agreement will be in effect for twenty (20) years.
Previous Board Action	The Board approved the design contract on April 17, 2017
Strategic Plan Alignment	Ensure Safe, Healthy and Secure Communities Build a Strong Infrastructure
Contact Person	David Queener, Program Supervisor, Clackamas County Development Agency – (503) 742-4322

BACKGROUND:

The Agency will begin construction of the Boyer Drive extension from 82nd Avenue to Fuller Road. A new signal at 82nd and Boyer is part of the project and 82nd Avenue is under ODOT jurisdiction.

This three party agreement between the County, Development Agency and ODOT memorializes the roles and responsibilities of each party as it relates to design, construction oversight and maintenance.

The Agreement will remain in effect for twenty (20) years and commits the Agency to reimburse ODOT up to $16,000 for construction inspection. It also commits the County to share in the cost of maintenance for the new facility.

County Counsel has reviewed and approved this Agreement.

RECOMMENDATION:

Staff recommends the Board approve and authorize the Chair to sign the Cooperative Improvement Agreement with Oregon Department of Transportation for the Boyer Drive extension project.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

COOPERATIVE IMPROVEMENT AGREEMENT
Boyer Drive Extension West

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;" Clackamas County, acting by and through its elected officials, hereinafter referred to as "County," and the Clackamas County Development Agency, the urban renewal Agency of Clackamas County, acting by and through its duly appointed board, hereinafter referred to as "Agency" all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. OR 213, Cascade Highway North, also known as 82nd Avenue, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Southeast Boyer Drive, Monroe Street, and Fuller Road are a part of the county road system under the jurisdiction and control of Clackamas County.

2. Agency is the County's Urban Renewal Agency and is authorized under ORS 457.035 to enter into this Agreement and to perform work on behalf of the County.

3. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 283.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

4. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a county street remains with the County.

5. 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.

6. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for their performance of work on any public highway within the State.

When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

7. State and County entered into Agreement No. 9211 on January 22, 1988 and an amendment to said Agreement on June 22, 1988 for the construction and maintenance of a traffic signal at the intersection of SE 82nd Avenue and SE Owen Drive (presently Boyer Drive).

8. Agency is building a project to extend a new roadway to be called SE Monroe Street west from SE 82nd Avenue to SE Fuller Road. The purpose of this Agreement is to address Party responsibilities as they pertain to Project work impacting State's facilities on SE 82nd Avenue.

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, the Parties agree to the Agency's extension of a new roadway west of 82nd Avenue to Fuller Road and name the new section of roadway SE Monroe Street, hereinafter referred to as "Project." The Project includes construction of a new two (2) lane roadway with turn lanes at the intersection of 82nd Avenue and Boyer/Monroe; bikeways and pedestrian facilities; and installation of flashing yellow arrows for left turns on northbound and southbound approaches at the intersection of SE 82nd Avenue and SE Boyer/Monroe. The location of the Project is approximately as shown on the map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. The Project will be financed entirely by Agency at an estimated cost of $4,600,000.

3. Upon execution of this Agreement, all maintenance and power cost responsibilities set forth in Agreement No. 9211 between County and State shall be considered null and void and shall be superseded by the maintenance and power responsibilities set forth in this Agreement.

4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power 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 both Parties.

AGENCY AND COUNTY OBLIGATIONS

1. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of $16,000, said amount being equal to the

estimated total cost for the work performed by State as further described under State Obligations. Agency agrees to make additional deposits as needed upon request from State and mutually agreed to by both State and Agency.

2. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total mutually agreed State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency.

3. Agency or its consultant shall conduct the necessary field surveys, environmental studies, traffic investigations; arrange for relocation or reconstruction of any conflicting utility facilities; obtain all needed right of way; identify and obtain all required permits; and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates. Agency or its contractor shall construct the Project, perform all construction engineering, including all required materials testing and quality documentation, provide technical inspection, project management, and other necessary functions for contract administration for the construction contract entered into for the Project.

4. Agency shall design and construct the Project in conformance with the current edition of the ODOT Highway Design Manual and the Oregon Standard Specifications for Construction Manual. Agency understands the Project shall be designed and constructed to State standards and approved by State prior to advertisement for bid, or construction of Project by Agency.

5. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval.

6. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

7. Agency shall construct the Project in compliance with all applicable requirements of the Americans with Disabilities Act (42 U.S.C. Chapter 126), revised regulations implementing Title II (28 C.F.R. Part 35), and the Rehabilitation Act (29 U.S.C. § 701 et seq.) (collectively, "ADA"), including, but not limited to, ensuring that all sidewalks,

curb cuts, curb ramps, signals, and signal poles installed or modified as part of the Project are ADA-compliant and existing facilities are modified to comply with the ADA when required by law. As part of its maintenance obligations under this Agreement, County shall, at its own expense, periodically inspect the Project and perform any repairs and modifications necessary to ensure ongoing compliance with all ADA requirements.

8. For portions of the Project located on or along the Oregon State Highway System (state highway), if the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, Agency shall:

    a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (ADA), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

    b. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form; and

    c. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required from the Agency showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address: http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx.

9. Agency 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 portions of the Project which are on County's right of way.

10. Agency, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. The State District 2B Permitting Office shall verify compliance with this requirement prior to construction.

11. Agency shall provide to State permanent Mylar “as constructed” plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the “Contract Plans Development Guide, Volume 1 Chapter 16” http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.

12. County shall be responsible for and pay to the power company 100 percent of the power costs for the Project illumination and traffic signals at the intersections of 82nd/Boyer Drive/Monroe Street. County shall require the power company to send invoices directly to County.

13. County shall keep accurate cost accounting of illumination and signal power costs and bill State annually for 50 percent of all power costs incurred for the Project illumination and traffic signals at 82nd and Boyer Drive/Monroe Street.

14. County shall be responsible for the maintenance of all County facilities including Fuller Road, Boyer Drive, and Monroe Street from curb to curb and all Project improvements made on County or Agency right of way on Fuller Road, Boyer Drive and Monroe Street. County shall also be responsible for any improvements made to SE 82nd Avenue beyond the back of sidewalks.

15. County shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in Fuller Road, Monroe Street, and Boyer Drive in such a manner as to provide adequate protection for said detector loops.

16. County shall upon receipt of a fully executed copy of this Agreement and upon receipt of billing from State annually reimburse State for 50 percent of all costs associated with the maintenance of the Project traffic signals at 82nd Avenue and Boyer Drive/Monroe Street.

17. County will be required to obtain the services of a registered professional engineer to oversee, accept, and document all construction procedures and certify proper construction was performed pursuant to the Project plan and permit. The registered professional engineer will be required to stamp the “As Constructed Plans” and ensure the Project meets State’s required standards. Construction inspection for this Project will be completed by state-certified inspectors under the direction of the registered professional engineer overseeing the construction and paid for by County.

18. Agency has provided the Project preliminary and final plans and specifications to State’s District 2B office for review and written concurrence, including review and concurrence from the Office of the State Traffic Engineer. All signal equipment must be inspected and tested by State’s Traffic Systems Services Unit. Any changes to the final plans and specifications shall be provided to the State’s District 2B office, which shall coordinate all such review and concurrence of revised plans. All review, inspection, and testing done by the State for the Project will be at Agency’s expense.

19. Agency 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.

20. Agency 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 Agency 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.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

21. Agency 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 State of Oregon, Oregon Transportation Commission and its members, Department of Transportation 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 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 State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.

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

23. Agency and 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, Agency 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.

24. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.

25. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.

26. Agency and its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).

27. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Agency shall provide a letter from Agency's legal counsel certifying that any right of way acquired on State's facility that is to be relinquished to the State has been acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. The letter shall be routed through the State Region 1 Right of Way Office.

28. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B Project Manager as well as land use permits, building permits, and engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.

29. Pursuant to the statutory requirements of ORS 279C.380 Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.

30. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:

    a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
    b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.

c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than $ 2,000,000 for each job site or location. Each annual aggregate limit will not be less than $ 4,000,000.
d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than $1,000,000.
e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

31. County grants Agency and State the right to enter onto County right of way for the performance of duties as set forth in this Agreement.

32. Agency is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Agency's own expense.

33. Agency is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Agency shall contact State's Geometronics Unit for replacement procedures.

34. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as

defined in ORS 209.150 and 209.155. Agency agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate Agency Surveyor's office as required.

35. County shall, at its own expense, periodically inspect and maintain any sidewalks, curb ramps, and pedestrian-activated signals on portions of the Project under County's maintenance jurisdiction upon Project completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. This provision shall survive termination of this Agreement.

36. Agency and County certify and represent that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind it.

37. County's right of way contact person for this Project is Sharan Hams-LaDuca, Right of Way Program Manager, Clackamas County DTD, 150 Beavercreek Road, Oregon City, OR 97045, (503) 742-4675, shamsladuca@co.clackamas.or.us:, or assigned designee upon individual's absence. County shall notify the other Parties in writing, of any contact information changes during the term of this Agreement.

38. Agency's Project Manager for this Project is David Queener, Program Supervisor, Clackamas County Development Agency, 150 Beavercreek Road, Oregon City, OR 97045, (503)742-4322, DavidQue@co.clackamas.or.us. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATION

1. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of $16,000 for payment of the following services pertaining to work performed on State facilities. State will review the Project plans, perform periodic inspection for internal documentation purposes; perform signal turn-on, timing, and testing, and will perform review, approval and acceptance of right of way acquired on the State Highway to be relinquished by the Agency post-construction. State agrees to not incur costs exceeding $16,000 without first submitting to Agency a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval.

2. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.

3. State grants authority to Agency and County to enter upon State right of way for the construction of this Project as provided for in the miscellaneous permit to be issued by State District 2B Office.

4. Within fifteen days of notice from County that County believes all work is complete, State will perform the final inspection of the Project and notify County that it agrees all work is complete or give County written instruction regarding incomplete or unsatisfactory work. Upon request by County, State will promptly re-inspect the Project to confirm the incomplete or unsatisfactory work has been satisfactorily completed. State will issue a Final Acceptance notice to County when all work is inspected and accepted.

5. State 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.

6. State shall, at its own expense, be responsible for maintaining the roadway and any Project improvements on 82nd Avenue from back of sidewalk to back of sidewalk.

7. State shall be responsible for maintaining the traffic signals and associated illumination at 82nd Avenue and Boyer Drive/Monroe Street. State shall keep accurate cost accounting records of traffic signal and associated illumination maintenance costs and shall bill County annually for 50 percent of all said costs.

8. State shall upon receipt of a fully executed copy of this Agreement and upon receipt of billing from County annually reimburse County for 50 percent of all power costs associated with the Project traffic signals at 82nd Avenue and Boyer Drive/Monroe Street.

9. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed on 82nd Avenue in such a manner as to provide adequate protection for said detector loops.

10. State's Project Manager for this Project is Tory Johnson, Access Management Coordinator, ODOT District 2B, 9200 SE Lawnfield Road, Clackamas, OR 97015, 971-673-6228, tory.v.johnson@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.

11. State's Right of Way contact for this Project is Shannon Fish, Region 1 Right of Way, 123 NW Flanders St., Portland, OR 97209, 503-731-8433, shannon.fish@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.

GENERAL PROVISIONS

1. This Agreement may be terminated by any Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

2. State may terminate this Agreement effective upon delivery of written notice to Agency and County, or at such later date as may be established by State, under any of the following conditions:

   a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

   b. If Agency or 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 Agency fails to provide payment for this Project, including payment to State for work performed by State.

   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.

3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4. All employers 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. Each Party shall ensure that each of its contractors complies with these requirements.

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 a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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 any other Party (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 any other Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of the other Party or Parties 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 Agency or County is jointly liable with State (or would be if joined in the Third Party Claim), Agency and 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 Agency and 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 Agency and 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. Agency and County's contribution amount(s) 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. 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.

10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No

waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by 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

CLACKAMAS COUNTY, by and through its elected officials

By _____
County Commissioner

Date _____

By _____

Date _____

CLACKAMAS COUNTY DEVELOPMENT AGENCY, by and through its duly appointed board:

By_____

Chair, Development Agency

Date_____

APPROVED AS TO LEGAL SUFFICIENCY

By _____ Counsel

Date _____

Agency and County Contact:

David Queener, Program Supervisor
Clackamas County Development Agency
150 Beavercreek Road
Oregon City, OR 97045
(503)742-4322
davidque@co.clackamas.or.us

State Contact:
Tory Johnson, Access Management Coordinator
ODOT District 2B
9200 SE Lawnfield Road
Clackamas, OR 97015
971-673-6228
Tory.V.Johnson@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 _____

Region 1 Manager

Date_____

By _____

District 2B Manager

Date _____

By_____

State Traffic Engineer

Date_____

By_____

APPROVED AS TO LEGAL SUFFICIENCY

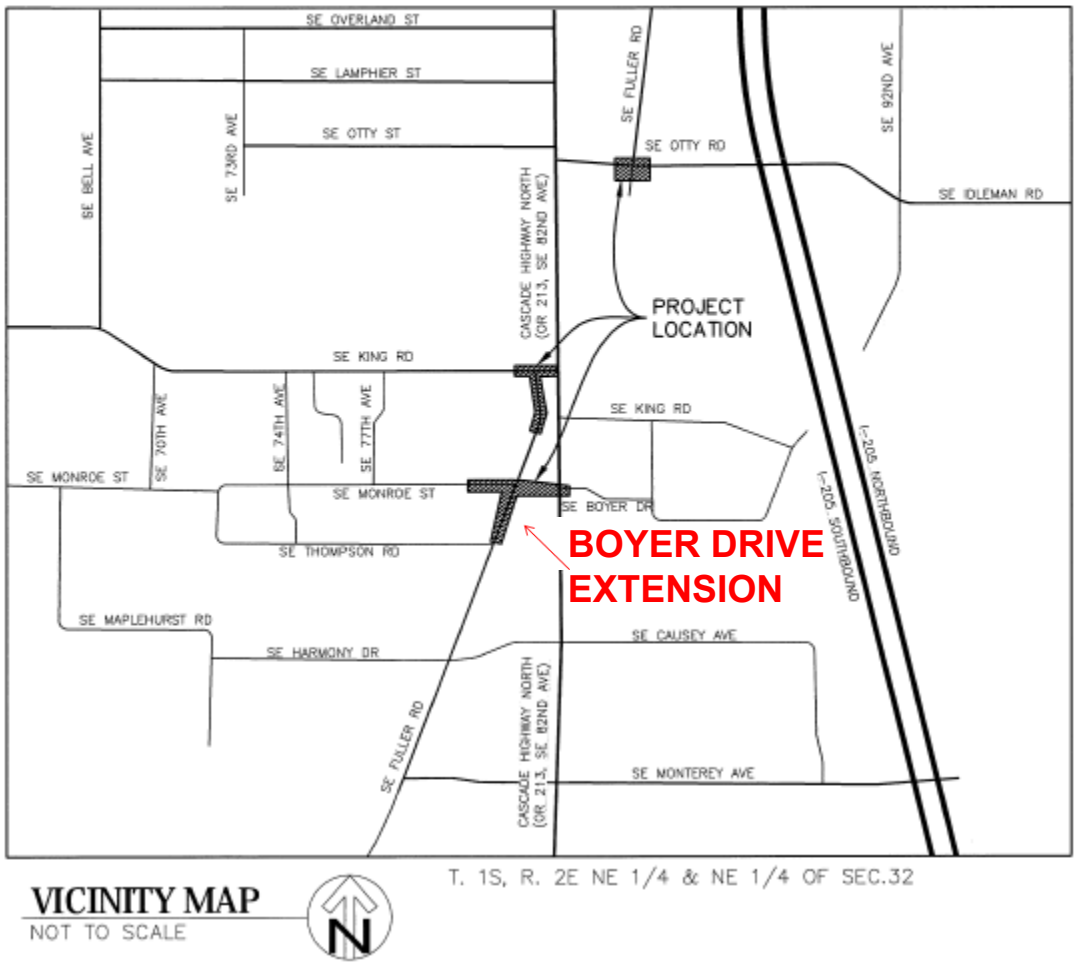
By_____
Assistant Attorney General

Date_____

EXHIBIT A – Project Location Map

BOYER DRIVE EXTENSION PROJECT

CLACKAMAS COUNTY OREGON



T. 1S, R. 2E NE 1/4 & NE 1/4 OF SEC.32

VICINITY MAP
NOT TO SCALE

CLACKAMAS COUNTY

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

October 19, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement for Right of Way Services with the Oregon Department of Transportation for the Boyer Drive Extension Project

Purpose/Outcomes	This agreement memorializes roles and responsibilities as agreed to by both parties related to right of way acquisition for the Boyer Drive extension project.
Dollar Amount and Fiscal Impact	The Agency will reimburse ODOT up to $5,000 for ODOT expenditures related to right of way acquisition.
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District.
Duration	This Agreement will be in effect for ten (10) years.
Previous Board Action	The Board approved the design contract on April 17, 2017
Strategic Plan Alignment	Ensure Safe, Healthy and Secure Communities Build a Strong Infrastructure
Contact Person	David Queener, Program Supervisor, Clackamas County Development Agency – (503) 742-4322

BACKGROUND:

The Agency will begin construction of the Boyer Drive extension from 82nd Avenue to Fuller Road in early 2018. In order to construct the project, it is necessary to acquire right of way.

This agreement between the County and ODOT memorializes the roles and responsibilities of each party as it relates to right of way acquisition.

The Agreement will remain in effect for ten (10) years and commits the Agency to reimburse ODOT for expenditures related to the right of way acquisition process.

County Counsel has reviewed and approved this Agreement.

RECOMMENDATION:

Staff recommends the Board approve and authorize the Chair to sign the Intergovernmental Agreement for Right of Way Services with Oregon Department of Transportation for the Boyer Drive extension project.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES
Boyer Drive Extension West

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 "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.

2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

3. That certain SE Boyer Drive is a County Road under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.

4. OR213 Cascade Hwy North (SE 82nd Avenue), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).

5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Cooperative Improvement Agreement number 31089. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."

6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

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, to accomplish the objectives in Agreement No. 31111 (CIA 31089), State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the

right of way services State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of $5,000.00 which is part of the overall cost identified in CIA 31089, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than ten (10) calendar years following the date all required signatures are obtained, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.

4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.

2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

3. State 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.

4. State's right of way contact person for this Project is Shannon Fish, Region 1 Right of Way Project Manager, 123 NW Flanders St, Portland, OR 97209, (503) 731-8433, shannon.fish@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.

2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.

3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:

a. Agency staff,
b. State staff,
c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc;
e. *Appraiser services procured by Agency from State's Qualified Appraiser List (on line at http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx);
f. *Other right of way related services procured by Agency from any source of qualified contractors or consultants.

* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the LPA A&E Requirements Guide (and must use the State's standard A&E Contract Template for LPAs which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.

5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs.

6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.

8. Agency's right of way contact person for this Project is Sharan Hams-LaDuca, Right of Way, Clackamas County Dept. of Transportation & Development, 150 Beavercreek Rd., DSB, Oregon City, OR 97045, shamsladuca@co.clackamas.or.us, (503) 742-4675, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of $5,000.00. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.

2. State shall upon execution of this Agreement, forward to Agency either: 1) a request to sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of the Agency, or 2) a letter of request for an advance deposit. Agency shall make any advance deposit to the State's Financial Services Branch, in an amount equal to the estimate of costs to be incurred by State for the Project. The preliminary estimate of costs is $5,000.00. Additional deposits, if any, shall be made as needed upon request from State and acceptance by Agency. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.

    a. Agency agrees to pay or reimburse all salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures, plus 10 percent surcharge on salary costs to cover administrative costs of Right of Way Section.

    b. State shall present invoices for 100 percent of actual costs incurred by State on behalf of the Project directly to Agency's right of way contact for review and approval. Such invoices shall be in a form identifying the Project, the agreement number, invoice number or account number, and shall itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one (1) month duration, based on actual expenses incurred.

    c. Upon completion of right of way acquisition and receipt from State of a final itemized statement, Agency shall pay an amount which, when added to said advance deposit, will equal 100 percent of the final total actual cost, up to a maximum amount of $5,000.00. Any portion of deposits made in excess of the final total costs of Project shall be refunded to Agency.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:

    a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

b. If either Party 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 fails to correct such failures within ten (10) days or such longer period as may be authorized.

c. If Agency fails to provide payment of its share of the cost of the Project.

d. 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.

e. 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.

2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

3. Agency 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 Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

4. Agency 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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.

5. All employers 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. Both Parties shall ensure that each of its subcontractors complies with these requirements.

6. 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 Agency 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.

7. With respect to a Third Party Claim for which State is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of 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 State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. 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.

8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency 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 Agency 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. Agency'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.

9. 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.

10. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this

Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

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

12. 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.

13. This Agreement and attached exhibits and Agreement No. 31089 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by 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

CLACKAMAS COUNTY, by and through its elected officials

By _____
Chair

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Legal Counsel

Date _____

Agency Contact:
David Queener, Sr. Project Planner
Clackamas County Development Agency
150 Beavercreek Road
Oregon City, OR 97045
503-742-4322
davidque@co.clackamas.or.us

State Contact:
Shannon Fish
123 NW Flanders St
Portland, OR 97209
503-731-8433
shannon.fish@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

By _____

Date_____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A
Assistant Attorney General

Date_____

APPROVED
(If Litigation Work Related to Condemnation is to be done by State)

By N/A
Chief Trial Counsel

Date_____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region (insert Region number) Right of Way Manager.

2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

Instructions: Insert either: State, Agency, or N/A on each line.

A. Preliminary Phase

1. Agency shall provide preliminary cost estimates.

2. Agency shall make preliminary contacts with property owners.

3. Agency shall gather and provide data for environmental documents.

4. Agency shall develop access and approach road list.

5. Agency shall help provide field location and Project data.

B. Acquisition Phase

1. General:

   a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project monthly.

   b. Title to properties acquired shall be in the name of the Agency.

   c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

   a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.

   b. Agency shall provide construction plans and cross-section information for the Project.

   c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.

   d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

   a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.

   b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "ODOT Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.

   c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.

   d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.

      - If contamination is found, a recommendation for remediation will be presented to State.

e. Agency shall be responsible for proper treatment and cost of any necessary remediation.

f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

a. Agency shall conduct the valuation process of properties to be acquired.

b. Agency shall perform the Appraisal Reviews to set Just Compensation.

c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.

b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.

c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.

b. Agency shall make all relocation and moving payments for the Project.

c. Agency shall facilitate the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.

2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.

2. Agency shall dispose of all improvements and excess land consistent with State and Agency prevailing laws and policies.

E. Condemnation

1. Agency may offer mediation if the Agency and property owners have reached an impasse.

2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.

3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.

4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the

right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

WHEREAS **CLACKAMAS COUNTY** may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the Agency's governing body to accomplish public purposes for which Clackamas County has responsibility;

WHEREAS Clackamas County has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project known as SE Boyer Drive Extension has been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by Clackamas County's Board of Commissioners:

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;

2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;

3. The County's staff and the County Board of Commissioners are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the County's Board of Commissioners

4. Clackamas County expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this _____ day of _____, 20__

Gregory L. Geist
Director

October 19, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Joint Funding Agreement between Water Environment Services and the U.S. Geological Survey for Tualatin River Monitoring

Purpose/Outcomes	This annual funding agreement between WES and the USGS supports the operation and maintenance of a continuous river flow monitoring gage on the Tualatin River.
Dollar Amount and Fiscal Impact	$5,400 of WES funds are required from the District's approved FY 2017-2018 budget.
Funding Source	WES Operating Fund. No General Funds are impacted.
Duration	October 1, 2017 to September 30, 2018
Previous Board Action/Review	Previous Joint Funding Agreements have been signed by the Board authorizing the use of WES funds since October 1, 1999.
Strategic Plan Alignment	This action aligns with strategic plans: 1. Aligns with WES's Watershed Protection program result to measure and improve stream health, and the Regulatory Management program result to fully implement compliance strategy measures. 2. Aligns with the Board's goal to Honor, Utilize, Promote and Invest in our Natural Resources.
Contact Person	Ron Wierenga, Surface Water Manager, x4581, rwierenga@clackamas.us
Contract No.	N/A

BACKGROUND:
A coordinated water resources monitoring project (Project) in the Tualatin River watershed has been underway since October 1999. In one element of this Project, Clean Water Services (CWS) of Washington County, the Cities of West Linn and Lake Oswego, and WES partner with the USGS to fund the operation and maintenance of a continuous Tualatin River flow measuring station in the WES service area. The operation of this station is the only element of the Project for which WES funds are allocated. The other elements of the Project, such as the operation of a continuous water quality monitoring station in the WES service area, are funded by CWS and the USGS. The benefits of the overall Project include:

- Compliance with Tualatin River Total Maximum Daily Load Implementation Plan strategy to monitor the Tualatin River.
- High quality flow data, which can be used to: 1) revise FEMA floodplain maps, and 2) calculate the river's pollutant mass loads (i.e. pounds of phosphorus/day) when combined with water quality data.
- Public access to real-time and historic water quality and flow conditions from various locations in the watershed via the USGS' website.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:
District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Joint Funding Agreement between Water Environment Services and the U.S. Geological Survey for Tualatin River Monitoring.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

United States Department of the Interior

U.S. GEOLOGICAL SURVEY

Oregon Water Science Center
2130 SW 5th Avenue
Portland, OR 97201
http://or.water.usgs.gov/

September 12, 2017

Ron Wierenga, Surface Water Manager
Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045

Dear Mr. Wierenga,

The U.S. Geological Survey (USGS), City of West Linn, City of Lake Oswego, Clean Water Services and the Water Environment Services (WES) collaboratively maintain the operation of the Tualatin River gage (14207500) at West Linn, Oregon. This letter and subsequent joint-funding agreement (JFA) provide the mechanism to continue this relationship and collaboration in Federal fiscal year (FFY) 2018 (October 1, 2017 through September 30, 2018).

The total cost to maintain this gage in FFY 2018 will be $8,630. The USGS will provide $3,230 of Cooperative Matching Funds and the WES will provide $5,400. Enclosed is a signed original of our standard JFA for the project covering the period October 1, 2017 through September 30, 2018.

Please sign and return one fully-executed original to Andrew Kerslake at the email address provided in paragraph 5. The signed agreement is not a bill and no funds are required at this time; rather, the agreement is our legal authority that permits the work to be done and authorizes USGS to accept funds. The USGS Water Resources Cooperative Program operates under the authority of statute 43 USC 50, which allows us to perform this work. The Oregon Water Science Center DUNS number is 137883463.

Federal law requires that we have a signed agreement to continue this work; therefore, please return the signed agreement as soon as possible. If, for any reason, the agreement cannot be signed and returned in the near future, please contact Keith Overton at (503) 251-3246 or email koverton@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed annually via Down Payment Request (automated Form DI-1040). We can bill you on a specific date if that is more convenient relative to your fiscal year planning and budgeting process. Please allow 30 days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Andrew Kerslake at (503) 251-3253 or email at kerslake@usgs.gov.

The results of all work under this agreement will be available for publication by USGS in collaboration with the County. During the course of this jointly planned activity and partnership, USGS may provide unpublished USGS data or information to your office for scientific peer and (or) courtesy review. Guidance concerning USGS's non-disclosure policy will be provided with any review material and is further explained in USGS Fundamental Science Practices at http://www.usgs.gov/fsp/.

Sincerely,

James D. Crammond
Center Director

Cc: To file, available upon request

Form 9-1366
(April 2015)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Agreement#: 18WNOR000180101
Customer#: 6000001801
Project #: YF00D7U
TIN #: 93-6002286
USGS DUNS #: 137883463

Fixed Cost Agreement YES[X] NO[ ]

THIS AGREEMENT is entered into as of the October 1, 2017, by the U.S. GEOLOGICAL SURVEY, Oregon Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and Water Environment Services, party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation the operation of the Tualatin River gage (14207500) at West Linn, Oregon, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of $0.00

(a) $3,230 by the party of the first part during the period October 1, 2017 to September 30, 2018

(b) $5,400 by the party of the second part during the period October 1, 2017 to September 30, 2018

(c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of :

Description of the USGS regional/national program:

(d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties

(e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request; be furnished by the party of the first part; at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties.

9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annually. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983.).

Form 9-1366
(April 2015)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Agreement#: 18WNOR000180101
Customer#: 6000001801
Project #: YF00D7U
TIN #: 93-6002286
USGS DUNS #: 137883463

USGS Technical Point of Contact

Name: Keith Overton
Supv.Hydrologist Data Chief
Address: 2130 SW 5th Avenue
Portland, OR 97201
Telephone: (503) 251-3246
Fax: (503) 251-3470
Email: koverton@usgs.gov

Customer Technical Point of Contact

Name: Ron Wierenga
Surface Water Manager
Address: Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045
Telephone: (503) 742-4581
Fax:
Email: rwierenga@clackamas.us

USGS Billing Point of Contact

Name: Andrew Kerslake
Financial Specialist
Address: 2130 SW 5th Avenue
Portland, OR 97201
Telephone: (503) 251-3253
Fax:
Email: kerslake@usgs.gov

Customer Billing Point of Contact

Name: Ron Wierenga
Surface Water Manager
Address: Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045
Telephone: (503) 742-4581
Fax:
Email: rwierenga@clackamas.us

U.S. Geological Survey
United States
Department of Interior

Water Environment Services

Signature

Signatures

By_____ **Date:**
Name: James D. Crammond
Title: Center Director

By_____ **Date:** _____
Name:
Title:

By_____ **Date:** _____
Name:
Title:

By_____ **Date:** _____
Name:
Title:

Gregory L. Geist
Director

October 19, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Joint Funding Agreement between the Clackamas County Service District No. 1 and the U.S. Geological Survey for Johnson Creek Monitoring

Purpose/Outcomes	This annual funding agreement between CCSD#1 and the USGS supports the operation and maintenance of a continuous creek flow monitoring gage on Johnson Creek.
Dollar Amount and Fiscal Impact	$10,000 of CCSD#1 funds are required from the District's approved FY 2017-2018 budget.
Funding Source	CCSD#1 Operating Fund. No General Funds are impacted.
Duration	October 1, 2017 to September 30, 2018
Previous Board Action/Review	Previous Joint Funding Agreements have been signed by the Board authorizing the use of CCSD#1 funds since October 1, 1999.
Strategic Plan Alignment	This action aligns with strategic plans: 1. Aligns with WES's Watershed Protection program result to measure and improve stream health, and the Regulatory Management program result to fully implement compliance strategy measures. 2. Aligns with the Board's goal to Honor, Utilize, Promote and Invest in our Natural Resources.
Contact Person	Ron Wierenga, Surface Water Manager, x4581, rwierenga@clackamas.us
Contract No.	N/A

BACKGROUND:
A cooperative, multi-jurisdictional hydrology study between the USGS and local governments in the Johnson Creek watershed is proposed to continue during Federal fiscal year 2017-2018. In 1999, CCSD#1 joined this long-term study. Other local governments who plan to participate this year include the Cities of Gresham, Milwaukie, and Portland, Multnomah County, and the East Multnomah County Soil & Water Conservation District. Funds would be used by the USGS to maintain a network of several continuous creek water quality and/or flow monitoring stations, and to maintain an existing network of monitoring stations which measure groundwater levels. The benefits of the overall Project include:

- Compliance with Willamette River Total Maximum Daily Load Implementation Plan strategy for Johnson Creek.
- High quality and water quality data flow data, which can be used to: 1) revise FEMA floodplain maps, and 2) calculate the river's pollutant mass loads (i.e. pounds of phosphorus/day) when combined with water quality data.
- Public access to real-time and historic water quality and flow conditions from various locations in the watershed via the USGS' website.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:
District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of the Clackamas County Service District No. 1, approve the Joint Funding Agreement between the Clackamas County Service District No. 1 and the U.S. Geological Survey for Johnson Creek Monitoring.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

United States Department of the Interior

U.S. GEOLOGICAL SURVEY

Oregon Water Science Center
2130 SW 5th Avenue
Portland, OR 97201
http://or.water.usgs.gov/

September 12, 2017

Ron Wierenga, Surface Water Manager
Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045

Dear Mr. Wierenga,

The U.S. Geological Survey (USGS), Multnomah County, City of Gresham, City of Portland, East Multnomah Soil and Water Conservation District, City of Milwaukie, and Water Environment Services (WES) collaboratively maintain the operation of the Johnson Creek hydrologic monitoring program (14211400, 14211499, 14211500, 14211550) in the Johnson Creek Basin, Oregon. This letter and subsequent joint-funding agreement (JFA) provide the mechanism to continue this relationship and collaboration in Federal fiscal year (FFY) 2018 (October 1, 2017 through September 30, 2018).

The total cost to maintain this gage in FFY 2018 will be $16,670. The USGS will provide $6,670 of Cooperative Matching Funds and the WES will provide $10,000. Enclosed is a signed original of our standard JFA for the project covering the period October 1, 2017 through September 30, 2018.

Please sign and return one fully-executed original to Andrew Kerslake at the email address provided in paragraph 5. The signed agreement is not a bill and no funds are required at this time; rather, the agreement is our legal authority that permits the work to be done and authorizes USGS to accept funds. The USGS Water Resources Cooperative Program operates under the authority of statute 43 USC 50, which allows us to perform this work. The Oregon Water Science Center DUNS number is 137883463.

Federal law requires that we have a signed agreement to continue this work; therefore, please return the signed agreement as soon as possible. If, for any reason, the agreement cannot be signed and returned in the near future, please contact Adam Stonewall at (503) 251-3276 or email stonewal@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed annually via Down Payment Request (automated Form DI-1040). We can bill you on a specific date if that is more convenient relative to your fiscal year planning and budgeting process. Please allow 30 days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Andrew Kerslake at (503) 251-3253 or email at kerslake@usgs.gov.

The results of all work under this agreement will be available for publication by USGS in collaboration with the County. During the course of this jointly planned activity and partnership, USGS may provide unpublished USGS data or information to your office for scientific peer and (or) courtesy review. Guidance concerning USGS's non-disclosure policy will be provided with any review material and is further explained in USGS Fundamental Science Practices at http://www.usgs.gov/fsp/.

Sincerely,

James D. Crammond
Center Director

Cc: To file, available upon request

Form 9-1366
(April 2015)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Agreement#: 18WNOR000180100
Customer#: 6000001801
Project #:
TIN #: 93-6002286
USGS DUNS #: 137883463

Fixed Cost Agreement YES[X] NO[ ]

THIS AGREEMENT is entered into as of the October 1, 2017, by the U.S. GEOLOGICAL SURVEY, Oregon Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and Water Environment Services, party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation the operation of the Johnson Creek hydrologic monitoring program (14211400, 14211499, 14211500, 14211550) in the Johnson Creek Basin, Oregon, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of $0.00

(a) $6,670 by the party of the first part during the period October 1, 2017 to September 30, 2018

(b) $10,000 by the party of the second part during the period October 1, 2017 to September 30, 2018

(c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of :

Description of the USGS regional/national program:

(d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties

(e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request; be furnished by the party of the first part; at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties.

9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annually. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983.).

Form 9-1366
(April 2015)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Agreement#: 18WNOR000180100
Customer#: 6000001801
Project #:
TIN #: 93-6002286
USGS DUNS #: 137883463

USGS Technical Point of Contact

Name: Keith Overton
Supv.Hydrologist Data Chief
Address: 2130 SW 5th Avenue
Portland, OR 97201
Telephone: (503) 251-3246
Fax: (503) 251-3470
Email: koverton@usgs.gov

Customer Technical Point of Contact

Name: Ron Wierenga
Surface Water Manager
Address: Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045
Telephone: (503) 742-4581
Fax:
Email: rwierenga@clackamas.us

USGS Billing Point of Contact

Name: Andrew Kerslake
Financial Specialist
Address: 2130 SW 5th Avenue
Portland, OR 97201
Telephone: (503) 251-3253
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Email: kerslake@usgs.gov

Customer Billing Point of Contact

Name: Ron Wierenga
Surface Water Manager
Address: Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045
Telephone: (503) 742-4581
Fax:
Email: rwierenga@clackamas.us

U.S. Geological Survey
United States
Department of Interior

Water Environment Services

Signature

Signatures

By_____ **Date:**
Name: James D. Crammond
Title: Center Director

By_____ **Date:** _____
Name:
Title:

By_____ **Date:** _____
Name:
Title:

By_____ **Date:** _____
Name:
Title: