

# AGENDA

**Thursday May 24, 2018 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2018-45

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**I. BOARD ACTION ITEM** *(The following items will be individually discussed by the Board only, followed by Board action.)*

**Business & Community Services**

1. Approval of a Fair Management Agreement between Clackamas County and the Clackamas County Fair Board (Laura Zentner, Business & Community Services)

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

1. Presentation of May - Mental Health Awareness & Older Adults Month (Mary Rumbaugh, Behavioral Health)

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

**Service District No. 1**

1. Second Reading of Ordinance No. 04-2018 Adopting and Ratifying Amendments to the WES Partnership IGA for CCSD No. 1 (Chris Storey, Water Environment Services)

**Tri-City Service District**

2. Second Reading of Ordinance No. 05-2018 Adopting and Ratifying Amendments to the WES Partnership Tri-City SD (Chris Storey, Water Environment Services)

**Surface Water Management Agency of Clackamas County**

3. Second Reading of Ordinance No. 06-2018 Adopting and Ratifying Amendments to the WES Partnership for SWMACC (Chris Storey, Water Environment Services)

**V. BOARD DISCUSSION ITEMS** *(The following items will be individually discussed by the Board only, followed by Board action.)*

**WATER ENVIRONMENT SERVICES**

*(Service District No. 1)*

1. Board Order No. \_\_\_\_\_ Adopting Findings and Amending the Master Sewer Revenue Bond Declaration of Clackamas County Service District No. 1 (Chris Storey, Water Environment Services)
2. Board Order No. \_\_\_\_\_ Effectuating Certain WES Partnership Agreement Provisions (Chris Storey, Water Environment Services)
3. Board Order No. \_\_\_\_\_ Accepting Substitution for Clackamas County Service District No. 1 with Respect to Certain Borrowings (Chris Storey, Water Environment Services)

**VI. 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 a Revenue Agreement with the State of Oregon, acting by and through its Oregon Health Authority for the Reproductive Health Program - *Health Centers*
2. Approval for Renewal of a Revenue Intergovernmental Agreement with Clackamas County Community Corrections, to Provide Behavioral Health Services to Community Corrections Consumers - *Health Centers*
3. Approval of a Professional, Technical, and Personal Services Contract with Cascadia Behavioral Healthcare, Inc. for Supported Employment Services for Health Share Medicaid Residents of Clackamas County – *Behavioral Health*
4. Approval of Amendment No. 2 to an Intergovernmental Agreement with the State of Oregon Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) – *Social Services*
5. Approval of Amendment No. 1 to an Intergovernmental Agreement with the State of Oregon Department of Consumer and Business Services, Oregon Insurance Division, Senior Health Insurance Benefits Assistance (SHIBA) - Senior Medicare Patrol (SMP) – *Social Services*
6. Approval of Amendment No. 2 to the Intergovernmental Agreement No.154433, with the State of Oregon Department of Human Services, Aging & People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over – *Social Services*
7. Approval Amendment No. 2 to the Intergovernmental Sub-recipient Agreement, with Canby Adult Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
8. Approval of Amendment No. 2 to the Agency Sub-recipient Agreement with Friends of the Estacada Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
9. Approval of Amendment No. 3 to the Intergovernmental Sub-recipient Agreement with Foothills Community Church/Molalla Adult Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*



10. Approval of an Intergovernmental Sub-recipient Agreement, Amendment No. 2 with City of Gladstone/Gladstone Senior Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
11. Approval of Amendment No. 1 to an Agency Service Agreement with the Inn for Transitional Shelter & Host Home Services – *Social Services*
12. Approval of Amendment No. 2 to the Intergovernmental Sub-recipient Agreement with the City of Oregon City/Pioneer Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
13. Approval of Amendment No. 2 to the Intergovernmental Sub-recipient Agreement with City of Wilsonville/Wilsonville Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
14. Approval of a Local Grant Agreement with Children’s Center for Child Abuse Medical Assessments – *Children, Youth & Families*
15. Approval of a Service Agreement with Rx Strategies Partnering with Clackamas County Health Centers Division for Third Party Administration of 340B Claims Management of Pharmacy Services - *Procurement*

**B. Department of Transportation & Development**

1. Resolution No. \_\_\_\_\_ Recognizing the Preferred Bridge Location of the French Prairie Bicycle-Pedestrian-Emergency Access Bridge

**C. Elected Officials**

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

**D. Tourism & Cultural Affairs**

1. Approval of an Amendment to the Lease with Blackhawk, LLC for Clackamas County Tourism and Cultural Affairs Office Space

**E. Disaster Management**

1. Approval to Apply for FY 2018 Emergency Management Performance Grant between Clackamas County and the State of Oregon
2. Approval of an Intergovernmental Agreement between the City of Portland and Clackamas County for Purchase and Reimbursement Activities Related to the use of the FY 17 United States Department of Homeland Security’s Urban Area Security Initiative (UASI) Grant Program
3. Approval of Intergovernmental Agreement between Clackamas County and the City of Lake Oswego for the activation of the Clackamas County Emergency Notification System
4. Approval of Research Service Agreement No. 26178 with University of Oregon
5. Approval of an Agreement with Everbridge, Inc. for the Purchase of an Emergency Community Notification System - *Procurement*

**F. Community Corrections**

1. Approval to Apply for a Grant Award with the US Department of Justice to Establish Alternatives to Incarceration for Individuals with Opioid Use Disorders

## **VII. DEVELOPMENT AGENCY**

1. Approval of a Disposition Agreement with Bottling Group, LLC

## **VIII. WATER ENVIRONMENT SERVICES (WES)**

*(Service District No. 1)*

1. Amendment No. 3 to the Contract Documents between Clackamas County Service District No. 1 and Brown and Caldwell for On-Call Surface Water Technical Services - *Procurement*
2. Amendment No. 3 to the Contract Documents between Clackamas County Service District No. 1 and Otak, Inc. for On-Call Surface Water Technical Services - *Procurement*
3. Amendment No. 3 to the Contract Documents between Clackamas County Service District No. 1 and Parametrix, Inc. for On-Call Surface Water Technical Services - *Procurement*
4. Amendment No. 3 to the Contract Documents between Clackamas County Service District No. 1 and Waterways Consulting, Inc. for On-Call Surface Water Technical Services - *Procurement*
5. Approval of a Public Improvement Contract between Clackamas County Service District No. 1 and Kennedy/Jenks Consultant, Inc. - *Procurement*
6. Amendment No. 3 to the Contract Documents between Surface Water Management Agency of Clackamas County and Brown and Caldwell for On-Call Surface Water Technical Services - *Procurement*
7. Amendment No. 3 to the Contract Documents between Surface Water Management Agency of Clackamas County and Otak, Inc. for On-Call Surface Water Technical Services - *Procurement*
8. Amendment No. 3 to the Contract Documents between Surface Water Management Agency of Clackamas County and Parametrix, Inc. for On-Call Surface Water Technical Services - *Procurement*
9. Amendment No. 3 to the Contract Documents between Surface Water Management Agency of Clackamas County and Waterways Consulting, Inc. for On-Call Surface Water Technical Services - *Procurement*
10. Approval of a Public Improvement Contract between Water Environment Services and Kennedy/Jenks Consultant, Inc. - *Procurement*
11. Approval of a Contract with Brown & Caldwell, Inc. for the WES Sanitary Sewer and Stormwater Rules and Standards Update - *Procurement*

## **IX. COUNTY ADMINISTRATOR UPDATE**

## **X. COMMISSIONERS COMMUNICATION**

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

[www.clackamas.us/bcc/business.html](http://www.clackamas.us/bcc/business.html)



May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Fair Management Agreement between  
Clackamas County and the Clackamas County Fair Board

<b>Purpose/Outcomes</b>	Approval of an agreement between Clackamas County and the Clackamas County Fair Board to clarify the rules, policies and procedures to be used in conducting activities related to the County Fair as dictated by Oregon Revised Statutes (ORS). Additionally, the agreement will protect the County and BCC from liability relating to the personnel or contractual matters related to the management of the Fair and Event Center.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	This agreement does not have a termination date, but states that it will be reviewed by the parties every three years.
<b>Previous Board Action</b>	12/16/2014 – BCC Policy Session regarding governance of the Fair and Event Center. 11/28/2017 – BCC Policy Session regarding governance of the Fair and Event Center/Fair Management Agreement. 1/17/2018 – Fair Board/County Commission Retreat.
<b>Strategic Plan Alignment</b>	1. Build Public Trust through Good Government. 2. Ensure Safe, Healthy and Secure Communities.
<b>Contact Person</b>	Laura Zentner, <i>Director of Business &amp; Community Services</i> , 503-742-4351

**BACKGROUND:**

All State and County Fairs in Oregon are governed by Chapter 565 - Fairs & Exhibits of the Oregon Revised Statutes (ORS). The Clackamas County Fair and Event Center, part of the Business & Community Services (BCS) portfolio, is governed by the Clackamas County Fair Board. In accordance with ORS, this board is appointed by the Board of County Commissioners (BCC).

The Fair Board has responsibilities for the year-round programming and operation of the Event Center and Fairgrounds. The management and operational staff of the Fair and Event Center are employees of the Clackamas County Fair (not Clackamas County) with the Event Center Executive Director reporting directly to the Fair Board. The County's Fair Fund is included within the BCS budget. The Event Center Executive Director coordinates with BCS staff regarding the preparation and presentation of the County Fair Fund budget. The BCC has ultimate approval authority and oversight of this Fund.

Conversely, the County owns the fairgrounds and the buildings on the site, therefore carrying liability relating to those assets. This structure results in a separation between ownership and

governance, leading to challenges in long-term strategic planning and capital asset management. This organizational structure was highlighted just prior to the 2014 County Fair, when a critical asset had to be demolished in the weeks leading up to the Fair. This resulted in a temporary structure solution but long-term capital asset questions remain.

In December 2014, staff held a Policy Session and presented alternative governance and management structures in order to provide the BCC with governance options. Following this Policy Session, County Administration and BCS staff met with the Fair Board on several occasions to develop and implement a governance model where the County would be more actively involved in the operations and management of the Clackamas County Fair & Event Center. The Fair Board, however, elected to continue with the current governance model.

In 2017, the County elected to diversify the Fair Board by increasing the number of Fair Board members from five (5) to seven (7). In addition, County Administration, Counsel and BCS staff began working with the Fair Board to develop a Fair Management Agreement. This agreement would ensure the responsibilities and associated liabilities of the Fair Board and Clackamas County would be clearly defined and delineated within the current governance structure as determined by the Fair Board.

After many months of discussion, the County and the Fair Board have reached consensus on a draft agreement. Under this agreement, the Fair Board will retain control of year-round planning, programming and operations of the Event Center and Fair, while the County retains ownership of the capital assets. The agreement also clarifies the rules, policies and procedures to be used in conducting County Fair activities as laid out in ORS Chapter 565. Furthermore, the agreement will provide protection for the County and BCC from liability relating to the personnel or contractual matters related to the management of the Fair and Event Center.

County Counsel has reviewed and approved this agreement as to form and content.

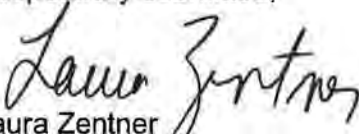
**RECOMMENDATION:**

Staff recommends the Board approve the attached agreement between Clackamas County and the Fair Board and authorizes the BCS Director or Deputy Director to execute all documents necessary to effectuate the same.

**ATTACHMENT:**

Fair Management Agreement between Clackamas County and the Clackamas County Fair Board

Respectfully submitted,

  
Laura Zentner  
Director of Business and Community Services  
[Lzentner@clackamas.us](mailto:Lzentner@clackamas.us)



**FAIR MANAGEMENT AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY FAIR BOARD  
And  
CLACKAMAS COUNTY, OREGON**

This Fair Management Agreement (this "Agreement") is between the Clackamas County Fair Board, an agency of Clackamas County, and Clackamas County, a political subdivision of the State of Oregon ("County").

**1. DEFINITIONS**

1.1 "Fair Board" means the Clackamas County Fair Board.

1.2 "BCC" means the Board of County Commissioners, the duly elected governing body of Clackamas County.

1.3 The "Fair" means the annual Clackamas County Fair and Rodeo, which includes "exhibition held for the purposes of disseminating knowledge concerning, and encouraging the growth and prosperity of, all agricultural, stock raising, horticultural, mining, mechanical, artistic and industrial pursuits in a county, including the racing of animals and vehicles." ORS 565.010(3).

1.4 "Clackamas County Fairgrounds and Event Center" or "FEC" means "the ground, and all other property owned, leased, used or controlled by a county and devoted to the use of a county fair," ORS 565.010(4), currently located at 694 NE 4th Avenue, Canby, OR 97013.

**2. PURPOSE**

2.1 Pursuant to ORS 203:035 and ORS 565.230(4), the County and Fair Board enter into this Agreement for the purpose of clarifying the rules, policies and procedures to be used in the conduct of county fair activities as laid out in ORS 565.190 through ORS 565.447 and ORS 565.610 through ORS 565.650, and for the purpose of protecting the County and BCC from liability relating to personnel or contractual matters, as described in ORS 565.230(4).

**3. GENERAL**

3.1 The duties and responsibilities of the Fair Board are defined in ORS 565.210 through 565.447 and 565.610 through 565.650. The Fair Board is subject to most laws applicable to public bodies. Nothing in this Agreement prohibits the Fair Board from contracting for services to manage the fair, Clackamas County Fairgrounds and Event Center, and Fair Board activities, when done in conformance with this Agreement and applicable laws and policies.

**4. THE FAIR BOARD**

4.1 The Fair Board shall consist of "not less than three nor more than seven members" appointed by the BCC to staggered three-year terms pursuant to ORS 565.210(2). Members of the Fair Board may be removed from office for cause by the BCC as provided in ORS 565.210(5) and

565.225.

4.2 Pursuant to ORS 565.210(3), each member of the Fair Board is required to furnish a good and sufficient bond in favor of the County, conditional upon faithful performance of the duties of the office. Additionally, pursuant to ORS 565.220(3) the Fair Board secretary is also required to furnish a similar bond. The bond for each Fair Board member and the Fair Board secretary shall be no less than \$10,000.00. The bonds, when approved by the BCC, shall be filed with the County Clerk. The premium on the bond(s) shall be paid by the Fair Board as a Fair Board expense.

4.3 Pursuant to ORS 565.220, the members of the Fair Board shall, as soon as their bonds have been filed and approved, meet and organize by electing a chair and other officers. A majority of the members of the Fair Board shall constitute a quorum for the transaction of all business at meetings. In the absence of the chair, another member of the Fair Board shall perform the duties of the chair. If there is a conflict between the Fair Board Bylaws and this Agreement, the terms of this Agreement shall control.

4.4 The Fair Board is a public body subject to requirements of the public meetings laws of the state as provided in ORS 192.610 through 192.710 and the Fair Board members are public officials subject to the government standards and practices provision of ORS Chapter 244.

4.5 The Fair Board is subject to the public records laws of the state as set forth in ORS Chapter 192.

4.6 Throughout the term of this Agreement, the Fair Board shall maintain and periodically update, as necessary, a Clackamas County Fairgrounds and Event Center Policy and Procedure Manual (the "Manual").

## 5. PERSONNEL

5.1 Employees working at the Fair are considered employees of the Fair Board and are not subject to Clackamas County bargaining unit agreements, but they are subject to all other applicable state and federal laws, and the County budget process. Salary and benefits of the Fair Board employees shall be determined by the Fair Board.

## 6. BUDGET

6.1 Pursuant to ORS 565.325, the County maintains a fair fund to record revenues and expenses of the Fair and to use to promote and operate the Fair. "The fair fund may be expended only for the promotion and operation of the county fair and to provide, maintain and improve county fairgrounds, buildings, facilities and improvements on the county fairgrounds for the county fair and other events authorized by the county fair board." ORS 565.325(1). "All moneys received from activities conducted at the county fair or at the county fairgrounds or facilities, and all moneys received by a county fair as the licensee for pari-mutuel wagering on races conducted at or on behalf of the fair shall be deposited in the county fair fund." ORS 565.325(2). The fair fund is subject to the Local Budget Law (ORS Chapter 294). The fair fund is part of the regular County budget, and is subject to all County fiscal policies, procedures and auditing.

6.2 The Fair Board acknowledges that it must comply with Oregon budget laws and

appropriate limits established by ORS 565.325 for the fair fund. Furthermore, under ORS 565.325, all receipts from fairground activities must be deposited into the fair fund.

6.3 The Fair Board agrees to continue providing FEC financial records to the County to be included in the County's budget and Comprehensive Annual Financial Report.

6.4 The fair staff responsible for preparing the budget will follow current budget processes as established each year by the County Budget Officer. The Fair Board shall review and approve the budget as prepared by fair staff before it is submitted to the County.

6.5 Capital improvement projects, and the estimated costs for each project and its ongoing operation and maintenance, shall be set by the Fair Board and submitted to the BCC by February 1 of each year for review and approval.

6.6 Fair Board will operate on the same fiscal year as the County, July 1 through June 30.

## 7. FINANCE

7.1 Through the fair fund, the County will provide the level of fiscal means necessary to maintain proper records of the Fair Board. The Fair Board will assume responsibility for the accuracy of all financial activities and accounts for which the BCC has the responsibility, including in the County accounting and auditing reports. The Fair Board acknowledges and agrees that it is solely and exclusively responsible for the accuracy of all financial information provided to the County for inclusion in the final auditing and accounting reports.

7.2 In the exercise of its management authority and in accordance with ORS 565.315, the Fair Board has authority to execute contracts for the authorized purposes set forth in statute, subject to budget approval and in accordance with this Agreement.

7.3 The Fair Board has authority to make expenditures from its budget in accordance with ORS 565.315. The Fair Board shall comply with public purchasing laws and applicable County rules.

7.4 Pursuant to ORS 565.315, the Fair Board shall, once each year, file with the County Budget Officer a complete financial statement showing all funds received and disbursed. The Fair Board may include in the report such suggestions and recommendations, as in its opinion would make for the improvement and advancement of agricultural and related industries of the fair. The Fair Board will have conducted an annual third party audit as required under Oregon Law. This audit will be conducted in coordination with, and with the input of, the County's Finance Department.

7.5 The Fair Board may establish and operate a petty cash account that is consistent with County petty cash policies and procedures. The Fair Board chair or the chair's designees who have been approved by the Fair Board may authorize expenditures from the petty cash account.

7.6 The Fair Board chair or the chair's designee, who has been approved by the Fair Board, have authority to cosign with the Fair Director for approved expenditures.

7.7 Without limiting the generality and applicability of the above provisions, the Fair Board



agrees to follow the financial and fiscal procedures as described in the Manual. To the extent there is a conflict between the County's financial and fiscal policies and procedures and those in the Manual, the County's policies and procedures shall control to the extent the County's policies and procedures comply with applicable law included in ORS Chapter 565.

7.8 Once every five years, starting with the second year of this Agreement and thereafter as required, the Fair Board shall engage a third party auditor identified by the County to perform a performance audit. The scope and nature of this audit shall generally be focused on successful implementation of the business plan and capital plan referenced in Section 10 below, adherence to applicable laws and valid agreements, including this one, and a general report on performance in relation to other similarly situated county fairs and/or event centers.

## **8. CONTRACTING**

8.1 The Fair Board must follow applicable laws, including those for public contracting by a public body, appropriate permitting and inspection by the applicable jurisdictions, whether City of Canby or County, and bonding of public works projects. The Fair Board agrees to use standard County contract language and processes.

8.2 Except as otherwise approved by the County, all contracts entered into by the Fair Board chair or chair's designee approved by the Fair Board shall contain provisions addressing, (i) minimum types and amounts of required insurance coverage, (ii) indemnification of the Fair Board and County, and its elected officials, employees, officers, and agents, (iii) voluntary waivers or releases or (iv) other provisions addressing allocations of risk or risks of loss as deemed appropriate following consultation with County Counsel's office.

8.3 Periodically, but no less frequently than every three (3) years, the Fair Board and the County may review and update the contract documents as necessary. The Fair Board will contact the County Counsel's office prior to accepting or agreeing to any material modifications or changes to previously reviewed and approved contract documents.

## **9. OPERATION OF FAIRGROUNDS**

9.1 All fair real property and fixtures are the property of Clackamas County. The Fair Board may contract with the County for maintenance or repair of its vehicles, power equipment, or facilities. "The county fair board has the exclusive management of the [Clackamas County Fairgrounds and Event Center] and all other property owned, leased, used or controlled by the County and devoted to the use of the county fair, and is entrusted and charged with the entire business management and financial and other affairs of such fair." ORS 565.230(1).

9.2 Source, scheduling and method of replacing equipment is a management decision of the Fair Board. Equipment purchased by the Fair Board can be disposed of as surplus in accordance with County surplus property procedures and the proceeds retained in the Fair fund.

9.3 As provided herein, the Fair Board shall exclusively operate and manage the Clackamas County Fairgrounds and Event Center. "In order that the fairgrounds and buildings may be utilized to the fullest extent for pleasure, recreation and public benefit, the board shall at all times have the authority to provide park facilities for the public or to issue licenses and grant permits for the holding of any exhibitions, shows, carnivals, circuses, dances, entertainments or public

gatherings upon the fairgrounds. During the progress of county agricultural or industrial fairs and not otherwise, any such businesses so licensed by the board shall not be required to pay license to any city or county other than to the board as provided in this section. The board shall fix the sum to be paid for such permits and licenses, which shall be issued and signed by the president and secretary of the board. The moneys received from the issuance of such permits and licenses shall be deposited to the credit of the fair fund and warrants drawn against it the same as upon the disbursement of any other fair funds." ORS 565.230(2).

9.4 As provided herein, the Fair Board shall operate and manage the Fair and Events Center. The Fair Board is responsible for recruiting bookings, scheduling, establishing standard facility and animal stall rental conditions and fees; general promotion, recruitment of event marketing coordinators, recruitment of security services, food service, concessions, maintenance and all other related operational activities, including contracts for these activities.

9.5 Pursuant to ORS 565.240, the Fair Board shall make and enforce all rules and regulations necessary for the proper conduct and management of the Fair and Event Center and all activities conducted at the Fair and Event Center.

9.6 The Fair Board will set prices of admission, licenses and all other fees provided by ORS 565.230 and 565.630.

## **10. COUNTY OWNERSHIP AND INVESTMENT IN FAIRGROUNDS AND EVENT CENTER**

10.1 The County may, in its sole and absolute discretion, choose to invest funds above and beyond the fair fund in improving the FEC. Any such improvements will be added to the management responsibilities of the Fair Board but remain owned by the County.

10.2 The Fair Board agrees that it shall, within one year of the execution of this Agreement, present to the BCC for approval a fully developed capital asset management plan, including a site master plan. If not approved, the Fair Board agrees to address any response and questions given by the BCC, revise the capital plan accordingly, and promptly re-present for approval.

10.3 The Fair Board agrees that it shall, within two years of the execution of this Agreement, present to the BCC for approval a fully developed business plan designed to provide sustainable funding only through the use of fair fund revenues for the maintenance, upkeep, improvement, operation and management of the FEC. The business plan will address capital asset deficiencies identified in the capital asset management plan. If not approved, the Fair Board agrees to address any response and questions given by the BCC, revise the business plan accordingly, and promptly re-present for approval.

10.4 The Fair Board acknowledges that the County is the owner of the FEC. Authority to manage the FEC is delegated to the Fair Board by ORS 565.230(1). This delegation lasts so long as the County owns the FEC. The County is under no obligation to perpetually own the FEC and, if at any future date the County decides to sell the FEC, any revenues generated from the sale of the FEC shall be held in trust by the county for up to 5 years until a decision is made regarding the future of the FEC.

10.5 The Fair Board further acknowledges and agrees that the BCC may have need for the FEC for other purposes, and that such emergency purposes may take precedence. Specifically, but without limitation, the Fair Board acknowledges that the BCC may, in the event of a declared emergency, designate the FEC as a disaster coordination area, disaster debris management area, a warming shelter area, or such other use as the BCC may determine. The Fair Board agrees to cooperate fully in all respects to support implementation of the BCC's direction for the use of the FEC. The BCC agrees to reimburse the fair fund to the extent there is a negative impact from the alternate uses of the FEC.

## **11. INSURANCE, BONDING AND INDEMNIFICATION**

The Fair Board currently pays all costs of auto; property and liability insurance through a group insurance pooling arrangement. The Fair Board shall obtain and maintain in full force the following policies and policy limits of insurance:

### 11.1 Commercial General Liability Insurance

The Fair Board shall obtain, at Fair Board's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees.

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

### 11.2 Auto Liability Insurance

Commercial Auto/Business Auto Policy. The Fair Board shall also obtain, at Fair Board's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1 Million.

### 11.3 Workers' Compensation Insurance

The Fair Board, 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. If the Fair Board contracts with any independent contractors, such Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

### 11.4 Property Insurance

The Fair Board will at its sole expense, procure and maintain a property insurance policy (ISO "Special Form" policy, or its nearest equivalent available) covering the Fair Board's personal property, including but not limited to mobile equipment, located at the Premises, providing coverage on an all-risk basis, including coverage (if eligible), for the perils of earthquake, flood, and windstorm. Limits of coverage shall be no less than the replacement cost of all scheduled property. The Fair Board shall solely be responsible for the Property Policy's deductible and such



policy will not contain a coinsurance requirement.

#### 11.5 Additional Insured Provision

The insurance, other than Workers' Compensation shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

#### 11.6 Certificate of Insurance

As evidence of the insurance coverage required by this contract, the contractor shall furnish a Certificate of Insurance to Clackamas County. No contract shall be effected until the required certificates have been received, approved and accepted by the County. A renewal certificate will be sent to the Clackamas County Purchasing Division 10 days prior to coverage expiration.

#### 11.7 Primary Coverage Clarification

Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

#### 11.8 Cross-Liability Clause

A cross-liability clause or separation of insured condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.

To the extent that insurance premiums can be directly attributed to the Fair Board, costs will be budgeted and paid accordingly. All administrative costs will be allocated through the cost allocation plan.

Clackamas County shall be listed as an additional insured on all insurance policies.

The Fair Board shall defend and indemnify the BCC and the County from liability arising out of personnel or contractual matters occurring under the Fair Board's direction, management or authority, to the extent permitted by law.

### **12. LAW ENFORCEMENT**

12.1 If necessary, the Fair Board will contract for the presence of Clackamas County Sheriff's deputies and reserve deputies, Oregon State patrol officers, or Canby Police Department officers on the grounds during major events. The Fair Board can also contract with private firms for security services during fairs and major events. *See* ORS 565.240.

### **13. JOINT MEETING**

13.1 The County, BCC, and Fair Board will meet no less than annually, preferably semi-annually. If no joint meeting occurs pursuant to subsection 13.1 of this Agreement, the current Agreement will remain in force.

### **14 MISCELLANEOUS**


30 April 2018

14.1 This Agreement is intended to reflect the duties and responsibilities of the Fair Board as defined in ORS 565.210 through 565.447 and 565.610 through 565.650. The Fair Board and the County mutually agree to cooperate fully to effectuate the terms of this Agreement. This Agreement may be modified, amended or repealed by the mutual written agreement of the parties.

14.2 This Agreement will be reviewed by the parties every three (3) years. The parties will negotiate in good faith whenever they review this Agreement or seek to renew it for additional three (3) year periods.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CLACKAMAS COUNTY FAIR  
BOARD

  
\_\_\_\_\_  
Chair

Approved as to Form:

\_\_\_\_\_  
STEPHEN L.  
MADKOUR  
Clackamas County  
Counsel

CLACKAMAS COUNTY  
BOARD OF COMMISSIONERS

Chair \_\_\_\_\_

COPY

May 24, 2018

Board of Commissioners  
Clackamas County

Members of the Board:

Presentation of  
May-Mental Health Awareness & Older Adults Month

<b>Purpose/Outcomes</b>	In honor of Mental Health Awareness and Older Adults Month, in May the Behavioral Health Division has prepared a presentation to the Board and citizens of Clackamas County in hopes of increasing awareness around the issue of Loneliness. We will present information on prevalence, risk factors and health issues resulting from loneliness experienced by older adults and, more importantly, the intentional work being done to address this life-threatening condition.
<b>Dollar Amount and Fiscal Impact</b>	No fiscal impact to the County
<b>Funding Source</b>	N/A
<b>Duration</b>	The month of May is dedicated to Mental Health Awareness, but programming occurs throughout the year.
<b>Previous Board Action</b>	The Board has been very supportive of addressing mental health and suicide prevention awareness in our community as well as supporting and participating in strategies that increase awareness of mental health, such as Mental Health First Aid and recognition of Super Heart Heroes.
<b>Strategic Plan Alignment</b>	Individuals and families in need are healthy and safe Ensure safe, healthy and secure communities
<b>Contact Person</b>	Mary Rumbaugh, Behavioral Health Division Director, 503.742.5305
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Behavioral Health Division (BHD), a division of the Health, Housing and Human Services department is presenting on the prevalence of loneliness in older adults including their risk for suicide, and the role that H3S is playing to reduce this condition. In May 2015, Clackamas County hired an Older Adult Behavioral Health Specialist as part of a state-wide effort to highlight the supports needed and barriers that exist for older adults and people with disabilities.

In the past three years, a tremendous amount of work has been accomplished to address systematic and social challenges that prevent older adults from receiving the care and support they need. The BHD has successfully implemented: integration of peer support services for older adults; A community-wide "Older Adult and Loneliness" training and the newly released Senior Loneliness Warm Line.

As in recent years past, BHD will also be honoring community members and Clackamas County employees who bring hope and the vision of recovery to our community by honoring them with a Super Heart Hero's Award. There will be 8 recipients honored this year.

*Healthy Families. Strong Communities.*

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

[www.clackamas.us](http://www.clackamas.us)

A handwritten signature in black ink, appearing to read 'R. Swift', written in a cursive style.

Respectfully submitted by:  
Richard Swift, Director  
Health, Housing & Human Services



# Older adults and loneliness

Be the Connection



# Loneliness Defined

- Loneliness is the feeling of being alone in a way that leaves the person feeling sad and isolated.
- It is not the same thing as being solitary or seeking solitude.
- It is experienced differently by everyone—people can be in a crowd and feel lonely, and people can be by themselves and be content

# Why talk about loneliness?

- It is a universal experience.
- Older adults are much more likely to be willing to talk about loneliness, than they are depression, anxiety, mental illness, or thoughts of suicide
- It is a powerful indicator of potential risks to physical and emotional health
- When people are connected, we tend to see better health indicators

# Risks of loneliness and isolation

- Older adults experiencing loneliness are at risk of earlier deaths, shortened lives—why?
  - Loneliness and its impact on health is comparable to smoking 15 cigarettes a day (Holt-Lundstad, PLoS 2010)
  - Although loneliness doesn't cause high blood pressure, Alzheimer's or heart disease, it can exacerbate all those conditions.
- Loneliness is a risk factor for depression, and depression is a risk factor for suicide
  - Between 2015-2017, people who were 55 or older represented 33% of all suicides or an average of 21 people per year in the county;



# What are we doing to address loneliness?

- Older Adult Behavioral Health Specialist – May 2015
- Two Older Adult peers – 2017
- Bringing older adult Behavioral Health expertise to services, systems & partners
- Complex case consultation with multiple partners (Social Services, law enforcement, first responders, providers, faith communities, primary care, families, etc.)
- “Be the Connection: Loneliness and Older Adults Summit” in June 2017 in Oregon City – 150 people
- Developing and providing over a dozen trainings – since 2015 over 1200 people have been trained in older adult-specific topics

# Resources for older adults

## Clackamas County Crisis Line & Clinic

503-655-8585

## Clackamas County Aging & Disability Resource Connection (ADRC)

*Information and referral*

503-650-5622

## Senior Loneliness Line

503-200-1633

[www.SeniorLonelinessLine.org](http://www.SeniorLonelinessLine.org)

*For adults 55 and older and their families and caregivers living in Clackamas County who may be isolated or lonely. Our team of volunteers and staff are specially trained in working with older adults, and can provide ongoing support, connect you with resources or just listen.*



## Feeling lonely?

**We're here to listen.**

**SeniorLonelinessLine**  
A SERVICE OF CLACKAMAS COUNTY • 

**Health, Housing  
& Human Services**  
CLACKAMAS COUNTY 

**Be the Connection**  
The Older Adult Loneliness Project 

# How to combat loneliness?

- Be the Connection!
- Human connection is essential to fighting loneliness—part of the work of the County and the community is fostering and supporting those connections.
- A friendly challenge:
  - Call an older adult in your circle
  - When you see older adults throughout your day, take a moment to make eye contact and say hello
  - Get three other people to take up this challenge!





# Start seeing seniors

What do you see when you look at me?



Health, Housing  
& Human Services   
CLACKAMAS COUNTY

  
**Be the Connection**  
The Older Adult Loneliness Project

## *Super Heart Heroes*

- **The Super Heart Ambassador Award** recognizes an individual, family or small group who has *raised awareness of behavioral health issues, initiated projects with a lasting impact, and/or influenced systems or policy changes.*

Cherie Conrad-Hersch

Mary Ellen Winterhalter

Dave Kidd

- **The Super Heart Partner Award** recognizes an organization, business or institution that has *implemented innovative behavioral health programs and/or policies that positively affect the emotional well-being of employees and the greater community.*

Hoodland Senior Center

North Clackamas School District Elementary Programs

# *Super Heart Heroes*

## **The Super Heart Neighbor Award**

Recognizes a unique individual or family who *promotes hope and healing through ordinary acts of kindness and compassion.*

**Shayla Montgomery**

**Kevin R. Mitchell**

## **The Super Heart Employee Award**

Recognizes an exemplary Clackamas County staff member *who goes above and beyond, leading with their heart to make a difference in behavioral health.*

**Tamra Dickinson**

**Thank you to our 2018 Super Heart Heroes!**





Board of County Commissioners as the Governing Body of  
Clackamas County Service District No. 1

Second Reading and Adoption of an Ordinance Adopting and Ratifying  
Amendment #2 to the WES Partnership IGA

<b>Purpose/Outcomes</b>	Adoption of Amendment #2 to Agreement and Related Ratifying Ordinance
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Permanent if adopted
<b>Previous Board Action</b>	Discussed at April 10, 2018 Policy Session First reading at May 10, 2018 Business Meeting
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers.</li> <li>2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.</li> </ol>
<b>Contact Person</b>	Chris Storey, WES Assistant Director
<b>Contract No.</b>	N/A

**BACKGROUND:**

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the "Agreement") creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the "Partners"). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC were provided as part of the first reading of this ordinance, and are included elsewhere in this business meeting packet as Attachment A to Exhibit C of the proposed board order making findings regarding amending the Master Declaration.

As of July 1, 2017, both SWMACC and TCSD's budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period allows time to implement a complex process of integrating and moving the operations and functionalities



of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

As described at the April 10, 2018 policy session, amendment of the Agreement is the next step in this process. This amendment is to clarify certain aspects of the CCSD#1 integration, and provide more clarity around the process of ensuring that only rate zone two (CCSD#1) ratepayers and contract customers will pay for the CCSD#1 Legacy Debt. The Agreement is adopted both as a contract by the Partners, and as an ordinance affirming the adoption of the Agreement as required by ORS 190. The amendment of the Agreement is attached, along with an ordinance for second reading and adoption affirming that amendment. This ordinance was first read on May 10<sup>th</sup>, 2018, and is proposed to be adopted here.

Related actions scheduled to take place at the May 24 business meeting include a (i) board order establishing process for ensuring only rate zone two pays for the CCSD#1 Legacy Debt, (ii) amendment of the Master Declaration, (iii) board order with findings and factual support for a no material adverse impact, and (iv) a board order allowing WES to substitute for CCSD#1 as the responsible agency for the CCSD#1 Legacy Debt.

**RECOMMENDATION:**

Staff recommends that the BCC, as the governing body of Clackamas County Service District No. 1, adopt the proposed ordinance amending the Agreement and ratifying said amendment.

Respectfully submitted,



Chris Storey  
WES Assistant Director

**ORDINANCE NO. 04-2018**

**OF CLACKAMAS COUNTY SERVICE DISTRICT NO. 1**

**AN ORDINANCE AUTHORIZING AND RATIFYING AN AMENDMENT OF THE INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, AND TRI-CITY SERVICE DISTRICT REGARDING THE WATER ENVIRONMENT SERVICES PARTNERSHIP**

**WHEREAS**, the Board of County Commissioners as the governing body of Clackamas County Service District No. 1 (the "District") is desirous of amending that certain Intergovernmental Partnership Agreement adopted November 6<sup>th</sup>, 2016 and amended May 18<sup>th</sup>, 2017 ("Agreement") to more clearly define the obligations of the parties with respect to the CCSD#1 Debt (as defined therein) outstanding; and

**WHEREAS**, it is in the best interests of the District and the partnership formed pursuant to the Agreement to adopt the attached amendment and this ordinance;

**NOW THEREFORE, CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 BOARD ORDAINS AS FOLLOWS:**

Section 1. The Amendment of the Intergovernmental Partnership Agreement between Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County regarding the municipal entity known as "Water Environment Services" as attached hereto as Exhibit A and incorporated herein, is hereby adopted, affirmed and ratified.

Read first time at a regular meeting of the District Board held on the 10<sup>th</sup> day of May, 2018, and the foregoing ordinance was enacted by the District Board this 24<sup>th</sup> day of May, 2018 with an effective date of June 30<sup>th</sup>, 2018.

**ADOPTED** this 24<sup>th</sup> day of May, 2018.

**BOARD OF COUNTY COMMISSIONERS**  
**as the governing body of**  
**CLACKAMAS COUNTY SERVICE DISTRICT NO. 1**

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Chair

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Recording Secretary

## AMENDMENT #2 TO THE WATER ENVIRONMENT SERVICES

### PARTNERSHIP AGREEMENT

This Amendment #2 to the Water Environment Services Partnership Agreement (this “Amendment”) is entered into by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statutes (“ORS”) Chapter 451 (“CCSD#1”), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 (“SWMACC”), and the Tri-City Service District, a county service district formed under ORS Chapter 451 (“TCSD”), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as “Partner” and collectively as the “Partners.”

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the “Agreement”); and

WHEREAS, SWMACC became a party to the Agreement on May 18, 2017; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues primarily pertaining to assuring any borrowings of CCSD#1 will remain the responsibility of ratepayers of Rate Zone 2, which encompasses the boundaries of CCSD#1 and its current and prior contract customers;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. Section 1.03 is amended to read in its entirety:

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements that shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES’s sole management and control. This full “Contribution” requires the substitution of WES for CCSD#1 with respect to all outstanding CCSD#1 Bonds (defined below). The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish the Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. The Partners agree that substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, consistent with Section 3.07 hereof, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and issuance of borrowings by WES going forward.



2. Section 1.11(a) is amended to read in its entirety:

“CCSD#1 Bonds” means all outstanding borrowings of CCSD#1 as of May 24, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same.

3. Section 1.11(b) is amended in its entirety to read:

“CCSD#1 Debt Service” means the principal of and interest on CCSD#1 Bonds, and any other payments or deposits that are required by the documents related to the CCSD#1 Bonds, such as deposits to debt service reserve accounts and bond sinking funds.

4. Section 3.07 of the Agreement is amended in its entirety to read:

The Partners acknowledge that CCSD#1 has issued the CCSD#1 Bonds relating to CCSD#1’s existing system, and that neither TCSD nor SWMACC has any outstanding borrowings. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be charged for the CCSD#1 Bonds and the related CCSD#1 Debt Service, and that rates shall be imposed to pay for the CCSD#1 Bonds and the related CCSD#1 Debt Service to ensure the same. To effectuate this the Parties agree that:

(a) The Board of WES shall adopt an order establishing a ratemaking policy to ensure the above restriction is effectuated, which may be modified from time to time to address budgetary or accounting factors.

(b) The provisions of this IGA shall not be construed to limit or prevent WES from:

(i) Commingling its gross revenues and applying them to any lawful obligation of WES without regard to the ratepayers that provided those gross revenues; or

(ii) Allocating expected operating expenses to its ratepayers in any reasonable manner, regardless of their location; or

(iii) Establishing rates for its customers in any manner WES determines is equitable and consistent with prudent utility practice, except as specifically limited by Section 3.02 and this Section 3.07.

(c) Nothing in this Agreement is intended or shall be construed to violate any covenant of the CCSD#1 Bonds, and such covenants, to the extent there is a conflict between them and the Agreement, said covenant shall control with respect to the CCSD#1 Bonds and any obligations issued on a parity with those bonds and required to have the same covenants as the CCSD#1 Bonds.

(d) Once all of the CCSD#1 Bonds are paid, defeased or refinanced for the benefit of WES as a whole, the provisions of Section 3.07 and any related order shall cease to have any effect.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

**Clackamas County Service District No. 1**

**Tri-City Service District**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Clerk

**Surface Water Management Agency of Clackamas County**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Clerk



Board of County Commissioners as the Governing Body of  
Tri-City Service District

Second Reading and Adoption of an Ordinance Adopting and Ratifying  
Amendment #2 to the WES Partnership IGA

<b>Purpose/Outcomes</b>	Adoption of Amendment #2 to Agreement and Related Ratifying Ordinance
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Permanent if adopted
<b>Previous Board Action</b>	Discussed at April 10, 2018 Policy Session First reading at May 10, 2018 Business Meeting
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<b>Contact Person</b>	Chris Storey, WES Assistant Director
<b>Contract No.</b>	N/A

**BACKGROUND:**

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As of July 1, 2017, both SWMACC and TCSD's budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period



allows time to implement a complex process of integrating and moving the operations and functionalities of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

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Related actions scheduled to take place at the May 24 business meeting include a (i) board order establishing process for ensuring only rate zone two pays for the CCSD#1 Legacy Debt, (ii) amendment of the Master Declaration, (iii) board order with findings and factual support for a no material adverse impact, and (iv) a board order allowing WES to substitute for CCSD#1 as the responsible agency for the CCSD#1 Legacy Debt.

**RECOMMENDATION:**

Staff recommends that the BCC, as the governing body of Tri-City Service District, adopt the proposed ordinance amending the Agreement and ratifying said amendment.

Respectfully submitted,

  
Chris Storey  
WES Assistant Director



**ORDINANCE NO. 05-2018**  
**OF TRI-CITY SERVICE DISTRICT**

**AN ORDINANCE AUTHORIZING AND RATIFYING AN AMENDMENT OF THE INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, AND TRI-CITY SERVICE DISTRICT REGARDING THE WATER ENVIRONMENT SERVICES PARTNERSHIP**

**WHEREAS**, the Board of County Commissioners as the governing body of Tri-City Service District (the "District") is desirous of amending that certain Intergovernmental Partnership Agreement adopted November 6<sup>th</sup>, 2016 and amended May 18<sup>th</sup>, 2017 ("Agreement") to more clearly define the obligations of the parties with respect to the CCSD#1 Debt (as defined therein) outstanding; and

**WHEREAS**, it is in the best interests of the District and the partnership formed pursuant to the Agreement to adopt the attached amendment and this ordinance;

**NOW THEREFORE, CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 BOARD ORDAINS AS FOLLOWS:**

Section 1. The Amendment of the Intergovernmental Partnership Agreement between Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County regarding the municipal entity known as "Water Environment Services" as attached hereto as Exhibit A and incorporated herein, is hereby adopted, affirmed and ratified.

Read first time at a regular meeting of the District Board held on the 10<sup>th</sup> day of May, 2018, and the foregoing ordinance was enacted by the District Board this 24<sup>th</sup> day of May, 2018 with an effective date of June 30<sup>th</sup>, 2018.

**ADOPTED** this 24<sup>th</sup> day of May, 2018.

**BOARD OF COUNTY COMMISSIONERS**  
as the governing body of  
**TRI-CITY SERVICE DISTRICT**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

## AMENDMENT #2 TO THE WATER ENVIRONMENT SERVICES

### PARTNERSHIP AGREEMENT

This Amendment #2 to the Water Environment Services Partnership Agreement (this "Amendment") is entered into by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statutes ("ORS") Chapter 451 ("CCSD#1"), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 ("SWMACC"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the "Agreement"); and

WHEREAS, SWMACC became a party to the Agreement on May 18, 2017; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues primarily pertaining to assuring any borrowings of CCSD#1 will remain the responsibility of ratepayers of Rate Zone 2, which encompasses the boundaries of CCSD#1 and its current and prior contract customers;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. Section 1.03 is amended to read in its entirety:

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements that shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES's sole management and control. This full "Contribution" requires the substitution of WES for CCSD#1 with respect to all outstanding CCSD#1 Bonds (defined below). The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish the Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. The Partners agree that substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, consistent with Section 3.07 hereof, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and issuance of borrowings by WES going forward.

2. Section 1.11(a) is amended to read in its entirety:

“CCSD#1 Bonds” means all outstanding borrowings of CCSD#1 as of May 24, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same.

3. Section 1.11(b) is amended in its entirety to read:

“CCSD#1 Debt Service” means the principal of and interest on CCSD#1 Bonds, and any other payments or deposits that are required by the documents related to the CCSD#1 Bonds, such as deposits to debt service reserve accounts and bond sinking funds.

4. Section 3.07 of the Agreement is amended in its entirety to read:

The Partners acknowledge that CCSD#1 has issued the CCSD#1 Bonds relating to CCSD#1’s existing system, and that neither TCSD nor SWMACC has any outstanding borrowings. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be charged for the CCSD#1 Bonds and the related CCSD#1 Debt Service, and that rates shall be imposed to pay for the CCSD#1 Bonds and the related CCSD#1 Debt Service to ensure the same. To effectuate this the Parties agree that:

(a) The Board of WES shall adopt an order establishing a ratemaking policy to ensure the above restriction is effectuated, which may be modified from time to time to address budgetary or accounting factors.

(b) The provisions of this IGA shall not be construed to limit or prevent WES from:

(i) Commingling its gross revenues and applying them to any lawful obligation of WES without regard to the ratepayers that provided those gross revenues; or

(ii) Allocating expected operating expenses to its ratepayers in any reasonable manner, regardless of their location; or

(iii) Establishing rates for its customers in any manner WES determines is equitable and consistent with prudent utility practice, except as specifically limited by Section 3.02 and this Section 3.07.

(c) Nothing in this Agreement is intended or shall be construed to violate any covenant of the CCSD#1 Bonds, and such covenants, to the extent there is a conflict between them and the Agreement, said covenant shall control with respect to the CCSD#1 Bonds and any obligations issued on a parity with those bonds and required to have the same covenants as the CCSD#1 Bonds.

(d) Once all of the CCSD#1 Bonds are paid, defeased or refinanced for the benefit of WES as a whole, the provisions of Section 3.07 and any related order shall cease to have any effect.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

**Clackamas County Service District No. 1**

**Tri-City Service District**

\_\_\_\_\_  
Chair

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Chair

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**Surface Water Management Agency of Clackamas County**

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Board of County Commissioners as the Governing Body of  
Surface Water Management Agency of Clackamas County

Second Reading and Adoption of an Ordinance Adopting and Ratifying  
Amendment #2 to the WES Partnership IGA

<b>Purpose/Outcomes</b>	Adoption of Amendment #2 to Agreement and Related Ratifying Ordinance
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Permanent if adopted
<b>Previous Board Action</b>	Discussed at April 10, 2018 Policy Session First reading at May 10, 2018 Business Meeting
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers.</li> <li>2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.</li> </ol>
<b>Contact Person</b>	Chris Storey, WES Assistant Director
<b>Contract No.</b>	N/A

**BACKGROUND:**

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the "Agreement") creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the "Partners"). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC were provided as part of the first reading of this ordinance, and are included elsewhere in this business meeting packet as Attachment A to Exhibit C of the proposed board order making findings regarding amending the Master Declaration.

As of July 1, 2017, both SWMACC and TCSD's budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period



allows time to implement a complex process of integrating and moving the operations and functionalities of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

As described at the April 10, 2018 policy session, amendment of the Agreement is the next step in this process. This amendment is to clarify certain aspects of the CCSD#1 integration, and provide more clarity around the process of ensuring that only rate zone two (CCSD#1) ratepayers and contract customers will pay for the CCSD#1 Legacy Debt. The Agreement is adopted both as a contract by the Partners, and as an ordinance affirming the adoption of the Agreement as required by ORS 190. The amendment of the Agreement is attached, along with an ordinance for second reading and adoption affirming that amendment. This ordinance was first read on May 10<sup>th</sup>, 2018, and is proposed to be adopted here.

Related actions scheduled to take place at the May 24 business meeting include a (i) board order establishing process for ensuring only rate zone two pays for the CCSD#1 Legacy Debt, (ii) amendment of the Master Declaration, (iii) board order with findings and factual support for a no material adverse impact, and (iv) a board order allowing WES to substitute for CCSD#1 as the responsible agency for the CCSD#1 Legacy Debt.

**RECOMMENDATION:**

Staff recommends that the BCC, as the governing body of Surface Water Management Agency of Clackamas County, adopt the proposed ordinance amending the Agreement and ratifying said amendment.

Respectfully submitted,



Chris Storey  
WES Assistant Director

**ORDINANCE NO. 06-2018**

**OF SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY**

**AN ORDINANCE AUTHORIZING AND RATIFYING AN AMENDMENT OF THE INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, AND TRI-CITY SERVICE DISTRICT REGARDING THE WATER ENVIRONMENT SERVICES PARTNERSHIP**

**WHEREAS**, the Board of County Commissioners as the governing body of Surface Water Management Agency of Clackamas County (the "District") is desirous of amending that certain Intergovernmental Partnership Agreement adopted November 6<sup>th</sup>, 2016 and amended May 18<sup>th</sup>, 2017 ("Agreement") to more clearly define the obligations of the parties with respect to the CCSD#1 Debt (as defined therein) outstanding; and

**WHEREAS**, it is in the best interests of the District and the partnership formed pursuant to the Agreement to adopt the attached amendment and this ordinance;

**NOW THEREFORE, CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 BOARD ORDAINS AS FOLLOWS:**

Section 1. The Amendment of the Intergovernmental Partnership Agreement between Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County regarding the municipal entity known as "Water Environment Services" as attached hereto as Exhibit A and incorporated herein, is hereby adopted, affirmed and ratified.

Read first time at a regular meeting of the District Board held on the 10<sup>th</sup> day of May, 2018, and the foregoing ordinance was enacted by the District Board this 24<sup>th</sup> day of May, 2018 with an effective date of June 30<sup>th</sup>, 2018.

**ADOPTED** this 24<sup>th</sup> day of May, 2018.

**BOARD OF COUNTY COMMISSIONERS**  
**as the governing body of**  
**SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY**

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Chair

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Recording Secretary

## AMENDMENT #2 TO THE WATER ENVIRONMENT SERVICES

### PARTNERSHIP AGREEMENT

This Amendment #2 to the Water Environment Services Partnership Agreement (this "Amendment") is entered into by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statutes ("ORS") Chapter 451 ("CCSD#1"), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 ("SWMACC"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the "Agreement"); and

WHEREAS, SWMACC became a party to the Agreement on May 18, 2017; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues primarily pertaining to assuring any borrowings of CCSD#1 will remain the responsibility of ratepayers of Rate Zone 2, which encompasses the boundaries of CCSD#1 and its current and prior contract customers;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. Section 1.03 is amended to read in its entirety:

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements that shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES's sole management and control. This full "Contribution" requires the substitution of WES for CCSD#1 with respect to all outstanding CCSD#1 Bonds (defined below). The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish the Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. The Partners agree that substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, consistent with Section 3.07 hereof, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and issuance of borrowings by WES going forward.



2. Section 1.11(a) is amended to read in its entirety:

“CCSD#1 Bonds” means all outstanding borrowings of CCSD#1 as of May 24, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same.

3. Section 1.11(b) is amended in its entirety to read:

“CCSD#1 Debt Service” means the principal of and interest on CCSD#1 Bonds, and any other payments or deposits that are required by the documents related to the CCSD#1 Bonds, such as deposits to debt service reserve accounts and bond sinking funds.

4. Section 3.07 of the Agreement is amended in its entirety to read:

The Partners acknowledge that CCSD#1 has issued the CCSD#1 Bonds relating to CCSD#1's existing system, and that neither TCSD nor SWMACC has any outstanding borrowings. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be charged for the CCSD#1 Bonds and the related CCSD#1 Debt Service, and that rates shall be imposed to pay for the CCSD#1 Bonds and the related CCSD#1 Debt Service to ensure the same. To effectuate this the Parties agree that:

(a) The Board of WES shall adopt an order establishing a ratemaking policy to ensure the above restriction is effectuated, which may be modified from time to time to address budgetary or accounting factors.

(b) The provisions of this IGA shall not be construed to limit or prevent WES from:

(i) Commingling its gross revenues and applying them to any lawful obligation of WES without regard to the ratepayers that provided those gross revenues; or

(ii) Allocating expected operating expenses to its ratepayers in any reasonable manner, regardless of their location; or

(iii) Establishing rates for its customers in any manner WES determines is equitable and consistent with prudent utility practice, except as specifically limited by Section 3.02 and this Section 3.07.

(c) Nothing in this Agreement is intended or shall be construed to violate any covenant of the CCSD#1 Bonds, and such covenants, to the extent there is a conflict between them and the Agreement, said covenant shall control with respect to the CCSD#1 Bonds and any obligations issued on a parity with those bonds and required to have the same covenants as the CCSD#1 Bonds.

(d) Once all of the CCSD#1 Bonds are paid, defeased or refinanced for the benefit of WES as a whole, the provisions of Section 3.07 and any related order shall cease to have any effect.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

**Clackamas County Service District No. 1**

**Tri-City Service District**

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Chair

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Chair

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Clerk

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Clerk

**Surface Water Management Agency of Clackamas County**

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Chair

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Clerk



Board of County Commissioners as the Governing Body of  
Clackamas County Service District No. 1

Adoption of a Board Order Making Certain Factual Findings, Amending  
The Master Sewer Revenue Bond Declaration, and Consenting  
To the Substitution of WES for CCSD#1 Regard Outstanding Borrowings

<b>Purpose/Outcomes</b>	To allow for the orderly substitution of WES for CCSD#1 with respect to CCSD#1's outstanding borrowings,
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Permanent if adopted
<b>Previous Board Action</b>	Discussed at April 10, 2018 Policy Session
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers.</li> <li>2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.</li> </ol>
<b>Contact Person</b>	Chris Storey, WES Assistant Director
<b>Contract No.</b>	N/A

**BACKGROUND:**

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the "Agreement") creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the "Partners"). The Board serves as the governing body of WES in the same way as it does for the Partners.

As of July 1, 2017, both SWMACC and TCSD's budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period



allows time to implement a complex process of integrating and moving the operations and functionalities of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

CCSD#1's borrowings are governed by a Master Sewer Revenue Bond Declaration ("Master Declaration") which establishes the terms under which CCSD#1 can borrow funds and how it will pay the associated borrowings. The Master Declaration has a specific provision to allow for amendments so long as "...in the reasonable judgement of the District, [it] does not materially and adversely affect the rights of the owners of any Outstanding Bonds..." and similarly, if the amendment would not "adversely materially affect the payment obligations of the District...or the priority accorded to Policy Costs" of the Reserve Credit Provider (more information provided below on this party).

Therefore the Board, as the governing body of CCSD#1, may make amendments of the Master Declaration so long as it does not materially and adversely affect either the bondowners or the Reserve Credit Provider. That is the approach the Board directed staff to pursue in March 2017. The essence of the proposed amendments (covered below) is that WES is being substituted for CCSD#1 under the Master Declaration, by amending the definition of "District" to be WES instead of CCSD#1. This will allow the borrowings to be managed through WES instead of maintaining CCSD#1 as a separate operating entity, and lay the framework for WES to issue future borrowings. This will accrue a material benefit to all the Partners by allowing SWMACC and TCSD to share in the good credit rating created by CCSD#1's past forays into the bond market. WES will be required to "step into the shoes" of CCSD#1 and manage the CCSD#1 Legacy Debt as well as any future borrowings, as intended.

To implement the substitution of WES for CCSD#1 under the Master Declaration, staff have worked with Hawkins Delafield & Wood as bond counsel, Piper Jaffrey as financial advisors, Donovan Enterprises as financial analytic experts, and Moss Adams as audit and financial statement advisors to document the necessary steps for the Board to make the determination of the necessary changes and whether or not they are material and adverse to bondowners and/or the Reserve Credit Provider. The overall analysis, described below and attached hereto, indicates that not only is the substitution not adverse, but actually has a material positive impact, on the rights of bondowners and the Reserve Credit Provider, based primarily on the savings resulting from the regionalization of the system through WES.



As described at the April 10, 2018 policy session, adoption of findings under the Master Declaration is necessary to support a determination that there are no material and adverse effects from the substitution of WES for CCSD#1 with respect to the CCSD#1 Legacy Debt on bondholders or the reserve credit facility issuer. In related Board action, WES is adopting an order ensuring that only rate zone two will pay for the CCSD#1 Legacy Debt, and having WES accept the substitution under the amended Master Declaration.

The proposed board order, attached, represents a compilation of relevant information that would be applicable to make the determination of no material or adverse effects on bondholders or the reserve credit facility issuer. The draft order also adopts the amendments of the Master Declaration and consents to the substitution of WES for CCSD#1. The supporting documents, which are exhibits to the proposed Order, are:

- i. *Financials* representing a retrospective financial statement of WES, to use as a baseline to compare against existing CCSD#1 financials, prepared by WES' outside auditor, Moss Adams LLP.
- ii. *Financial Analysis and Report* by Donovan Enterprises providing a third party analysis of the financial impact of WES being substituted as the issuer of the CCSD#1 Legacy Debt. This includes not only a historical review comparing WES performance to CCSD#1, but integrating projections on future requirements and describing hypotheticals for CCSD#1 if it was not part of WES and applying those scenarios to covenants and requirements included in the Master Declaration.
- iii. *Factual Findings* for the Board to review and adopt drafted by WES staff that address the capital, financial, operational, and regulatory savings by having WES as the operating entity in lieu of CCSD#1. The Findings also include an evaluation & discussion of factors that are not directly related to the amendment but often included in evaluations of publicly traded issuances. This was done in support of the report into the securities market of the amendment of the Master Declaration as required by the Securities Exchange Act of 1934. There are additional supporting documents relating to the Findings, the Blue Ribbon panel report and the previously-drafted White Paper that discussed regionalization as a service delivery model, included for consideration and context.
- iv. *Positive Credit Watch from Standard and Poor's ("S&P")*. Staff engaged S&P to provide additional third party review and validation of the proposed substitution. S&P was the rating agency for the 2016 refinancing that compromises nearly all of the CCSD#1 Legacy Debt. The documents allowing for the substitution of WES for CCSD#1 were presented to S&P for their consideration. S&P has agreed to issue a report on the substitution and provide a new rating for WES as being deemed the "issuer" under the amended Master Declaration. This report is contingent upon the Board implementing the proposed substitution, does not yet represent a final report or revised credit rating, and would only be issued subsequent to final action. As part of that review, S&P found that substitution of WES for CCSD#1 would represent an improvement of the underlying utility and commitment to the CCSD#1 Legacy

Debt, and indicated that it would likely upgrade its rating for the debt from AA+/Stable to AAA/Stable. A Positive Credit Watch is being issued into the market to indicate a positive outlook for the CCSD#1 Legacy Debt based on the review. S&P will undertake a final review and issue a report and credit rating into the market upon adoption of final action by the Board as contemplated at this May 24 business meeting.

- v. *Amended Master Declaration* is the document allowing for the substitution of WES for CCSD#1, amongst other related changes. Of particular note is the draft amendment also provides adopting a covenant restricting the ability of WES to dissolve so long as any borrowings are outstanding under the Master Declaration, and amendments to the WES Agreement can only be made if there are similar findings of no material and adverse impact on the rights of bondowners, as an assurance that WES will continue as a reliable issuer/payer of the outstanding borrowings. The entire Master Declaration as proposed to be adopted is attached. A redlined version was provided to the Board on April 10<sup>th</sup>, and no additional changes have been included or are proposed from that draft.

**RECOMMENDATION:**

Staff recommends that the BCC, as the governing body of Clackamas County Service District No. 1, adopt the proposed findings and board order amending the Master Declaration allowing the substitution of WES for CCSD#1.

Respectfully submitted,



Chris Storey  
WES Assistant Director

In the Matter of a Board Order  
Adopting Findings and Amending the  
Master Sewer Revenue Bond Declaration  
of Clackamas County Service District No. 1

Order No. \_\_\_\_\_

WHEREAS, on November 3, 2016, an intergovernmental Partnership Agreement (the "Partnership Agreement") was entered into by Clackamas County Service District No. 1 ("CCSD#1"), and the Tri-City Service District ("TCSD") creating a new municipal entity known as Water Environment Services ("WES");

WHEREAS, on May 18, 2017, the Surface Water Management Agency of Clackamas County ("SWMACC") joined WES with the consent of CCSD#1 and TCSD, each being deemed "Partners" under the Partnership Agreement;

WHEREAS, the Partners to the Partnership Agreement agreed that they would contribute the ownership and management of all existing facilities, assets whether tangible or intangible, and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements; and

WHEREAS, the Partners to the Partnership Agreement agreed that the debt service on the CCSD#1 Bonds (as defined and so designated in the Partnership Agreement) would be charged only to Rate Zone Two customers, which encompasses the boundaries of CCSD#1 and includes revenues from current or prior contract customers of CCSD#1 (the "Prior Bond Commitment"); and

WHEREAS, the Partners agree that the substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, which are also defined as the "Outstanding Bonds" under the Master Declaration, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and bond issuance by WES going forward; and

WHEREAS, the CCSD#1's Master Sewer Revenue Bond Declaration dated as of August 30, 2016 (the "Master Declaration") provides in Section 13.1.7 thereof that the Board, without the consent of the owners of the Outstanding Bonds, may amend the Master Declaration "[t]o make any change which, in the reasonable judgment of the District, does not materially and adversely affect the rights of the owners of any Outstanding Bonds;" and

WHEREAS, Section 20.1.2.13 of the Master Declaration provides that no provision of the Master Declaration "shall be amended, supplemented, modified or waived, without the prior written consent of the 2016 Bonds Reserve Credit Provider, in a manner that could adversely materially affect the payment obligations of the District" to the 2016 Bonds Reserve Credit Provider under Section 20 of the Master Declaration or "the priority accorded to the reimbursement of Policy Costs" to the 2016 Bonds Reserve Credit Provider; and



WHEREAS, the substitution of WES for CCSD#1 as the responsible entity for the Outstanding Bonds would be the most efficient and reasonable manner for CCSD#1 to meet its obligations regarding contribution as set forth in the Partnership Agreement; and

WHEREAS, the Board has ordered a financial analysis undertaken to determine whether or not the substitution of WES for CCSD#1 as responsible entity for the Outstanding Bonds would (i) materially and adversely affect the rights of the owners of any Outstanding Bonds, or (ii) could adversely materially affect the payment obligations of the District to the 2016 Bonds Reserve Credit Provider under Section 20 of the Master Declaration or "the priority accorded to the reimbursement of Policy Costs" to the 2016 Bonds Reserve Credit Provider, and found no evidence of material and adverse effect on the rights of bondholders or reserve credit provider, and in fact found improved surety and financial performance;

WHEREAS, staff engaged Standard and Poor's ("S&P") to provide additional third party review and validation of the proposed substitution. S&P was the rating agency for the 2016 refinancing that comprises nearly all of the Outstanding Bonds, and the proposed documents allowing for the substitution of WES for CCSD#1 were presented to S&P for their consideration; and

WHEREAS, S&P has agreed to issue a report on the substitution and provide a new rating for WES as being deemed the "issuer" under the amended Master Declaration, with this report is contingent upon the Board implementing the proposed substitution, does not yet represent a final report or revised credit rating, and would only be issued subsequent to final action. As part of that review, S&P found that substitution of WES for CCSD#1 would represent an improvement of the underlying utility and commitment to the CCSD#1 Legacy Debt, and indicated that it would likely upgrade its rating for the debt from AA+/Stable to AAA/Stable. A Positive Credit Watch is being issued into the market to indicate a positive outlook for the Outstanding Bonds based on the review;

NOW THEREFORE, IT IS HEREBY ORDERED THAT THE BELOW FINDINGS AND SUPPORTING DOCUMENTS FOR SUCH FINDINGS ARE ADOPTED HEREBY:

1. The combined financials as compiled by Moss Adams LLC as set forth as Exhibit A;
2. Donovan Enterprises Report as set forth as Exhibit B;
3. Findings of the Board as set forth as Exhibit C;
4. Positive Credit Watch from Standard & Poor's' as set forth as Exhibit D; and
5. Amended Master Declaration as set forth as Exhibit E.

AND ORDERED FURTHER, THAT the proposed Amended Master Declaration as set forth in Exhibit E, in reasonable judgment of the District, does not materially and adversely affect the rights of the owners of any Outstanding Bonds, as defined in that document;



AND ORDERED FURTHER, THAT the Board determines that the proposed Amended Master Declaration as set forth in Exhibit E does not adversely and materially affect the payment obligations of the District under the Master Declaration's Section 20 or the priority accorded to the reimbursement of Policy Costs under the Authorizing Documents as defined therein;

AND ORDERED FURTHER, THAT the Amended Master Declaration as set forth in Exhibit E is hereby approved and adopted; and

AND ORDERED FURTHER, THAT CCSD#1 consents to WES being substituted for CCSD#1 as issuer of the CCSD#1 Bonds as provided in the Amended Master Declaration as set forth in Exhibit E.

ADOPTED this 24<sup>th</sup> day of May, 2018.

BOARD OF COUNTY COMMISSIONERS  
as the Governing Body of  
Clackamas County Service District No. 1

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Chair

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Recording Secretary



*REVIEW REPORT OF INDEPENDENT ACCOUNTANTS,  
COMBINING FINANCIAL STATEMENTS AND SUPPLEMENTARY INFORMATION*

*FOR*

**WATER ENVIRONMENT SERVICES**

*June 30, 2017*

**MOSSADAMS.COM**

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## Review Report of Independent Accountants

Board of County Commissioners of  
Clackamas County, Oregon, as Governing Body of  
Service District No. 1,  
Oregon City, Oregon

We have reviewed the combining financial statements of Water Environment Services (a municipal entity formed in an ORS 190 Partnership Agreement between Service District No. 1, Tri-City Service District and Surface Water Management Agency of Clackamas County), which comprise the statement of net position combining totals as of June 30, 2017, and the related statements of revenues, expenses and changes in net position and cash flows combining totals for the year then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of Water Environment Services management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

### *Accountant's Responsibility*

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with the accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.



*Accountant's Conclusion*

Based on our review, we are not aware of any material modifications that should be made to the accompanying combining financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

***Other Matter***

*Required Supplementary Information*

Management has omitted management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the combining financial statements. Such missing information, although not a part of the combining financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of the financial reporting for placing the combining financial statements in an appropriate operational, economic, or historical context. Our opinion on the combining financial statements is not affected by this missing information.

*Supplementary Information*

The supplementary information included in pages 20 through 37 is presented for purposes of additional analysis and is not a required part of the combining financial statements. Such information is the responsibility of management. We have not audited or reviewed such information and we do not express an opinion, a conclusion, nor provide any assurance on it.

*Moss Adams, LLP*

Eugene, Oregon  
April 4, 2018

## **Combining Financial Statements**

**Water Environment Services  
Statement of Net Position  
June 30, 2017**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>					
<b>Current assets:</b>					
Pooled cash and investments	\$ 44,099,226	\$ 11,644,318	\$ 544,476	\$ -	\$ 56,288,020
Unbonded assessments receivable, net	228,387	-	-	-	228,387
Accrued interest receivable on assessments, net	69,651	-	-	-	69,651
Accounts receivable	4,448,603	1,511,355	19,589	(173,181)	5,606,366
Interest receivable	328,604	13,081	517	-	342,202
Prepaid expenses	191,196	134,110	753	-	326,059
Total current assets	<u>49,365,667</u>	<u>13,302,864</u>	<u>565,335</u>	<u>(173,181)</u>	<u>63,060,685</u>
<b>Noncurrent assets:</b>					
Pooled cash and investments - restricted	27,513,657	2,257,943	-	-	29,771,600
Nondepreciable capital assets	12,961,066	5,080,396	-	-	18,041,462
Depreciable capital assets	159,779,619	30,375,302	65,559	-	190,220,480
Connection charges receivable, noncurrent portion	148,287	-	-	-	148,287
Bonded assessment receivable, net	141,744	-	-	-	141,744
Contracts receivable	951,410	-	-	-	951,410
Unbonded assessments receivable, noncurrent portion	3,664,746	-	-	-	3,664,746
Total noncurrent assets	<u>205,160,529</u>	<u>37,713,641</u>	<u>65,559</u>	<u>-</u>	<u>242,939,729</u>
<b>Deferred outflows of resources:</b>					
Deferred charges on debt refunding	6,560,099	-	-	-	6,560,099
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<b><u>261,088,285</u></b>	<b><u>51,016,505</u></b>	<b><u>630,894</u></b>	<b><u>(173,181)</u></b>	<b><u>312,560,503</u></b>
<b>LIABILITIES</b>					
<b>Current liabilities:</b>					
Accounts payable	1,716,321	361,586	60	-	2,077,967
Contract labor payable	369,026	-	-	-	369,026
Other liabilities	212,648	11,823	-	-	224,471
Unearned income	69,100	-	-	-	69,100
Due to other Service Districts	173,181	-	-	(173,181)	-
Due to Clackamas County	363,429	71,956	2,325	-	437,710
Accrued interest payable, payable from restricted assets	281,925	-	-	-	281,925
Loans payable, current portion	106,208	-	-	-	106,208
Current portion of long term debt, payable from restricted assets	3,730,000	-	-	-	3,730,000
Total current liabilities	<u>7,021,838</u>	<u>445,365</u>	<u>2,385</u>	<u>(173,181)</u>	<u>7,296,407</u>
<b>Noncurrent liabilities:</b>					
Long term unearned income, net of current portion	160,800	-	-	-	160,800
Loans payable, net of current portion, payable from current assets	1,540,031	-	-	-	1,540,031
Long term debt, net of current portion, payable from restricted assets	99,211,959	-	-	-	99,211,959
Total noncurrent liabilities	<u>100,912,790</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>100,912,790</u>
<b>TOTAL LIABILITIES</b>	<b><u>107,934,628</u></b>	<b><u>445,365</u></b>	<b><u>2,385</u></b>	<b><u>(173,181)</u></b>	<b><u>108,209,197</u></b>
<b>NET POSITION</b>					
Net investment in capital assets	75,747,140	35,455,698	65,559	-	111,268,397
Restricted for capital assets	20,930,692	2,257,401	-	-	23,188,093
Restricted for debt service	6,384,755	542	-	-	6,385,297
Unrestricted	50,089,070	12,857,499	562,950	-	63,509,519
<b>TOTAL NET POSITION</b>	<b><u>\$ 153,151,657</u></b>	<b><u>\$ 50,571,140</u></b>	<b><u>\$ 628,509</u></b>	<b><u>\$ -</u></b>	<b><u>\$ 204,351,306</u></b>

The accompanying notes are an integral part of the combining financial statements.



**Water Environment Service**  
**Statement of Revenues, Expenses and Changes in Net Position**  
**Year Ended June 30, 2017**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>Operating revenues:</b>					
Sewerage charges					
Residential and commercial	\$ 25,982,276	222,874	\$ -	\$ -	\$ 26,205,150
Municipalities and other	4,676,605	7,972,783	-	-	12,649,388
Surface water management charges	-	-	180,015	-	180,015
Intergovernmental revenue	-	354,963	-	(354,963)	-
Other operating revenues	876,582	301,501	16,482	(177,000)	1,017,565
Total operating revenues	<u>31,535,463</u>	<u>8,852,121</u>	<u>196,497</u>	<u>(531,963)</u>	<u>40,052,118</u>
<b>Operating expenses:</b>					
Contracted salaries and benefits	8,540,477	2,480,481	67,365	-	11,088,323
Professional services	2,579,513	434,975	18,193	-	3,032,681
Laboratory services	447,622	248,562	9,281	-	705,465
Other County services	1,839,984	502,346	18,280	-	2,360,610
Supplies	656,081	1,051,271	1,850	(354,963)	1,354,239
Vehicle expenses	516,952	180,640	5,276	-	702,868
Repairs and maintenance	420,318	32,752	287	-	453,357
Utilities	959,063	723,413	501	-	1,682,977
Insurance	228,301	156,847	1,252	-	386,400
Other expense	790,763	579,765	11,955	(177,000)	1,205,483
Depreciation and amortization	17,960,982	2,581,826	2,267	-	20,545,075
Total operating expenses	<u>34,940,056</u>	<u>8,972,878</u>	<u>136,507</u>	<u>(531,963)</u>	<u>43,517,478</u>
Operating income (loss)	<u>(3,404,593)</u>	<u>(120,757)</u>	<u>59,990</u>	<u>-</u>	<u>(3,465,360)</u>
<b>Nonoperating revenue (expense):</b>					
Interest income	926,695	105,031	4,382	-	1,036,108
Interest expense	(4,423,269)	-	-	-	(4,423,269)
Dispatchable power	69,100	-	-	-	69,100
Gain (loss) on disposal of capital assets	(133,219)	(3,103)	-	-	(136,322)
Total nonoperating revenue (expense)	<u>(3,560,693)</u>	<u>101,928</u>	<u>4,382</u>	<u>-</u>	<u>(3,454,383)</u>
Income (loss) before contributions	<u>(6,965,286)</u>	<u>(18,829)</u>	<u>64,372</u>	<u>-</u>	<u>(6,919,743)</u>
<b>Contributions:</b>					
Connection charges	4,847,125	976,273	-	-	5,823,398
Capital contributions	2,904,383	148,601	-	-	3,052,984
Total contributions	<u>7,751,508</u>	<u>1,124,874</u>	<u>-</u>	<u>-</u>	<u>8,876,382</u>
Change in net position	786,222	1,106,045	64,372	-	1,956,639
NET POSITION - beginning of year	<u>152,365,435</u>	<u>49,465,095</u>	<u>564,137</u>	<u>-</u>	<u>202,394,667</u>
NET POSITION - end of year	<u>\$ 153,151,657</u>	<u>\$ 50,571,140</u>	<u>\$ 628,509</u>	<u>\$ -</u>	<u>\$ 204,351,306</u>

The accompanying notes are an integral part of the combining financial statements

**Water Environment Services  
Statement of Cash Flows  
Year Ended June 30, 2017**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Combining Totals
<b><u>CASH FLOWS FROM OPERATING ACTIVITIES</u></b>				
Received from customers	\$ 30,348,210	\$ 8,689,156	\$ 173,932	\$ 39,211,298
Paid to suppliers for goods and services	(5,632,098)	(3,207,556)	(135,554)	(8,975,208)
Paid to related entities for services	(10,459,184)	(3,230,960)	-	(13,690,144)
Other operating revenue	1,000,836	301,594	16,482	1,318,912
NET CASH FROM OPERATING ACTIVITIES	<u>15,257,764</u>	<u>2,552,234</u>	<u>54,860</u>	<u>17,864,858</u>
<b><u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</u></b>				
Bond principal paid	(81,399,801)	-	-	(81,399,801)
Interest paid on bonds and contracts	(2,776,885)	-	-	(2,776,885)
Assessment and contract principal collected	700,272	-	-	700,272
Interest received on assessments and contracts	183,984	-	-	183,984
Capital contributed by customer/governments	4,880,605	18,447	-	4,899,052
Payments made on note payable	(6,396,790)	-	-	(6,396,790)
Connection charges collected	-	567,495	-	567,495
Collection of property taxes	-	805	-	805
Proceeds from bonds	84,946,384	-	-	84,946,384
Acquisition of capital assets, net of dispositions	(4,057,610)	(1,102,160)	-	(5,159,770)
NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES	<u>(3,919,841)</u>	<u>(515,413)</u>	<u>-</u>	<u>(4,435,254)</u>
<b><u>CASH FLOWS FROM INVESTING ACTIVITIES</u></b>				
Interest received on investments	666,563	100,725	4,227	771,515
NET CASH FROM INVESTING ACTIVITIES	<u>666,563</u>	<u>100,725</u>	<u>4,227</u>	<u>771,515</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	12,004,486	2,137,546	59,087	14,201,119
POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR	59,608,397	11,764,715	485,389	71,858,501
POOLED CASH AND INVESTMENTS, END OF YEAR (1)	<u>\$ 71,612,883</u>	<u>\$ 13,902,261</u>	<u>\$ 544,476</u>	<u>\$ 86,059,620</u>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</b>				
Operating income (loss)	\$ (3,404,593)	\$ (120,757)	\$ 59,990	\$ (3,465,360)
Adjustments to reconcile operating income (loss) to net cash from operating activities:				
Depreciation and amortization	17,960,982	2,581,826	2,267	20,545,075
Changes in assets and liabilities:				
Other receivables	(54,490)	126,806	(6,083)	66,233
Prepaid expenses	29,891	(28,129)	(159)	1,603
Accounts payable	935,478	11,823	(1,259)	946,042
Accrued payroll payable	(327,608)	-	-	(327,608)
Other liabilities	118,103	(19,335)	104	98,872
Total adjustments	<u>18,662,356</u>	<u>2,672,991</u>	<u>(5,130)</u>	<u>21,330,217</u>
NET CASH FROM OPERATING ACTIVITIES	<u>\$ 15,257,763</u>	<u>\$ 2,552,234</u>	<u>\$ 54,860</u>	<u>\$ 17,864,857</u>
<b>(1) Pooled cash and investments are reflected on the Statements of Net Position as follows:</b>				
Current assets - unrestricted	\$ 44,099,226	\$ 11,644,318	\$ 544,476	\$ 56,288,020
Non-current assets - restricted	27,513,657	2,257,943	-	29,771,600
	<u>\$ 71,612,883</u>	<u>\$ 13,902,261</u>	<u>\$ 544,476</u>	<u>\$ 86,059,620</u>
<b>NONCASH CAPITAL ACTIVITY</b>				
Contributions of capital assets from governments developers and customers	\$ 2,869,623	\$ 130,154	\$ -	\$ 2,999,777

The accompanying notes are an integral part of the combining financial statements.

## **Water Environment Services** **Notes to Combining Financial Statements**

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### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### **Reporting Entity**

Water Environment Services ("WES") was created November 3, 2016 when Clackamas County Service District No. 1 and Tri-City Service District entered into an ORS 190 Partnership Agreement ("the Agreement"). WES jointly owns, operates and manages the functions and assets of the two districts to provide reduced costs, create regulatory efficiencies, and improve service. The Agreement contemplates an 18-month transition period with a target effective date of July 1, 2018. The Agreement specifically allows for continued ownership of assets by the districts so long as required by the covenants under their outstanding debt agreements. Surface Water Management Agency of Clackamas County joined the WES entity on May 18, 2017 to allow full realization of the above-described benefits for all parties. These financial statements present the combined activity of the three formerly separate county service districts.

WES has no potential component units. Since Clackamas County, Oregon ("the County") is financially accountable for, and significantly influences the operations of, WES and the Clackamas County Board of County Commissioners also serves as Board for each of the three WES partners. The three WES partners are included as a blended component unit in the Comprehensive Annual Financial Report of the County for the year ended June 30, 2017.

Fiscal and accounting functions and certain repairs and maintenance of capital assets are provided by personnel of WES, the County's Department of Transportation and Development, the County Treasurer and the County's General Services Agency.

WES personal services are budgeted as part of the County and are contracted for with the County.

Significant accounting policies used in the preparation of the combining financial statements are described below:

#### **Measurement Focus**

The combining financial statements are prepared on the flow of economic resources measurement focus. With this measurement focus, all assets and liabilities are included in the Statement of Net Position. The Statement of Revenues, Expenses and Changes in Net Position present increases (e.g. revenues) and decreases (e.g. expenses) in total net position.

#### **Basis of Accounting**

WES's combining financial statements are prepared on the accrual basis of accounting. Revenues are recognized when earned and expenses are recognized when a liability is incurred regardless of the timing of related cash flows. WES maintains 13 individual funds for state legal compliance that are combined and reported as a unitary enterprise similar to a commercial entity organized for profit for financial reporting.

WES distinguishes operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services in connection with ongoing operations, primarily wastewater treatment and surface water management services. Operating expenses include the cost of services and administrative expenses. All revenues and expenses not meeting these definitions are reported as nonoperating revenue and expense. Contributions represent capital assets contributed by governments and developers, and connection fees.



## **Water Environment Services**

### **Notes to Combining Financial Statements (Continued)**

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#### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

##### **Pooled Cash and Investments**

Pooled cash and investments are comprised of funds held and invested by the Clackamas County Treasurer and the State of Oregon Treasurer's Local Government Investment Pool ("LGIP"). Financial information required by Governmental Accounting Standards Board Statements (GASB) No. 3, No. 31, No. 40, and No. 72 regarding the accounting and financial reporting for WES's pooled cash and investments, held by the Clackamas County Treasurer, has been disclosed in the County's Comprehensive Annual Financial Report for the fiscal year ended June 30, 2017. For purposes of the Statement of Cash Flows, pooled cash and investments include all cash and investments held by the Clackamas County Treasurer and LGIP, since they have the general characteristics of a demand deposit account.

Investments in the State of Oregon Treasurer's Local Government Investment Pool are stated at cost which approximates fair value and its share value.

The LGIP is administered by the Oregon State Treasurer. The LGIP is an open-ended no load diversified portfolio offered to any agency, political subdivision or public corporation of the state that by law is made the custodian of, or has control of, any fund. The LGIP is commingled with the State's short-term funds. In seeking to best serve local government in Oregon, the Oregon Legislature established the Oregon Short-Term Fund Board, which is not registered with the US Securities and Exchange Commission as an investment company. The purpose of the Board is to advise the Oregon State Treasury in the management and investment of the LGIP.

##### **Assessments Receivable**

Assessments receivable represent the uncollected amounts levied against benefited property for the cost of local improvements. The assessments represent liens against benefited property and are generally payable over a period of twenty years at interest rates ranging from 5.4% to 12.09%. WES has determined the collectability of a portion of assessments receivable and accrued interest thereon as doubtful and has established an allowance.

##### **Sewerage User Charges Receivable**

Sewerage user charges, included as accounts receivable in the Statements of Net Position, are due from property owners within WES. An allowance for doubtful accounts is not deemed necessary as uncollectible accounts become a lien on the property.

##### **Restricted Assets and Related Liabilities**

Assets, whose use is restricted to specific purposes by state statute or bond indenture, and related liabilities are segregated on the Statements of Net Position.

##### **Capital Assets**

Purchased or constructed capital assets are reported at cost or acquisition value at the time of donation in the case of contributed sewer pipe installation from developers. WES defines capital assets as assets with an initial cost of more than \$5,000 and an estimated life in excess of one year. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset's lives are not capitalized.

## Water Environment Services

### Notes to Combining Financial Statements (Continued)

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#### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Depreciation is computed on the capital assets placed in service using the straight-line method over their estimated useful lives as follows:

Sewage treatment plant	20-50 years
Sewage treatment line system	20-50 years
Equipment	10-15 years

#### Intangible Assets

Intangible assets include software and are stated at cost less accumulated amortization. Amortization is provided using the straight-line method over the life of five years. WES periodically reevaluates the estimated useful lives of these assets.

#### Capitalized Interest

Interest costs are capitalized as part of the costs of capital assets during the period of construction based on the related weighted average net borrowing costs incurred. Interest earned on temporary investments, acquired with the proceeds of such borrowed funds from the date of the borrowing until the assets are ready for their intended use, is used to reduce the interest costs capitalized on the constructed assets. Interest is not capitalized for acquisitions funded by capital grants or other outside parties, which are externally restricted for the acquisition of specified assets. Total interest expense incurred during the year is \$4,451,036, of which \$4,423,269 was expensed, \$27,767 was capitalized.

#### Deferred Outflows of Resources

In addition to assets, the statement of financial position reports a separate section for deferred outflows of resources, which represents a consumption of net position that applies to future periods and so will not be recognized as an outflow of resources (expense/expenditure) until that time.

#### Bonds

Bond premium and discount costs are amortized over the life of the associated bond issuances.

#### Net Position

Net position comprises the various net earnings from operating and nonoperating revenues, expenses and contributions of capital. Net position is classified in the following four components: Net investment in capital assets; Restricted for capital projects; Restricted for debt service; and Unrestricted net position. Net investment in capital assets consists of all capital assets and intangibles, net of accumulated depreciation and amortization and reduced by outstanding debt (revenue bonds and other debt obligations) that is attributable to the acquisition, construction and improvement of those assets. Debt related to unspent proceeds or other restricted cash and investments is excluded from the determination. Restricted for capital projects and debt service consists of net position on which constraints are placed by external parties, such as lenders, grantors, contributors, laws, regulations and enabling legislation, including legal mandates. The balance in Restricted for capital projects of \$23,188,093 is restricted due to enabling legislation. This balance relates to unspent System Development Charges. Unrestricted consists of all other assets not included in the above categories.

## **Water Environment Services**

### **Notes to Combining Financial Statements (Continued)**

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#### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

WES may fund outlays for a particular purpose from both restricted and unrestricted resources. In order to calculate the amounts to report as restricted and unrestricted fund balance in WES's fund financial statements, a flow assumption must be made about the order in which the resources are considered to be applied. It is the WES's policy to consider restricted fund balance to have been depleted before using any of the components of unrestricted fund balance.

#### **Use of Estimates**

The preparation of combining financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the combining financial statements and reported amounts of revenues and expenses during the reporting period. Actual results may differ from those estimates.

#### **Adoption of New GASB Pronouncements**

During the fiscal year ended June 30, 2017, the following new GASB pronouncements became effective:

GASB Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*, Issued June 2015.

GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, Issued June 2015.

GASB Statement No. 77, *Tax Abatement Disclosures*, Issued August 2015.

GASB Statement No. 78, *Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans*, Issued December 2015.

GASB Statement No. 79, *Certain External Investment Pools and Pool Participants*, Issued December 2015.

GASB Statement No. 80, *Blending Requirements for Certain Component Units—an amendment of GASB Statement No. 14*, Issued January 2016.

GASB Statement No. 82, *Pension Issues—an amendment of GASB Statements No. 67, No. 68, and No. 73*, Issued March 2016.

WES has applied all applicable GASB pronouncements in the financial statements.

#### **Future Adoption of GASB Pronouncements**

The following GASB pronouncements have been issued, but are not yet effective at June 30, 2017:

GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, Issued June 2015

GASB Statement No. 81, *Irrevocable Split-Interest Agreements*, Issued March 2016



**Water Environment Services**  
**Notes to Combining Financial Statements (Continued)**

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**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

GASB Statement No. 83, *Certain Asset Retirement Obligations*, Issued November 2016

GASB Statement No. 84, *Fiduciary Activities*, Issued January 2017

GASB Statement No. 85, *Omnibus 2017*, Issued March 2017

GASB Statement No. 86, *Certain Debt Extinguishment Issues*, Issued May 2017

GASB Statement No. 87, *Leases*, Issued June 2017

WES will implement the new GASB pronouncements in the fiscal year no later than the required effective date. WES is currently evaluating if the above listed new GASB pronouncements will have a significant financial impact to WES or in issuing its financial statements.

**2. POOLED CASH AND INVESTMENTS**

Pooled cash and investments are comprised of the following:

Petty cash	\$ 1,600
Pooled cash and investments	<u>86,058,020</u>
	<u>\$ 86,059,620</u>

Pooled cash and investments are held by the County Treasurer and represent the WES's equity in pooled accounts maintained by the County Treasurer. Investments with a remaining maturity of more than one year, at the time of purchase, are stated at fair value, which approximates cost.

Various inputs are used in determining the fair value of investments. These inputs to valuation techniques are categorized into a fair value hierarchy consisting of three broad levels for financial statement purposes as follows:

Level 1 - unadjusted price quotations in active markets/exchanges for identical assets or liabilities, that each Fund has the ability to access.

Level 2 - other observable inputs including, but not limited to, quoted prices for similar assets or liabilities in markets that are active, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the assets or liabilities (such as interest rates, yield curves, volatilities, loss severities, credit risks and default rates) or other market-corroborated inputs.

Level 3 - unobservable inputs based on the best information available in the circumstances, to the extent observable inputs are not available (including each Fund's own assumptions used in determining the fair value of investments).

The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Accordingly, the degree of judgment exercised in determining fair value is greatest for instruments categorized in Level 3. The inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the fair value hierarchy classification is determined based on the lowest level input that is significant to the fair value measurement in its entirety.

## **Water Environment Services**

### **Notes to Combining Financial Statements (Continued)**

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#### **2. POOLED CASH AND INVESTMENTS (Continued)**

The categorization of a value determined for investments is based on the pricing transparency of the investments and is not necessarily an indication of the risks associated with investing in those securities.

At June 30, 2017, none of the WES's accounts fell within these input levels.

State statutes authorize WES to invest in general obligations of the U.S. Government and in its agencies, certain bonded obligations of Oregon municipalities, bank repurchase agreements and bankers' acceptances, among others. Reference should be made to the June 30, 2017 Comprehensive Annual Financial Report of the County for compliance with these statutes. Investments in the LGIP are stated at fair value, which approximates cost. The Oregon State Treasury administers the LGIP. The LGIP is an open-ended no-load diversified portfolio offered to any agency, political subdivision or public corporation of the State who by law is made the custodian of, or has control of, any fund. The LGIP is commingled with the State's short-term funds. In seeking to best serve local government in Oregon, the Oregon Legislature established the Oregon Short-Term Fund Board, which is not registered with the U.S. Securities and Exchange Commission as an investment company. The purpose of the Board is to advise the Oregon State Treasury in the management and investment of the LGIP. The Oregon Short-Term Fund financial statements and its portfolio rules can be obtained at [www.ost.state.or.us](http://www.ost.state.or.us). The LGIP is not rated by any national rating service. The LGIP is stated at fair value, which approximates cost. Fair value is the same as the WES's value in the pool shares.

#### **Custodial Credit Risk**

WES is exposed to custodial credit risk because its cash and investments are held by the counterparty in the counterparty's name. This is the risk that in the event of failure of the counterparty, the WES's deposits may not be returned. The WES's cash and investments are held by Clackamas County in a pool, which consists of bank and local government investment pool accounts and federal treasury securities. This pool is subject to general credit claims of the County. WES believes that the risk of County default is slight and outweighed by the advantages of participation in the Clackamas County Cash and Investment Pool.

WES follows the County's policies to address custodial credit risk, which mirror parameters for the investment of public funds set forth in the ORS. Reference should be made to the County Comprehensive Annual Financial Report for information regarding the interest, credit, and custodial credit risks associated with the County's various cash and investments.

#### **Credit Risk**

WES is exposed to credit risk, through the investments made by the Clackamas County Treasurer and the LGIP. Credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. Credit risk is measured by the assignment of a rating by a national statistical rating organization.

WES follows the County's policies to address credit risk, which mirror parameters for the investment of public funds set forth in the ORS. Reference should be made to the County Comprehensive Annual Financial Report for information about the interest, credit, and custodial credit risks associated with the County's various cash and investments.

The State of Oregon LGIP is unrated. Investments with the County Treasurer are invested in US Treasury or US Agencies rated AAA or AA+.

**Water Environment Services**  
**Notes to Combining Financial Statements (Continued)**

**2. POOLED CASH AND INVESTMENTS (Continued)**

Oregon Revised Statutes limit the types of investments that WES may have. WES is in compliance with these statutes at June 30, 2017. WES is also in compliance with the County's investment policy, which requires the County to limit exposure to credit risk, concentrating its investments in the safest types of securities, diversifying the investment portfolio so that potential losses on individual securities will be minimized, actively monitoring the investment portfolio holdings for ratings changes, changing economic or market conditions, and pre-qualifying the financial institutions with which the County will do business.

**3. ACCOUNTS RECEIVABLE**

Accounts receivable balances were comprised as of June 30, 2017 of the following:

Sewerage charges	\$ 4,293,690
Connection charges	577,551
Interest receivable on unbonded assessments	733,727
Intergovernmental agreement and miscellaneous receivables	201,398
	<u>\$ 5,806,366</u>

**4. CAPITAL ASSETS**

Capital asset activity for the year ended June 30, 2017 was as follows:

	Balance June 30, 2016	Additions	Transfers	Deletions	Balance June 30, 2017
Capital assets not being depreciated:					
Land and easements	\$ 8,776,807	\$ -	\$ -	\$ -	\$ 8,776,807
Construction in progress	5,268,264	5,154,401	(997,715)	(160,095)	9,264,855
Total capital assets not being depreciated	<u>14,044,871</u>	<u>5,154,401</u>	<u>(997,715)</u>	<u>(160,095)</u>	<u>18,041,462</u>
Capital assets being depreciated and amortized:					
Intangibles	1,842,380	-	47,061	-	1,889,441
Sewerage treatment plant	248,026,931	1,163,384	559,273	(98,835)	249,650,753
Sewerage treatment line system	130,459,029	1,706,239	8,366	-	132,173,634
Collection plant	20,375,800	130,154	225,990	-	20,731,944
Pumping plant	5,612,871	-	24,992	(15,632)	5,622,031
General plant	7,967,447	-	12,849	-	7,980,296
Equipment	10,524,669	-	119,184	(47,765)	10,596,088
Total capital assets being depreciated and amortized	<u>424,808,927</u>	<u>2,999,777</u>	<u>997,715</u>	<u>(162,232)</u>	<u>428,644,187</u>
Less accumulated depreciation and amortization for:					
Intangibles	(1,842,378)	(26)	-	-	(1,842,404)
Sewerage treatment plant	(141,945,045)	(15,314,709)	-	98,835	(157,160,919)
Sewerage treatment line system	(46,911,576)	(3,893,307)	-	-	(50,804,883)
Collection plant	(10,239,913)	(432,205)	-	-	(10,672,118)
Pumping plant	(3,459,472)	(197,405)	-	15,632	(3,641,245)
General plant	(5,412,880)	(310,398)	-	-	(5,723,278)
Equipment	(8,229,600)	(397,025)	-	47,765	(8,578,860)
Total accumulated depreciation and amortization	<u>(218,040,864)</u>	<u>(20,545,075)</u>	<u>-</u>	<u>162,232</u>	<u>(238,423,707)</u>
Total capital assets being depreciated and amortized, net	<u>206,768,063</u>	<u>(17,545,298)</u>	<u>997,715</u>	<u>-</u>	<u>190,220,480</u>
Total capital assets, net	<u>220,812,934</u>	<u>(12,390,897)</u>	<u>-</u>	<u>(160,095)</u>	<u>208,261,942</u>

## Water Environment Services

### Notes to Combining Financial Statements (Continued)

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#### 5. CONTRACTS RECEIVABLE

On May 17, 2012, WES signed a sale agreement and note receivable with the County for the sale of the WES's portion of the building located at 9101 SE Sunnybrook Boulevard. Per the terms of the agreement, interest will accrue on the principal at the rate of 4.325% per annum until the note's maturity date of December 31, 2022. The balance of the note was \$848,292, plus accrued interest in the amount of \$223,386, as of June 30, 2017.

#### 6. LOANS PAYABLE

Amounts represent obligations for state revolving loans from the Department of Environmental Quality (DEQ), which were used for the construction of capital assets and are payable in annual and semi-annual installments. The original amount of Loan R22401 was \$2,914,744. At June 30, 2015, Loan R22401 was paid in full.

In November of 2011, WES amended the American Recovery and Reinvestment Act Loan R06224 that was originally awarded in 2009. The amount of this loan is \$4,142,142 which financed construction of collector sewers in the North Clackamas Revitalization Area (NCRA). These funds are administered by the Oregon DEQ. Of the total amount, \$2,071,071 (50%) is in the form of a loan to be forgiven at the completion of the project. The general terms of the loan forgiveness require timely payments and WES solvency. Accordingly, \$2,000,000 was reported as capital contributions in 2010, and \$71,071 was reported as capital contributions in 2013. Disbursements of loan proceeds by DEQ are made following submission of eligible invoices by WES. As of June 30, 2013, WES had submitted and received reimbursement requests in the amount of \$4,142,142. Loan payments are payable in semi-annual installments of principal and interest over 20 years, with a stated interest rate of 0%. Payments commenced in fiscal year 2013-14.

In September of 2011, WES amended the \$5,000,000 Oregon Department of Environmental Quality Loan R22403 that was received in April of 2010. The total amount of this loan is \$7,018,376 to finance construction of collector sewers in the North Clackamas Revitalization Area. Disbursements of loan proceeds by the DEQ are made following submission of eligible invoices by WES. As of June 30, 2013, WES had submitted and received \$7,018,376 in reimbursable expenses. Loan payments are payable in semiannual installments of principal and interest over 20 years and commenced in fiscal year 2013-14. In August of 2016, Loan R22403 was fully refinanced with the issue of revenue obligation 2016.

These loans are collateralized by future sewer revenues and contain certain financial covenants. As of June 30, 2017, management believes WES was in compliance with these covenants.

Changes in loans payable for the year ended June 30, 2017 are as follows:

	Interest Rates	Outstanding July 1, 2016	Increases	Decreases	Outstanding June 30, 2017	Current Portion
Revolving Loan R06224	0.00%	\$ 1,752,447	\$ -	\$ (106,208)	\$ 1,646,239	\$ 106,208
Revolving Loan R22402	2.77%	6,290,582	-	(6,290,582)	-	-
		<u>\$ 8,043,029</u>	<u>\$ -</u>	<u>\$ (6,396,790)</u>	<u>\$ 1,646,239</u>	<u>\$ 106,208</u>



**Water Environment Services**  
**Notes to Combining Financial Statements (Continued)**

**6. LOANS PAYABLE (Continued)**

Future maturities of revolving loans are as follow:

Fiscal Year	Principal	Interest	Admin. Fees	Total
2018	\$ 106,208	\$ -	\$ 7,966	\$ 114,174
2019	106,208	-	7,435	113,643
2020	106,208	-	6,904	113,112
2021	106,208	-	6,373	112,581
2022	106,208	-	5,842	112,050
2023-2027	531,040	-	21,240	552,280
2028-2033	584,159	-	7,965	592,124
	<u>\$ 1,646,239</u>	<u>\$ -</u>	<u>\$ 63,725</u>	<u>\$ 1,709,964</u>

**7. LONG-TERM DEBT**

Changes in long-term debt for the year ended June 30, 2017 are as follows:

	Interest Rates	Outstanding July 1, 2016	Increases	Decreases	Outstanding June 30, 2017	Current Portion
Revenue Bonds - 2002A	3.000% - 4.875%	\$ 980,000	\$ -	\$ (140,000)	\$ 840,000	\$ 140,000
Revenue Obligations - 2009A	2.000% - 4.700%	32,145,000	-	(29,775,000)	2,370,000	1,160,000
Revenue Obligations - 2009B	2.250% - 5.000%	37,275,000	-	(33,030,000)	4,245,000	1,360,000
Revenue Obligations - 2010	2.000% - 4.625%	20,715,000	-	(17,460,000)	3,255,000	790,000
Revenue Obligations - 2016	2.000% - 5.000%	-	83,250,000	(1,015,000)	82,235,000	280,000
		<u>\$ 91,115,000</u>	<u>\$ 83,250,000</u>	<u>\$ (81,420,000)</u>	<u>\$ 92,945,000</u>	<u>\$ 3,730,000</u>

Current and future maturities at June 30, 2017 are summarized as follows:

Current maturities - face value	<u>\$ 3,730,000</u>
Future maturities - face value	89,215,000
Premium	<u>9,996,959</u>
	<u>\$ 99,211,959</u>

**Revenue Bonds 2002A and 2002B**

Revenue bonds are payable from monthly sewer and surface water user fees collected from customers connected to and benefited by the systems. The original amount was \$15,698,000 and was used to finance capital improvements and capital improvements through an assessment.

Maturities of bond principal and interest, as refunded, at June 30, 2017 are as follows:

## Water Environment Services

### Notes to Combining Financial Statements (Continued)

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#### 7. LONG-TERM DEBT (Continued)

Fiscal Year	Principal	Interest
2018	\$ 140,000	\$ 36,995
2019	140,000	30,485
2020	140,000	23,835
2021	140,000	17,063
2022	140,000	10,238
2023	140,000	3,413
	<u>\$ 840,000</u>	<u>\$ 122,029</u>

Under the revenue bond agreements, WES has agreed to covenants that it will charge user rates and fees in connection with the operation of the sewer system which are adequate to cover annual debt service as required by the bond agreements. Management believes WES was in compliance with these covenants during the year ended June 30, 2017.

In prior years, WES defeased revenue bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and the liability for the defeased bonds are not included in WES's financial statements. The 2002B issuance, which defeased revenue bond issued in 1994, was paid in full at June 30, 2015.

#### Revenue Obligations 2009A, 2009B, 2010 and 2016

Revenue obligations are payable from monthly sewer fees collected from customers connected to and benefited by the system. The original amount of the 2009A issuance was \$38,460,000, the 2009B issuance was \$44,365,000 and the 2010 issuance was \$23,710,000. These issuances were all used to finance capital improvements for the Phase 1 Capacity Expansion Project.

In August of 2016, WES issued revenue obligation series 2016 in the amount of \$83,250,000 with an all-in interest rate of 2.20%. The proceeds were used to advance refund \$77,070,000 of outstanding 2009A, 2009B, and 2010 revenue obligations and to pay of outstanding Oregon DEQ Clean Water State Revolving Fund Loan R22403, which had interest rates ranging from 2.77% to 4.7%. The net proceeds of \$85,876,532 (including a \$10,523,115 premium and after payment of \$1,519,115 in underwriting fees and other issuance costs and the payoff of Loan R22403 in the amount of \$6,377,468) were deposited in an irrevocable trust with an escrow agent to provide funds for the future debt service payments on the refunded bonds. As a result, portions of the 2009A, 2009B, and 2010 are considered defeased and the liability for those bonds has been removed from the statement of net position.

The reacquisition price exceeded the net carrying amount of the old debt by \$8,826,731. This amount is being reported in the statement of net position as a deferred outflow of resources and amortized over the remaining life of the refunded debt in accordance with GASB 65. WES advance refunded portions of the 2009A, 2009B, and 2010 bonds and refinanced Loan R22403 to reduce its total annual debt service payments by approximately \$625,000 and to obtain an economic gain (difference between the present values of the debt service payments on the old and new debt) of \$9.7 million. WES was also able to free up approximately \$7.6 million in reserves that will be used on capital projects.

**Water Environment Services**  
**Notes to Combining Financial Statements (Continued)**

**7. LONG-TERM DEBT (Continued)**

Maturities of 2009A bond principal at June 30, 2017 are as follows:

Fiscal Year	Principal	Interest
2018	\$ 1,160,000	\$ 53,700
2019	1,210,000	18,150
	<u>\$ 2,370,000</u>	<u>\$ 71,850</u>

Maturities of 209B bond principal at June 30, 2017 are as follows:

Fiscal Year	Principal	Interest
2018	\$ 1,360,000	\$ 142,600
2019	1,415,000	87,100
2020	1,470,000	29,400
	<u>\$ 4,245,000</u>	<u>\$ 259,100</u>

Maturities of 2010 bond principal at June 30, 2017 are as follows:

Fiscal Year	Principal	Interest
2018	\$ 790,000	\$ 110,450
2019	805,000	82,500
2020	820,000	50,000
2021	840,000	16,800
	<u>\$ 3,255,000</u>	<u>\$ 259,750</u>

Maturities of 2016 bond principal at June 30, 2017 are as follows:

Fiscal Year	Principal	Interest
2018	\$ 280,000	\$ 2,976,881
2019	285,000	2,971,231
2020	1,495,000	2,931,006
2021	3,095,000	2,816,256
2022	4,125,000	2,635,756
2023-2027	24,665,000	9,717,281
2028-2032	30,255,000	4,268,578
2033-2036	18,035,000	728,288
	<u>\$ 82,235,000</u>	<u>\$ 29,045,277</u>

## Water Environment Services

### Notes to Combining Financial Statements (Continued)

#### 7. LONG-TERM DEBT (Continued)

Under the revenue obligation agreements, WES has agreed to covenants that it will charge user rates and fees in connection with the operation of the sewer system, which are adequate to cover annual debt service as required by the bond agreements. WES has also agreed to maintain restricted reserve accounts to provide for the payment of debt service in the event that pledged revenues are not sufficient to pay debt service when due. Management believes WES was in compliance with these covenants during the year ended June 30, 2017.

At June 30, 2017, future pledged revenues are as follows:

Purpose	Revenue Stream	Principal	Future Pledged Revenue Debt Outstanding	For the Year Ended June 30, 2017 Revenue	For the Year Ended June 30, 2017 Debt (P&I) Total
State Loan R06224	Sewer Fees	2033	\$ 1,646,239	\$ 20,330,209 *	\$ 106,208
Revenue Bonds 2002A	Sewer Fees	2023	840,000	-	183,400
Revenue Obligations 2009A	Sewer Fees	2019	2,370,000	-	1,247,750
Revenue Obligations 2009B	Sewer Fees	2020	4,245,000	-	1,556,100
Revenue Obligations 20010	Sewer Fees	2021	3,255,000	-	923,850
Revenue Obligations 20016	Sewer Fees	2033	82,235,000	-	2,528,169
			<u>\$ 94,591,239</u>	<u>\$ 20,330,209</u>	<u>\$ 6,545,477</u>

\*Same net revenue sourced pledged for multiple purposes.  
Total Gross Revenues of \$37,309,309,283 less Total Operating Expenses of \$16,979,074.

#### 8. RELATED PARTY TRANSACTIONS

The County Board of Commissioners also serves as the Board of Directors for the following related parties:

- Clackamas County
- Clackamas County Development Agency
- Clackamas County Service District No. 5
- Housing Authority of Clackamas County
- North Clackamas Parks and Recreation District
- Clackamas County Enhanced Law Enforcement District
- Library District of Clackamas County
- Clackamas County Extension and 4-H Service District

During fiscal year 2017, fiscal and accounting functions and certain repairs and maintenance on plant and equipment were performed by personnel of various County departments. Operating expenses in the Statements of Revenues, Expenses and Changes in Net Position for 2017, charged by the above departments, totaled approximately \$13,700,000.

At June 30, 2017, WES's related party receivables due from the County totaled \$1,075,967, and WES's related party payables due to the County totaled \$806,736. WES's related party receivables are included in accounts receivable, interest receivable, and contract receivable on the Statement of Net Position.



## **Water Environment Services Notes to Combining Financial Statements (Continued)**

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### **9. STEWARDSHIP, COMPLIANCE, AND ACCOUNTABILITY**

The three WES partners are required by state law to budget their operations on a fund basis. The budget is generally prepared on the modified accrual basis of accounting. The resolution authorizing appropriations for each WES partner's funds sets the level by which expenditures cannot legally exceed appropriations.

Appropriations are made at the principal object level - materials and services, interfund transfers, capital outlay, debt service, special payments, reserve, and contingency – which are the levels of control established by the resolution. The detail budget documents, however, are required to contain more specific, detailed information for the above mentioned expenditure categories. Management may make transfers of appropriations within object levels. However, transfers of appropriations among object levels require approval by the Board.

Unexpected additional resources may be added to the budget through the use of supplemental budgets. The Board, at a regular Board meeting, may adopt a supplemental budget less than 10% of the fund's original budget. A supplemental budget greater than 10% of the fund's original budget requires hearings before the public, publications in newspapers and approval by the Board. Original and supplemental budgets may be modified by the use of appropriation transfers between the levels of control and require approval by the Board. Except for the following two listed below, no supplemental budgets or appropriation transfers were made during the year ended June 30, 2017.

Tri-City Service District – the Board approved a supplemental budget for the District greater than 10% in order to accomplish the integration of the District into the municipal partnership WES.

Surface Water Management Agency of Clackamas County - the Board approved a supplemental budget for the Agency greater than 10% in order to accomplish the integration of the Agency into the municipal partnership WES.

All annual appropriations lapse at fiscal year-end.

### **10. COMMITMENTS**

WES has commitments under contractual agreements for various multi-year contracts related to capital acquisition and service agreements. The total contract costs are approximately \$15,186,200. As of June 30, 2017, approximately \$7,113,500 of these contracts remain outstanding.

WES has also entered into agreements with the cities of Oregon City, West Linn and Gladstone ("the Cities"). Pertinent terms of these agreements are as follows:

- The Cities will process and review all permit applications for hookup and inspection; operate and maintain local collection facilities; bill and collect sewer user charges and connection charges.
- The Cities will collect and remit a contractual percentage of connection charges to WES.
- The Cities will bill and collect sewer user charges bimonthly according to the rate schedule provided by WES.
- Should the WES fail to perform services outlined in these agreements, the Cities can terminate the agreement upon 30-days written notice.

## **Water Environment Services**

### **Notes to Combining Financial Statements (Continued)**

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#### **10. COMMITMENTS (Continued)**

In accordance with the terms of these agreements, the following fees and charges were earned by the WES:

Sewerage user fees	\$	7,964,971
Connection charges		940,328
Pump station maintenance charges		1,049
	\$	<u>8,906,348</u>

#### **11. LITIGATION**

WES has various claims and pending legal proceedings outstanding. These proceedings are, in the opinion of management, ordinary routine matters incidental to the normal business conducted by WES. In the opinion of management, the ultimate disposition of such proceedings is not expected to have a material adverse effect on WES.

#### **12. RISK MANAGEMENT**

WES purchases insurance coverage for automobile, flood, earthquake, liability, machinery, and business risks. These policies are subject to minimum deductibles.

IGAs between WES and the County clarify that for workers' compensation and employment practice liability issues, the WES participates in Clackamas County's risk management pool. All employees of WES are contracted from the County. The County is responsible for any workers' compensation risk. All risk of loss related to the self-insurance program is borne by the County. The County is fully self-insured for unemployment benefits, short-term disability benefits, employment practice liability issues, and partially self-insured for dental benefits and workers' compensation. The County carries coverage in excess of \$1,000,000 with an outside insurer for workers' compensation claims. There have been no significant reductions in insurance coverage from the prior year for any category of risk, and settled claims have not reached the level of commercial coverage in any of the past three fiscal years.

#### **13. POLLUTION REMEDIATION**

WES entered into an agreement with the State of Oregon Department of Environmental Quality (DEQ) on June 2, 2000 which requires WES to perform certain specific pollution remediation measures on property owned by WES adjacent to Tri-City Water Resource Recovery Facility ("TCWRRF") which had been used for municipal refuse. The agreement does not have a specific date by which these remediation efforts must be completed. Rather, these measures are to be taken at a time in the future if WES decides to expand the TCWRRF property to provide additional treatment capacity.

On July 19, 2012 the Oregon Department of Environmental Quality (DEQ) issued a Consent Order to two of the WES partners. The purpose of the agreement was to: (a) protect the public health, safety, and welfare and the environment through the design and implementation of remedial measures on the Blue Heron site; (b) to facilitate productive reuse of the property; and (c) to provide WES with protection from potential liabilities in accordance with applicable law. The Remedial Investigation Report and Human Health and Ecological Risk Assessments commissioned by WES were accepted by DEQ on June 18, 2014.

In July 2016, WES continued an alternatives evaluation. WES will be reviewing the alternatives to determine if the site will remain unused or remediation efforts will commence. WES has determined that no obligating events have occurred as of June 30, 2017, therefore no liability has been recorded.

## **Supplementary Information**

**Water Environment Services  
Schedules of Net Position  
June 30, 2017 - 2012**

	JUNE 30,					
	2017	2016	2015	2014	2013	2012
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>						
<b>Current assets:</b>						
Pooled cash and investments	\$ 56,286,020	\$ 40,309,847	\$ 34,261,357	\$ 30,812,702	\$ 29,926,404	\$ 30,331,894
Unbonded assessments receivable, net	228,387	263,720	304,360	351,295	431,275	47,632
Accrued interest receivable on assessments, net	69,651	66,240	63,030	65,436	63,083	67,004
Accounts receivable	5,806,366	5,427,578	4,770,187	4,331,556	5,012,083	4,293,011
Interest receivable	342,202	312,530	325,753	293,546	298,169	294,052
Property taxes receivable	-	805	844	841	1,047	1,184
Prepaid expenses	326,059	327,862	99,365	133,677	148,318	94,056
Total current assets	<u>63,060,685</u>	<u>46,708,382</u>	<u>39,824,916</u>	<u>38,089,153</u>	<u>35,882,379</u>	<u>35,128,833</u>
<b>Noncurrent assets:</b>						
Pooled cash and investments - restricted	29,771,600	31,548,654	24,950,274	21,019,635	15,836,865	15,049,595
Nondepreciable capital assets	18,041,482	14,044,871	13,287,264	11,511,698	8,741,835	37,547,547
Depreciable capital assets	190,220,460	206,768,063	223,237,503	239,399,484	256,566,720	236,762,383
Connection charges receivable, noncurrent portion	148,267	72,422	69,366	60,601	64,188	30,570
Bond issuance costs	-	-	-	-	1,143,356	1,203,024
Bond discount	-	-	-	797,576	-	-
Bonded assessment receivable, net	141,744	154,059	165,001	211,178	237,479	271,496
Contracts receivable	951,410	1,140,905	1,336,577	1,531,753	1,877,577	1,816,600
Unbonded assessments receivable, noncurrent portion	3,664,746	4,380,671	5,164,832	6,090,828	7,633,692	364,711
Total noncurrent assets	<u>242,939,729</u>	<u>258,109,645</u>	<u>268,190,617</u>	<u>260,622,853</u>	<u>291,901,914</u>	<u>293,065,926</u>
<b>Deferred outflows of resources:</b>						
Deferred charges on debt refunding	6,560,089	-	-	29,826	71,140	-
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<u>312,590,503</u>	<u>304,818,027</u>	<u>308,015,733</u>	<u>316,741,834</u>	<u>327,855,433</u>	<u>328,194,759</u>
<b>LIABILITIES</b>						
<b>Current liabilities:</b>						
Accounts payable	2,077,967	1,499,430	1,788,833	2,057,939	1,909,456	2,586,803
Contract labor payable	369,026	696,634	590,290	518,310	529,290	514,861
Other liabilities	224,471	94,545	56,211	410,653	544,960	1,875
Unearned income	69,100	69,100	69,100	69,100	69,100	57,800
Due to Clackamas County	437,710	319,894	543,508	478,097	154,983	680,390
Accrued interest payable, payable from restricted assets	281,925	376,027	366,685	405,875	649,629	366,715
Loans payable, current portion	106,208	411,633	457,772	658,869	500,933	243,113
Current portion of long term debt, payable from restricted assets	3,730,000	3,372,120	3,277,120	4,182,120	4,062,120	3,693,585
Total current liabilities	<u>7,296,407</u>	<u>6,839,383</u>	<u>7,169,519</u>	<u>8,760,862</u>	<u>8,420,441</u>	<u>8,365,142</u>
<b>Noncurrent liabilities:</b>						
Long term unearned income, net of current portion	160,800	229,900	299,000	368,100	543,948	561,648
Loans payable, net of current portion, payable from current assets	1,540,031	7,831,396	8,043,029	8,446,375	9,052,922	9,092,574
Long term debt, net of current portion, payable from restricted assets	99,211,959	87,722,681	91,055,779	95,145,870	99,273,573	103,264,553
Total noncurrent liabilities	<u>100,912,790</u>	<u>95,583,977</u>	<u>99,397,808</u>	<u>103,960,354</u>	<u>108,870,443</u>	<u>112,918,775</u>
<b>TOTAL LIABILITIES</b>	<u>108,209,197</u>	<u>102,423,360</u>	<u>106,567,327</u>	<u>112,741,316</u>	<u>117,290,884</u>	<u>121,283,917</u>
<b>NET POSITION</b>						
Net investment in capital assets	111,268,397	129,221,060	141,178,397	149,975,048	159,617,403	165,078,951
Restricted for capital assets	23,188,093	19,934,822	12,548,369	9,473,884	5,954,232	5,099,093
Restricted for debt service	6,385,297	4,855,529	4,623,957	3,751,077	1,836,434	2,171,013
Unrestricted	63,509,516	49,383,256	43,097,883	40,800,509	42,954,480	34,561,785
<b>TOTAL NET POSITION</b>	<u>\$ 204,351,306</u>	<u>\$ 202,394,667</u>	<u>\$ 201,446,406</u>	<u>\$ 204,000,518</u>	<u>\$ 210,564,549</u>	<u>\$ 206,910,842</u>



**Water Environment Services  
Schedule of Net Position  
June 30, 2016**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>					
<b>Current assets:</b>					
Pooled cash and investments	\$ 30,138,808	\$ 9,685,650	\$ 485,389	\$ -	\$ 40,309,847
Unbonded assessments receivable, net	263,720	-	-	-	263,720
Accrued interest receivable on assessments, net	66,240	-	-	-	66,240
Accounts receivable	4,357,870	1,229,383	13,506	(173,181)	5,427,578
Interest receivable	303,393	8,775	362	-	312,530
Property taxes receivable	-	805	-	-	805
Prepaid expenses	221,087	105,981	594	-	327,662
Total current assets	<u>35,351,118</u>	<u>11,030,594</u>	<u>489,951</u>	<u>(173,181)</u>	<u>46,708,382</u>
<b>Noncurrent assets:</b>					
Pooled cash and investments - restricted	29,469,589	2,079,065	-	-	31,548,654
Nondepreciable capital assets	9,461,356	4,583,515	-	-	14,044,871
Depreciable capital assets	174,256,804	32,443,433	67,826	-	206,768,063
Connection charges receivable, noncurrent portion	72,422	-	-	-	72,422
Bonded assessment receivable, net	154,059	-	-	-	154,059
Contracts receivable	1,140,905	-	-	-	1,140,905
Unbonded assessments receivable, noncurrent portion	4,380,671	-	-	-	4,380,671
Total noncurrent assets	<u>218,935,806</u>	<u>39,106,013</u>	<u>67,826</u>	<u>-</u>	<u>258,109,645</u>
<b>Deferred outflows of resources:</b>					
Deferred charges on debt refunding	-	-	-	-	-
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<u>254,286,924</u>	<u>50,136,607</u>	<u>587,677</u>	<u>(173,181)</u>	<u>304,818,027</u>
<b>LIABILITIES</b>					
<b>Current liabilities:</b>					
Accounts payable	897,800	600,311	1,319	-	1,499,430
Contract labor payable	696,634	-	-	-	696,634
Other liabilities	94,545	-	-	-	94,545
Unearned income	69,100	-	-	-	69,100
Due to other Service Districts	173,181	-	-	(173,181)	-
Due to Clackamas County	248,472	71,201	2,221	-	319,894
Accrued interest payable, payable from restricted assets	376,027	-	-	-	376,027
Loans payable, current portion	411,633	-	-	-	411,633
Current portion of long term debt, payable from restricted assets	3,372,120	-	-	-	3,372,120
Total current liabilities	<u>6,337,512</u>	<u>671,512</u>	<u>3,540</u>	<u>(173,181)</u>	<u>6,839,383</u>
<b>Noncurrent liabilities:</b>					
Long term unearned income, net of current portion	229,900	-	-	-	229,900
Loans payable, net of current portion, payable from current assets	7,631,396	-	-	-	7,631,396
Long term debt, net of current portion, payable from restricted assets	87,722,681	-	-	-	87,722,681
Total noncurrent liabilities	<u>95,583,977</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>95,583,977</u>
<b>TOTAL LIABILITIES</b>	<u>101,921,489</u>	<u>671,512</u>	<u>3,540</u>	<u>(173,181)</u>	<u>102,423,360</u>
<b>NET POSITION</b>					
Net investment in capital assets	92,126,286	37,026,948	67,826	-	129,221,060
Restricted for capital assets	16,866,295	2,078,527	-	-	18,934,822
Restricted for debt service	4,854,991	538	-	-	4,855,529
Unrestricted	38,527,863	10,359,082	496,311	-	49,383,256
<b>TOTAL NET POSITION</b>	<u>\$ 152,365,435</u>	<u>\$ 49,465,095</u>	<u>\$ 564,137</u>	<u>\$ -</u>	<u>\$ 202,394,667</u>

**Water Environment Services**  
**Schedule of Net Position**  
**June 30, 2015**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>					
<b>Current assets:</b>					
Pooled cash and investments	\$ 24,854,154	\$ 9,003,587	\$ 393,616	\$ -	\$ 34,251,357
Unbonded assessments receivable, net	304,360	-	-	-	304,360
Accrued interest receivable on assessments, net	63,030	-	-	-	63,030
Accounts receivable	3,985,782	940,344	17,242	(173,181)	4,770,187
Interest receivable	314,170	11,153	430	-	325,753
Property taxes receivable	-	844	-	-	844
Prepaid expenses	70,617	28,684	84	-	99,385
Total current assets	<u>29,602,113</u>	<u>9,984,612</u>	<u>411,372</u>	<u>(173,181)</u>	<u>39,824,916</u>
<b>Noncurrent assets:</b>					
Pooled cash and investments - restricted	23,617,330	1,332,944	-	-	24,950,274
Nondepreciable capital assets	9,044,388	4,222,876	-	-	13,267,264
Depreciable capital assets	188,345,691	34,821,718	70,094	-	223,237,503
Connection charges receivable, noncurrent portion	69,368	-	-	-	69,368
Bonded assessment receivable, net	165,001	-	-	-	165,001
Contracts receivable	1,336,577	-	-	-	1,336,577
Unbonded assessments receivable, noncurrent portion	5,164,832	-	-	-	5,164,832
Total noncurrent assets	<u>227,743,185</u>	<u>40,377,538</u>	<u>70,094</u>	<u>-</u>	<u>268,190,817</u>
<b>Deferred outflows of resources:</b>					
Deferred charges on debt refunding	-	-	-	-	-
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<u>257,345,298</u>	<u>50,362,150</u>	<u>481,466</u>	<u>(173,181)</u>	<u>208,015,733</u>
<b>LIABILITIES</b>					
<b>Current liabilities:</b>					
Accounts payable	1,350,398	436,469	1,946	-	1,788,833
Contract labor payable	590,290	-	-	-	590,290
Other liabilities	56,211	-	-	-	56,211
Unearned income	69,100	-	-	-	69,100
Due to other Service Districts	173,181	-	-	(173,181)	-
Due to Clackamas County	376,691	164,426	2,391	-	543,508
Accrued interest payable, payable from restricted assets	385,602	1,083	-	-	386,685
Loans payable, current portion	403,346	54,426	-	-	457,772
Current portion of long term debt, payable from restricted assets	3,277,120	-	-	-	3,277,120
Total current liabilities	<u>6,681,939</u>	<u>656,424</u>	<u>4,337</u>	<u>(173,181)</u>	<u>7,169,519</u>
<b>Noncurrent liabilities:</b>					
Long term unearned income, net of current portion	299,000	-	-	-	299,000
Loans payable, net of current portion, payable from current assets	8,043,029	-	-	-	8,043,029
Long term debt, net of current portion, payable from restricted assets	91,055,779	-	-	-	91,055,779
Total noncurrent liabilities	<u>99,397,808</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>99,397,808</u>
<b>TOTAL LIABILITIES</b>	<u>106,079,747</u>	<u>656,424</u>	<u>4,337</u>	<u>(173,181)</u>	<u>106,567,327</u>
<b>NET POSITION</b>					
Net investment in capital assets	102,118,135	38,990,168	70,094	-	141,178,397
Restricted for capital assets	11,270,770	1,277,599	-	-	12,548,369
Restricted for debt service	4,569,612	55,345	-	-	4,623,957
Unrestricted	33,308,034	9,382,614	407,035	-	43,097,683
<b>TOTAL NET POSITION</b>	<u>\$ 151,265,551</u>	<u>\$ 49,705,726</u>	<u>\$ 477,129</u>	<u>\$ -</u>	<u>\$ 201,448,406</u>

**Water Environment Services  
Schedule of Net Position  
June 30, 2014**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>					
<b>Current assets:</b>					
Pooled cash and investments	\$ 23,094,048	\$ 7,518,742	\$ 299,912	\$ -	\$ 30,912,702
Unbonded assessments receivable, net	351,295	-	-	-	351,295
Accrued interest receivable on assessments, net	65,436	-	-	-	65,436
Accounts receivable	3,655,350	833,484	15,903	(173,181)	4,331,556
Interest receivable	287,573	5,774	199	-	293,546
Property taxes receivable	-	941	-	-	941
Prepaid expenses	100,833	31,862	982	-	133,677
Total current assets	<u>27,554,535</u>	<u>8,390,803</u>	<u>316,996</u>	<u>(173,181)</u>	<u>36,089,153</u>
<b>Noncurrent assets:</b>					
Pooled cash and investments - restricted	19,957,245	1,062,390	-	-	21,019,635
Nondepreciable capital assets	7,627,428	3,884,270	-	-	11,511,698
Depreciable capital assets	201,724,821	37,602,302	72,361	-	239,399,484
Connection charges receivable, noncurrent portion	60,601	-	-	-	60,601
Bond discount	797,576	-	-	-	797,576
Bonded assessment receivable, net	211,178	-	-	-	211,178
Contracts receivable	1,531,753	-	-	-	1,531,753
Unbonded assessments receivable, noncurrent portion	6,090,928	-	-	-	6,090,928
Total noncurrent assets	<u>238,001,530</u>	<u>42,548,962</u>	<u>72,361</u>	<u>-</u>	<u>280,622,853</u>
<b>Deferred outflows of resources:</b>					
Deferred charges on debt refunding	29,828	-	-	-	29,828
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<u>265,585,893</u>	<u>50,939,765</u>	<u>389,357</u>	<u>(173,181)</u>	<u>316,741,834</u>
<b>LIABILITIES</b>					
<b>Current liabilities:</b>					
Accounts payable	1,698,360	358,714	864	-	2,057,938
Contract labor payable	518,310	-	-	-	518,310
Other liabilities	410,653	-	-	-	410,653
Unearned income	69,100	-	-	-	69,100
Due to other Service Districts	173,181	-	-	(173,181)	-
Due to Clackamas County	418,701	55,846	3,550	-	478,097
Accrued interest payable, payable from restricted assets	403,751	2,124	-	-	405,875
Loans payable, current portion	606,547	52,322	-	-	658,869
Current portion of long term debt, payable from restricted assets	4,182,120	-	-	-	4,182,120
Total current liabilities	<u>8,480,723</u>	<u>469,006</u>	<u>4,414</u>	<u>(173,181)</u>	<u>8,780,962</u>
<b>Noncurrent liabilities:</b>					
Long term unearned income, net of current portion	368,100	-	-	-	368,100
Loans payable, net of current portion, payable from current assets	8,446,375	-	-	-	8,446,375
Long term debt, net of current portion, payable from restricted assets	95,091,453	54,426	-	-	95,145,879
Total noncurrent liabilities	<u>103,905,928</u>	<u>54,426</u>	<u>-</u>	<u>-</u>	<u>103,960,354</u>
<b>TOTAL LIABILITIES</b>	<u>112,386,651</u>	<u>523,432</u>	<u>4,414</u>	<u>(173,181)</u>	<u>112,741,316</u>
<b>NET POSITION</b>					
Net investment in capital assets	108,522,863	41,379,824	72,361	-	149,975,048
Restricted for capital assets	8,466,546	1,007,338	-	-	9,473,884
Restricted for debt service	3,696,025	55,052	-	-	3,751,077
Unrestricted	32,513,808	7,974,119	312,582	-	40,800,509
<b>TOTAL NET POSITION</b>	<u>\$ 153,199,242</u>	<u>\$ 50,416,333</u>	<u>\$ 384,943</u>	<u>\$ -</u>	<u>\$ 204,000,518</u>

**Water Environment Services**  
**Schedule of Net Position**  
**June 30, 2013**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>					
<b>Current assets:</b>					
Pooled cash and investments	\$ 22,256,420	\$ 7,453,341	\$ 218,643	\$ -	\$ 29,928,404
Unbonded assessments receivable, net	431,275	-	-	-	431,275
Accrued interest receivable on assessments, net	63,083	-	-	-	63,083
Accounts receivable	4,205,607	969,496	10,161	(173,181)	5,012,083
Interest receivable	290,416	7,547	206	-	298,169
Property taxes receivable	-	1,047	-	-	1,047
Prepaid expenses	104,896	43,349	73	-	148,318
Total current assets	<u>27,351,697</u>	<u>8,474,780</u>	<u>229,063</u>	<u>(173,181)</u>	<u>35,882,379</u>
<b>Noncurrent assets:</b>					
Pooled cash and investments - restricted	15,011,954	824,911	-	-	15,836,865
Nondepreciable capital assets	4,413,757	4,328,068	-	-	8,741,825
Depreciable capital assets	217,456,614	39,035,478	74,528	-	256,566,720
Connection charges receivable, noncurrent portion	64,188	-	-	-	64,188
Bond issuance costs	1,143,358	-	-	-	1,143,358
Bonded assessment receivable, net	237,479	-	-	-	237,479
Contracts receivable	1,677,577	-	-	-	1,677,577
Unbonded assessments receivable, noncurrent portion	7,633,892	-	-	-	7,633,892
Total noncurrent assets	<u>247,638,829</u>	<u>44,168,457</u>	<u>74,628</u>	<u>-</u>	<u>291,901,914</u>
<b>Deferred outflows of resources:</b>					
Deferred charges on debt refunding	71,140	-	-	-	71,140
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<u>275,061,666</u>	<u>52,663,237</u>	<u>303,711</u>	<u>(173,181)</u>	<u>327,855,433</u>
<b>LIABILITIES</b>					
<b>Current liabilities:</b>					
Accounts payable	1,317,945	581,324	10,187	-	1,909,456
Contract labor payable	529,260	-	-	-	529,260
Other liabilities	544,960	-	-	-	544,960
Unearned income	69,100	-	-	-	69,100
Due to other Service Districts	173,181	-	-	(173,181)	-
Due to Clackamas County	126,959	25,930	1,094	-	154,983
Accrued interest payable, payable from restricted assets	646,504	3,125	-	-	649,629
Loans payable, current portion	450,833	50,300	-	-	500,933
Current portion of long term debt, payable from restricted assets	4,062,120	-	-	-	4,062,120
Total current liabilities	<u>7,920,652</u>	<u>661,679</u>	<u>11,281</u>	<u>(173,181)</u>	<u>8,420,441</u>
<b>Noncurrent liabilities:</b>					
Long term unearned income, net of current portion	437,200	106,748	-	-	543,948
Loans payable, net of current portion, payable from current assets	9,052,922	-	-	-	9,052,922
Long term debt, net of current portion, payable from restricted assets	99,273,573	-	-	-	99,273,573
Total noncurrent liabilities	<u>108,763,695</u>	<u>106,748</u>	<u>-</u>	<u>-</u>	<u>108,870,443</u>
<b>TOTAL LIABILITIES</b>	<u>116,684,357</u>	<u>768,427</u>	<u>11,281</u>	<u>(173,181)</u>	<u>117,290,884</u>
<b>NET POSITION</b>					
Net investment in capital assets	116,536,277	43,206,499	74,628	-	159,817,403
Restricted for capital assets	5,184,537	769,695	-	-	5,954,232
Restricted for debt service	1,783,218	55,216	-	-	1,838,434
Unrestricted	34,873,277	7,863,401	217,802	-	42,954,480
<b>TOTAL NET POSITION</b>	<u>\$ 158,377,309</u>	<u>\$ 51,894,810</u>	<u>\$ 292,430</u>	<u>\$ -</u>	<u>\$ 210,564,549</u>



**Water Environment Services  
Schedule of Net Position  
June 30, 2012**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>					
<b>Current assets:</b>					
Pooled cash and investments	\$ 22,523,501	\$ 7,568,845	\$ 139,548	\$ --	\$ 30,331,894
Unbonded assessments receivable, net	47,532	-	-	-	47,532
Accrued interest receivable on assessments, net	67,004	-	-	-	67,004
Accounts receivable	3,680,919	767,176	18,097	(173,181)	4,293,011
Interest receivable	282,843	11,033	176	-	294,052
Property taxes receivable	-	1,184	-	-	1,184
Prepaid expenses	85,029	8,956	71	-	94,056
Total current assets	<u>26,686,928</u>	<u>8,457,194</u>	<u>157,892</u>	<u>(173,181)</u>	<u>35,128,833</u>
<b>Noncurrent assets:</b>					
Pooled cash and investments - restricted	14,269,859	779,726	-	--	15,049,585
Nondepreciable capital assets	34,201,873	3,345,674	-	-	37,547,547
Depreciable capital assets	195,730,615	40,954,873	76,895	-	236,762,383
Connection charges receivable, noncurrent portion	30,570	-	-	-	30,570
Bond Issuance Costs	1,203,024	-	-	-	1,203,024
Bonded assessment receivable, net	271,496	-	-	-	271,496
Contracts receivable	1,816,600	-	-	-	1,816,600
Unbonded assessments receivable, noncurrent portion	384,711	-	-	-	384,711
Total noncurrent assets	<u>247,908,758</u>	<u>45,080,273</u>	<u>76,895</u>	<u>-</u>	<u>293,065,926</u>
<b>Deferred outflows of resources:</b>					
Deferred charges on debt refunding	-	-	-	-	-
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<u>274,595,686</u>	<u>53,537,467</u>	<u>234,787</u>	<u>(173,181)</u>	<u>328,194,759</u>
<b>LIABILITIES</b>					
<b>Current liabilities:</b>					
Accounts payable	2,242,254	335,629	18,920	-	2,596,803
Contract labor payable	514,861	-	-	-	514,861
Other liabilities	1,875	-	-	-	1,875
Unearned income	57,800	-	-	-	57,800
Due to other Service Districts	173,181	-	-	(173,181)	-
Due to Clackamas County	690,390	-	-	-	690,390
Accrued interest payable, payable from restricted assets	366,715	-	-	-	366,715
Loans payable, current portion	194,756	48,357	-	-	243,113
Current portion of long term debt, payable from restricted assets	3,889,497	4,088	-	-	3,893,585
Total current liabilities	<u>8,131,329</u>	<u>388,074</u>	<u>18,920</u>	<u>(173,181)</u>	<u>8,365,142</u>
<b>Noncurrent liabilities:</b>					
Long term unearned income, net of current portion	404,600	157,048	-	-	561,648
Loans payable, net of current portion, payable from current assets	9,092,574	-	-	-	9,092,574
Long term debt, net of current portion, payable from restricted assets	103,264,553	-	-	-	103,264,553
Total noncurrent liabilities	<u>112,761,727</u>	<u>157,048</u>	<u>-</u>	<u>-</u>	<u>112,918,775</u>
<b>TOTAL LIABILITIES</b>	<u>120,893,056</u>	<u>545,122</u>	<u>18,920</u>	<u>(173,181)</u>	<u>121,283,917</u>
<b>NET POSITION</b>					
Net investment in capital assets	120,906,914	44,095,142	76,895	-	165,078,951
Restricted for capital assets	4,374,745	724,348	-	-	5,099,093
Restricted for debt service	2,115,635	55,378	-	-	2,171,013
Unrestricted	26,305,336	8,117,477	138,972	-	34,561,785
<b>TOTAL NET POSITION</b>	<u>\$ 153,702,830</u>	<u>\$ 52,992,345</u>	<u>\$ 215,867</u>	<u>\$ -</u>	<u>\$ 206,910,842</u>

## Water Environment Services Schedules of Revenues, Expenses and Changes in Net Position Years Ended June 30, 2017 - 2012

	FOR THE YEARS ENDED JUNE 30,					
	2017	2018	2015	2014	2013	2012
<b>Operating revenues:</b>						
Sewerage charges						
Residential and commercial	\$ 26,205,150	\$ 24,519,390	\$ 23,097,547	\$ 21,524,727	\$ 20,558,887	\$ 20,181,195
Municipalities and other	12,649,388	11,807,714	11,233,339	10,143,755	9,234,455	7,247,658
Surface water management charges	180,015	172,894	172,847	175,401	168,847	170,872
Other operating revenues	1,017,565	1,262,651	1,146,808	911,786	1,190,559	814,072
Total operating revenues	<u>40,052,118</u>	<u>37,762,649</u>	<u>35,650,541</u>	<u>32,755,669</u>	<u>31,152,748</u>	<u>28,393,797</u>
<b>Operating expenses:</b>						
Contracted salaries and benefits	11,088,323	10,893,401	9,994,099	10,663,305	10,055,783	9,385,858
Professional services	3,032,681	1,477,276	1,402,311	1,390,842	2,133,235	2,398,180
Laboratory services	705,465	720,240	677,050	597,763	623,203	304,111
Other County services	2,360,610	2,405,607	2,191,248	2,159,835	1,669,412	1,721,831
Supplies	1,354,239	915,109	1,104,961	1,726,656	909,122	1,071,813
Vehicle expenses	702,868	648,429	743,497	557,938	699,327	532,430
Repairs and maintenance	453,357	603,585	310,011	281,173	217,622	338,853
Utilities	1,882,977	1,699,687	1,663,133	1,649,334	1,659,845	1,700,991
Insurance	386,400	387,651	321,682	312,336	288,023	259,059
Other expense	1,205,483	1,220,083	1,036,637	1,021,393	670,366	734,119
Depreciation and amortization	20,545,075	21,073,955	20,912,485	20,811,184	18,260,726	17,383,112
Total operating expenses	<u>43,517,478</u>	<u>42,045,023</u>	<u>40,357,124</u>	<u>41,171,859</u>	<u>37,188,664</u>	<u>35,830,355</u>
Operating income (loss)	<u>(3,465,360)</u>	<u>(4,282,374)</u>	<u>(4,706,583)</u>	<u>(8,416,190)</u>	<u>(6,033,916)</u>	<u>(7,436,558)</u>
<b>Nonoperating revenue (expense):</b>						
Interest income	1,036,108	622,808	757,420	639,502	521,562	511,111
Interest expense	(4,423,269)	(4,034,984)	(4,182,378)	(4,687,956)	(4,524,795)	(3,461,992)
Federal and state grants	-	-	-	-	-	4,992
Dispatchable power	69,100	69,100	69,100	69,100	69,100	57,800
Gain (loss) on disposal of capital assets	(136,322)	(138,695)	(19,302)	(228,341)	(407,077)	3,747
Deferred amount on refunding	-	-	-	-	-	(63,710)
Amortization of bond issuance costs	-	-	-	-	-	(23,950)
Total nonoperating revenue (expense)	<u>(3,454,383)</u>	<u>(3,481,971)</u>	<u>(3,375,160)</u>	<u>(4,208,695)</u>	<u>(4,145,843)</u>	<u>(2,972,002)</u>
Income (loss) before contributions	<u>(6,919,743)</u>	<u>(7,764,345)</u>	<u>(8,081,743)</u>	<u>(12,624,885)</u>	<u>(10,179,759)</u>	<u>(10,408,560)</u>
<b>Contributions:</b>						
Connection charges	5,823,398	7,435,766	3,688,911	4,204,541	13,233,632	4,068,857
Capital contributions	3,052,984	1,274,840	1,840,720	1,856,313	599,834	2,711,101
Total contributions	<u>8,876,382</u>	<u>8,710,606</u>	<u>5,529,631</u>	<u>6,060,854</u>	<u>13,833,466</u>	<u>6,779,958</u>
Change in net position	1,956,639	946,261	(2,552,112)	(6,564,031)	3,653,707	(3,628,602)
<b>NET POSITION - beginning of year</b>	<u>202,394,667</u>	<u>201,448,406</u>	<u>204,000,518</u>	<u>210,564,549</u>	<u>206,910,842</u>	<u>210,539,444</u>
<b>NET POSITION - end of year</b>	<u>\$ 204,351,306</u>	<u>\$ 202,394,667</u>	<u>\$ 201,448,406</u>	<u>\$ 204,000,518</u>	<u>\$ 210,564,549</u>	<u>\$ 206,910,842</u>

**Water Environment Services**  
**Schedule of Revenues, Expenses and Changes in Net Position**  
**Year Ended June 30, 2016**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>Operating revenues:</b>					
Sewerage charges					
Residential and commercial	\$ 24,325,651	193,739	\$ -	\$ -	\$ 24,519,390
Municipalities and other	4,435,104	7,372,610	-	-	11,807,714
Surface water management charges	-	-	172,894	-	172,894
Intergovernmental revenue	-	321,158	-	(321,158)	-
Other operating revenues	1,151,697	261,584	18,370	(169,000)	1,262,651
Total operating revenues	<u>29,912,452</u>	<u>8,149,091</u>	<u>191,264</u>	<u>(490,158)</u>	<u>37,762,649</u>
<b>Operating expenses:</b>					
Contracted salaries and benefits	8,443,783	2,395,695	53,923	-	10,893,401
Professional services	1,117,850	349,563	9,863	-	1,477,276
Laboratory services	426,040	286,102	8,098	-	720,240
Other County services	1,919,327	468,916	17,364	-	2,405,607
Supplies	350,010	883,487	2,770	(321,158)	915,109
Vehicle expenses	507,847	140,155	427	-	648,429
Repairs and maintenance	569,915	33,637	33	-	603,585
Utilities	878,157	821,307	223	-	1,699,687
Insurance	232,237	154,093	1,321	-	387,651
Other expense	859,338	520,168	9,577	(169,000)	1,220,083
Depreciation and amortization	17,843,322	3,228,365	2,268	-	21,073,955
Total operating expenses	<u>33,147,826</u>	<u>9,281,488</u>	<u>105,867</u>	<u>(490,158)</u>	<u>42,045,023</u>
Operating income (loss)	<u>(3,235,374)</u>	<u>(1,132,397)</u>	<u>85,397</u>	<u>-</u>	<u>(4,282,374)</u>
<b>Nonoperating revenue (expense):</b>					
Interest income	582,605	38,392	1,611	-	622,608
Interest expense	(4,034,300)	(684)	-	-	(4,034,984)
Dispatchable power	69,100	-	-	-	69,100
Gain (loss) on disposal of capital assets	(139,016)	321	-	-	(138,695)
Total nonoperating revenue (expense)	<u>(3,521,611)</u>	<u>38,029</u>	<u>1,611</u>	<u>-</u>	<u>(3,481,971)</u>
Income (loss) before contributions	<u>(6,756,985)</u>	<u>(1,094,368)</u>	<u>87,008</u>	<u>-</u>	<u>(7,764,345)</u>
<b>Contributions:</b>					
Connection charges	6,582,029	853,737	-	-	7,435,766
Capital contributions	1,274,840	-	-	-	1,274,840
Total contributions	<u>7,856,869</u>	<u>853,737</u>	<u>-</u>	<u>-</u>	<u>8,710,606</u>
Change in net position	1,099,884	(240,631)	87,008	-	946,261
<b>NET POSITION - beginning of year</b>	<u>151,265,551</u>	<u>49,705,726</u>	<u>477,129</u>	<u>-</u>	<u>201,448,406</u>
<b>NET POSITION - end of year</b>	<u>\$ 152,365,435</u>	<u>\$ 49,465,095</u>	<u>\$ 564,137</u>	<u>\$ -</u>	<u>\$ 202,394,667</u>

**Water Environment Services**  
**Schedule of Revenues, Expenses and Changes in Net Position**  
**Year Ended June 30, 2015**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>Operating revenues:</b>					
Sewerage charges					
Residential and commercial	\$ 22,912,937	\$ 184,610	\$ -	\$ -	\$ 23,097,547
Municipalities and other	4,316,418	6,916,921	-	-	11,233,339
Surface water management charges	-	-	172,847	-	172,847
Intergovernmental revenue	-	498,555	-	(498,555)	-
Other operating revenues	1,038,252	271,055	6,501	(169,000)	1,146,808
Total operating revenues	<u>28,267,607</u>	<u>7,871,141</u>	<u>179,348</u>	<u>(667,555)</u>	<u>35,650,541</u>
<b>Operating expenses:</b>					
Contracted salaries and benefits	7,735,723	2,220,985	37,391	-	9,994,099
Professional services	1,088,194	306,083	8,034	-	1,402,311
Laboratory services	364,970	292,811	19,269	-	677,050
Other County services	1,734,376	445,204	11,668	-	2,191,248
Supplies	678,497	924,591	428	(498,555)	1,104,951
Vehicle expenses	532,190	209,577	1,730	-	743,497
Repairs and maintenance	280,338	29,643	30	-	310,011
Utilities	849,276	813,661	196	-	1,663,133
Insurance	192,309	129,097	276	-	321,682
Other expense	730,318	467,237	8,082	(169,000)	1,036,637
Depreciation and amortization	17,757,833	3,152,395	2,267	-	20,912,495
Total operating expenses	<u>31,944,024</u>	<u>8,991,284</u>	<u>89,371</u>	<u>(667,555)</u>	<u>40,357,124</u>
Operating income (loss)	<u>(3,676,417)</u>	<u>(1,120,143)</u>	<u>89,977</u>	<u>-</u>	<u>(4,706,583)</u>
<b>Nonoperating revenue (expense):</b>					
Interest income	700,846	54,365	2,209	-	757,420
Interest expense	(4,179,282)	(3,096)	-	-	(4,182,378)
Dispatchable power	89,100	-	-	-	89,100
Gain (loss) on disposal of capital assets	(22,039)	2,737	-	-	(19,302)
Total nonoperating revenue (expense)	<u>(3,431,375)</u>	<u>54,006</u>	<u>2,209</u>	<u>-</u>	<u>(3,375,160)</u>
Income (loss) before contributions	<u>(7,107,792)</u>	<u>(1,066,137)</u>	<u>92,186</u>	<u>-</u>	<u>(8,081,743)</u>
<b>Contributions:</b>					
Connection charges	3,343,541	345,370	-	-	3,688,911
Capital contributions	1,830,560	10,160	-	-	1,840,720
Total contributions	<u>5,174,101</u>	<u>355,530</u>	<u>-</u>	<u>-</u>	<u>5,529,631</u>
Change in net position	<u>(1,933,691)</u>	<u>(710,607)</u>	<u>92,186</u>	<u>-</u>	<u>(2,552,112)</u>
<b>NET POSITION - beginning of year</b>	<u>153,199,242</u>	<u>50,416,333</u>	<u>384,943</u>	<u>-</u>	<u>204,000,518</u>
<b>NET POSITION - end of year</b>	<u>\$ 151,265,551</u>	<u>\$ 49,705,726</u>	<u>\$ 477,129</u>	<u>\$ -</u>	<u>\$ 201,448,406</u>



**Water Environment Services**  
**Schedule of Revenues, Expenses and Changes in Net Position**  
**Year Ended June 30, 2014**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>Operating revenues:</b>					
Sewerage charges					
Residential and commercial	\$ 21,350,231	\$ 174,496	\$ -	\$ -	\$ 21,524,727
Municipalities and other	4,129,879	6,013,876	-	-	10,143,755
Surface water management charges	-	-	175,401	-	175,401
Intergovernmental revenue	-	348,655	-	(348,655)	-
Other operating revenues	818,566	250,163	12,057	(169,000)	911,786
Total operating revenues	<u>26,298,676</u>	<u>6,787,190</u>	<u>187,458</u>	<u>(517,655)</u>	<u>32,755,669</u>
<b>Operating expenses:</b>					
Contracted salaries and benefits	8,404,311	2,218,110	40,884	-	10,663,305
Professional services	1,050,798	330,236	9,808	-	1,390,842
Laboratory services	321,119	263,337	13,307	-	597,763
Other County services	1,724,881	421,671	13,383	-	2,159,935
Supplies	1,134,602	939,592	1,117	(348,655)	1,726,656
Vehicle expenses	389,820	167,553	565	-	557,938
Repairs and maintenance	251,509	29,625	39	-	281,173
Utilities	868,072	781,182	80	-	1,649,334
Insurance	180,664	131,435	237	-	312,336
Other expense	764,180	412,011	14,202	(169,000)	1,021,393
Depreciation and amortization	17,813,020	2,995,897	2,267	-	20,811,184
Total operating expenses	<u>32,902,976</u>	<u>8,690,649</u>	<u>95,889</u>	<u>(517,655)</u>	<u>41,171,859</u>
Operating income (loss)	<u>(6,604,300)</u>	<u>(1,903,459)</u>	<u>91,569</u>	<u>-</u>	<u>(8,416,190)</u>
<b>Nonoperating revenue (expense):</b>					
Interest income	610,312	27,246	944	-	638,502
Interest expense	(4,682,872)	(5,084)	-	-	(4,687,956)
Dispatchable power	69,100	-	-	-	69,100
Gain (loss) on disposal of capital assets	(179,784)	(48,557)	-	-	(228,341)
Total nonoperating revenue (expense)	<u>(4,183,244)</u>	<u>(26,395)</u>	<u>944</u>	<u>-</u>	<u>(4,208,695)</u>
Income (loss) before contributions	<u>(10,787,544)</u>	<u>(1,929,854)</u>	<u>92,513</u>	<u>-</u>	<u>(12,624,885)</u>
<b>Contributions:</b>					
Connection charges	3,753,164	451,377	-	-	4,204,541
Capital contributions	1,856,313	-	-	-	1,856,313
Total contributions	<u>5,609,477</u>	<u>451,377</u>	<u>-</u>	<u>-</u>	<u>6,060,854</u>
Change in net position	(5,178,067)	(1,478,477)	92,513	-	(6,564,031)
<b>NET POSITION - beginning of year</b>	<u>158,377,309</u>	<u>51,894,810</u>	<u>292,430</u>	<u>-</u>	<u>210,564,549</u>
<b>NET POSITION - end of year</b>	<u>\$ 153,199,242</u>	<u>\$ 50,416,333</u>	<u>\$ 384,943</u>	<u>\$ -</u>	<u>\$ 204,000,518</u>

**Water Environment Services**  
**Schedule of Revenues, Expenses and Changes in Net Position**  
**Year Ended June 30, 2013**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>Operating revenues:</b>					
Sewerage charges					
Residential and commercial	\$ 20,393,369	\$ 165,518	\$ -	\$ -	\$ 20,558,887
Municipalities and other	4,008,490	5,225,965	-	-	9,234,455
Surface water management charges	-	-	168,847	-	168,847
Intergovernmental revenue	-	711,756	-	(711,756)	-
Other operating revenues	1,084,477	256,369	18,713	(169,000)	1,190,559
Total operating revenues	<u>25,486,336</u>	<u>6,359,608</u>	<u>187,560</u>	<u>(880,756)</u>	<u>31,152,748</u>
<b>Operating expenses:</b>					
Contracted salaries and benefits	7,773,485	2,226,661	55,637	-	10,055,783
Professional services	1,813,248	310,564	9,423	-	2,133,235
Laboratory services	318,366	295,917	8,920	-	623,203
Other County services	1,327,312	325,194	18,906	-	1,669,412
Supplies	872,686	745,411	2,781	(711,756)	909,122
Vehicle expenses	483,980	214,779	568	-	699,327
Repairs and maintenance	158,059	59,547	16	-	217,622
Utilities	886,071	773,434	340	-	1,659,845
Insurance	171,043	116,224	756	-	288,023
Other expense	668,755	156,102	14,509	(169,000)	670,366
Depreciation and amortization	15,257,264	3,001,195	2,267	-	18,260,726
Total operating expenses	<u>29,730,269</u>	<u>8,225,028</u>	<u>112,123</u>	<u>(880,756)</u>	<u>37,186,664</u>
Operating income (loss)	<u>(4,243,933)</u>	<u>(1,865,420)</u>	<u>75,437</u>	<u>-</u>	<u>(6,033,916)</u>
<b>Nonoperating revenue (expense):</b>					
Interest income	476,623	43,813	1,126	-	521,562
Interest expense	(4,517,605)	(7,190)	-	-	(4,524,795)
Federal and State Grants	195,367	-	-	-	195,367
Dispatchable power	69,100	-	-	-	69,100
Gain (loss) on disposal of capital assets	(222,437)	(184,640)	-	-	(407,077)
Total nonoperating revenue (expense)	<u>(3,998,952)</u>	<u>(148,017)</u>	<u>1,126</u>	<u>-</u>	<u>(4,145,843)</u>
Income (loss) before contributions	<u>(8,242,885)</u>	<u>(2,013,437)</u>	<u>76,563</u>	<u>-</u>	<u>(10,179,759)</u>
<b>Contributions:</b>					
Connection charges	12,317,730	915,902	-	-	13,233,632
Capital contributions	599,834	-	-	-	599,834
Total contributions	<u>12,917,564</u>	<u>915,902</u>	<u>-</u>	<u>-</u>	<u>13,833,466</u>
Change in net position	4,674,679	(1,097,535)	76,563	-	3,653,707
<b>NET POSITION - beginning of year</b>	<u>153,702,630</u>	<u>52,992,345</u>	<u>215,867</u>	<u>-</u>	<u>206,910,842</u>
<b>NET POSITION - end of year</b>	<u>\$ 158,377,309</u>	<u>\$ 51,894,810</u>	<u>\$ 292,430</u>	<u>\$ -</u>	<u>\$ 210,564,549</u>

**Water Environment Services**  
**Schedule of Revenues, Expenses and Changes in Net Position**  
**Year Ended June 30, 2012**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Eliminating Entries	Combining Totals
<b>Operating revenues:</b>					
Sewerage charges					
Residential and commercial	\$ 20,016,519	\$ 144,676	\$ -	\$ -	\$ 20,161,195
Municipalities and other	2,794,416	4,453,242	-	-	7,247,658
Surface water management charges	-	-	170,872	-	170,872
Intergovernmental revenue	-	246,358	-	(246,358)	-
Other operating revenues	730,458	72,597	11,017	-	814,072
Total operating revenues	<u>23,541,393</u>	<u>4,916,873</u>	<u>181,889</u>	<u>(246,358)</u>	<u>28,393,797</u>
<b>Operating expenses:</b>					
Contracted salaries and benefits	7,274,639	2,032,633	78,584	-	9,385,856
Professional services	1,901,798	449,012	47,370	-	2,398,180
Laboratory services	-	282,482	21,629	-	304,111
Other County services	1,378,572	295,387	47,872	-	1,721,831
Supplies	674,237	638,717	5,217	(246,358)	1,071,813
Vehicle expenses	364,836	166,813	781	-	532,430
Repairs and maintenance	274,951	63,893	9	-	338,853
Utilities	894,216	806,086	689	-	1,700,991
Insurance	165,072	93,254	733	-	259,059
Other expense	504,752	211,398	17,969	-	734,119
Depreciation and amortization	14,655,084	2,725,761	2,267	-	17,383,112
Total operating expenses	<u>28,088,157</u>	<u>7,765,436</u>	<u>223,120</u>	<u>(246,358)</u>	<u>35,830,355</u>
Operating income (loss)	<u>(4,546,764)</u>	<u>(2,848,563)</u>	<u>(41,231)</u>	<u>-</u>	<u>(7,436,558)</u>
<b>Nonoperating revenue (expense):</b>					
Interest income	472,179	38,236	696	-	511,111
Interest expense	(3,452,205)	(9,787)	-	-	(3,461,992)
Federal and State Grants	4,992	-	-	-	4,992
Dispatchable power	57,800	-	-	-	57,800
Gain (loss) on disposal of capital assets	(42,348)	46,095	-	-	3,747
Deferred amount on refunding	(63,710)	-	-	-	(63,710)
Amortization of bond issuance costs	(23,950)	-	-	-	(23,950)
Total nonoperating revenue (expense)	<u>(3,047,242)</u>	<u>74,544</u>	<u>696</u>	<u>-</u>	<u>(2,972,002)</u>
Income (loss) before contributions	<u>(7,594,006)</u>	<u>(2,774,019)</u>	<u>(40,535)</u>	<u>-</u>	<u>(10,408,500)</u>
<b>Contributions:</b>					
Connection charges	3,425,390	643,467	-	-	4,068,857
Capital contributions	2,711,101	-	-	-	2,711,101
Total contributions	<u>6,136,491</u>	<u>643,467</u>	<u>-</u>	<u>-</u>	<u>6,779,958</u>
Change in net position	(1,457,515)	(2,130,552)	(40,535)	-	(3,628,602)
NET POSITION - beginning of year	155,160,145	55,122,897	256,402	-	210,539,444
NET POSITION - end of year	<u>\$ 153,702,630</u>	<u>\$ 52,992,345</u>	<u>\$ 215,867</u>	<u>\$ -</u>	<u>\$ 206,910,842</u>

**Water Environment Services  
Schedules of Cash Flows  
Years Ended June 30, 2017 - 2012**

	FOR THE YEARS ENDED JUNE 30,					
	2017	2016	2015	2014	2013	2012
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>						
Received from customers	\$ 39,211,298	\$ 36,445,526	\$ 34,779,017	\$ 32,876,959	\$ 29,873,173	\$ 27,953,146
Paid to suppliers for goods and services	(8,975,208)	(8,595,763)	(8,326,452)	(7,609,653)	(8,299,474)	(7,952,616)
Paid to related entities for services	(13,690,144)	(13,726,859)	(12,326,829)	(12,647,687)	(12,522,283)	(10,769,933)
Other operating revenue	1,318,912	1,336,368	1,297,552	1,082,063	1,344,031	1,016,111
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>17,864,858</b>	<b>15,459,272</b>	<b>15,423,288</b>	<b>13,701,682</b>	<b>10,395,447</b>	<b>10,246,708</b>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>						
Bond principal paid	(81,399,801)	(3,294,426)	(4,197,322)	(4,075,300)	(3,953,357)	(3,441,488)
Interest paid on bonds and contracts	(2,776,885)	(4,043,741)	(4,169,838)	(4,581,736)	(4,170,800)	(3,472,994)
Assessment and contract principal collected	700,272	828,920	999,275	1,718,039	(7,753,493)	113,613
Interest received on assessments and contracts	183,984	(81,905)	(93,185)	(179,956)	(69,839)	50,913
Grant Revenue	4,899,052	-	-	2,163	161,926	11,204
Capital contributed by customer/governments	(6,396,790)	7,034,463	3,897,197	3,859,431	12,448,801	5,073,545
Payments made on note payable	567,495	(403,346)	(606,547)	(450,633)	(194,756)	(186,992)
Proceeds from loans	805	-	-	-	410,981	2,860,053
Connection charges collected	84,946,384	827,610	310,107	505,768	955,250	548,767
Collection of property taxes	(5,159,770)	39	97	106	137	96
Acquisition of capital assets, net of dispositions	-	(4,315,847)	(5,008,991)	(4,975,621)	(8,476,962)	(24,831,800)
<b>NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>	<b>(4,435,254)</b>	<b>(3,448,233)</b>	<b>(8,869,207)</b>	<b>(6,177,739)</b>	<b>(10,642,112)</b>	<b>(23,275,083)</b>
<b>CASH FLOWS FROM NON-CAPITAL ACTIVITIES</b>						
Dispatchable power agreement	-	-	-	-	113,000	-
<b>NET CASH FROM NON-CAPITAL ACTIVITIES</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>113,000</b>	<b>-</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>						
Interest received on investments	771,515	635,831	725,213	643,125	517,445	225,991
<b>NET CASH FROM INVESTING ACTIVITIES</b>	<b>771,515</b>	<b>635,831</b>	<b>725,213</b>	<b>643,125</b>	<b>517,445</b>	<b>225,991</b>
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>14,201,119</b>	<b>12,646,870</b>	<b>7,279,294</b>	<b>6,167,068</b>	<b>383,780</b>	<b>(12,802,384)</b>
<b>POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR</b>						
	<b>71,858,501</b>	<b>59,211,631</b>	<b>51,932,337</b>	<b>45,765,269</b>	<b>45,381,489</b>	<b>58,183,873</b>
<b>POOLED CASH AND INVESTMENTS, END OF YEAR</b>						
	<b>\$ 86,059,620</b>	<b>\$ 71,858,501</b>	<b>59,211,631</b>	<b>51,932,337</b>	<b>45,765,269</b>	<b>45,381,489</b>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</b>						
Operating income (loss)	(3,465,360)	\$ (4,282,374)	\$ (4,706,583)	\$ (8,416,190)	\$ (6,033,916)	\$ (7,436,558)
Adjustments to reconcile operating income to net cash from operating activities:						
Depreciation and amortization	20,545,075	21,073,955	20,912,495	20,811,184	18,260,726	17,383,112
Changes in assets and liabilities:						
Other receivables	66,233	(588,613)	(257,879)	736,369	(866,179)	330,752
Prepaid expenses	1,603	(228,277)	34,292	14,641	(54,262)	(57,771)
Accounts payable	946,042	(659,927)	(275,416)	698,480	(1,458,566)	6,589
Accrued payroll payable	(327,608)	106,344	71,980	(10,950)	14,399	21,844
Other liabilities	98,872	38,164	(355,601)	(131,852)	533,245	(1,260)
Total adjustments	21,330,217	19,741,646	20,129,871	22,117,872	16,429,363	17,683,266
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>\$ 17,864,857</b>	<b>\$ 15,459,272</b>	<b>\$ 15,423,288</b>	<b>\$ 13,701,682</b>	<b>\$ 10,395,447</b>	<b>\$ 10,246,708</b>
<b>NONCASH CAPITAL ACTIVITY</b>						
Contributions of capital assets from governments developers and customers	\$ 2,999,777	\$ 876,251	\$ 1,248,335	\$ 1,750,047	\$ 468,763	\$ 1,096,708



**Water Environment Services  
Schedule of Cash Flows  
Year Ended June 30, 2016**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Combining Totals
<b><u>CASH FLOWS FROM OPERATING ACTIVITIES</u></b>				
Received from customers	\$ 28,644,301	\$ 7,624,595	\$ 176,630	\$ 36,445,526
Paid to suppliers for goods and services	(5,506,127)	(2,984,730)	(104,906)	(8,595,763)
Paid to related entities for services	(10,504,687)	(3,222,172)		(13,726,859)
Other operating revenue	1,056,414	261,584	18,370	1,336,368
NET CASH FROM OPERATING ACTIVITIES	<u>13,689,901</u>	<u>1,679,277</u>	<u>90,094</u>	<u>15,459,272</u>
<b><u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</u></b>				
Bond principal paid	(3,240,000)	(54,426)	-	(3,294,426)
Interest paid on bonds and contracts	(4,041,974)	(1,767)	-	(4,043,741)
Assessment and contract principal collected	828,920	-	-	828,920
Interest received on assessments and contracts	(81,905)	-	-	(81,905)
Capital contributed by customer/governments	7,034,463	-	-	7,034,463
Payments made on note payable	(403,346)	-	-	(403,346)
Connection charges collected	-	827,610	-	827,610
Collection of property taxes	-	39	-	39
Acquisition of capital assets, net of dispositions	(3,252,528)	(1,063,319)	-	(4,315,847)
NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES	<u>(3,156,370)</u>	<u>(291,863)</u>	<u>-</u>	<u>(3,448,233)</u>
<b><u>CASH FLOWS FROM INVESTING ACTIVITIES</u></b>				
Interest received on investments	593,382	40,770	1,679	635,831
NET CASH FROM INVESTING ACTIVITIES	<u>593,382</u>	<u>40,770</u>	<u>1,679</u>	<u>635,831</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	11,126,913	1,428,184	91,773	12,646,870
<b><u>POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR</u></b>	<u>48,481,484</u>	<u>10,336,531</u>	<u>393,616</u>	<u>59,211,631</u>
<b><u>POOLED CASH AND INVESTMENTS, END OF YEAR</u></b>	<u>\$ 59,608,397</u>	<u>11,764,715</u>	<u>485,389</u>	<u>71,858,501</u>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</b>				
Operating income (loss)	\$ (3,235,374)	\$ (1,132,397)	\$ 85,397	\$ (4,282,374)
Adjustments to reconcile operating income to net cash from operating activities:				
Depreciation and amortization	17,843,322	3,228,365	2,268	21,073,955
Changes in assets and liabilities:				
Other receivables	(329,438)	(262,911)	3,736	(588,613)
Prepaid expenses	(150,470)	(77,297)	(510)	(228,277)
Accounts payable	(582,817)	(76,483)	(627)	(659,927)
Accrued payroll payable	106,344	-	-	106,344
Other liabilities	38,334	-	(170)	38,164
Total adjustments	<u>16,925,275</u>	<u>2,811,674</u>	<u>4,697</u>	<u>19,741,646</u>
NET CASH FROM OPERATING ACTIVITIES	<u>\$ 13,689,901</u>	<u>\$ 1,679,277</u>	<u>\$ 90,094</u>	<u>\$ 15,459,272</u>
<b>NONCASH CAPITAL ACTIVITY</b>				
Contributions of capital assets from governments developers and customers	\$ 876,251	\$ -	\$ -	\$ 876,251

**Water Environment Services**  
**Schedule of Cash Flows**  
**Year Ended June 30, 2015**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Combining Totals
<b><u>CASH FLOWS FROM OPERATING ACTIVITIES</u></b>				
Received from customers	\$ 27,088,860	\$ 7,538,649	\$ 171,508	\$ 34,779,017
Paid to suppliers for goods and services	(5,388,280)	(2,851,889)	(86,283)	(8,326,452)
Paid to related entities for services	(9,456,481)	(2,870,348)	-	(12,326,829)
Other operating revenue	1,019,896	271,055	6,501	1,297,552
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>13,244,095</b>	<b>2,087,467</b>	<b>91,726</b>	<b>15,423,288</b>
<b><u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</u></b>				
Bond principal paid	(4,145,000)	(52,322)	-	(4,197,322)
Interest paid on bonds and contracts	(4,165,701)	(4,137)	-	(4,169,838)
Assessment and contract principal collected	999,275	-	-	999,275
Interest received on assessments and contracts	(93,185)	-	-	(93,185)
Capital contributed by customer/governments	3,897,197	-	-	3,897,197
Payments made on note payable	(606,547)	-	-	(606,547)
Connection charges collected	-	310,107	-	310,107
Collection of property taxes	-	97	-	97
Acquisition of capital assets, net of dispositions	(4,374,192)	(634,799)	-	(5,008,991)
<b>NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>	<b>(8,488,153)</b>	<b>(381,054)</b>	<b>-</b>	<b>(8,869,207)</b>
<b><u>CASH FLOWS FROM INVESTING ACTIVITIES</u></b>				
Interest received on investments	674,249	48,986	1,978	725,213
<b>NET CASH FROM INVESTING ACTIVITIES</b>	<b>674,249</b>	<b>48,986</b>	<b>1,978</b>	<b>725,213</b>
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>5,430,191</b>	<b>1,755,399</b>	<b>93,704</b>	<b>7,279,294</b>
<b><u>POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR</u></b>	<b>43,051,293</b>	<b>8,581,132</b>	<b>299,912</b>	<b>51,932,337</b>
<b><u>POOLED CASH AND INVESTMENTS, END OF YEAR</u></b>	<b>\$ 48,481,484</b>	<b>\$ 10,336,531</b>	<b>\$ 393,616</b>	<b>\$ 59,211,631</b>
<b><u>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</u></b>				
Operating income (loss)	\$ (3,676,417)	\$ (1,120,143)	\$ 89,977	\$ (4,706,583)
Adjustments to reconcile operating income to net cash from operating activities:				
Depreciation and amortization	17,757,833	3,152,395	2,267	20,912,495
Changes in assets and liabilities:				
Other receivables	(195,103)	(61,437)	(1,339)	(257,879)
Prepaid expenses	30,216	3,178	898	34,292
Accounts payable	(389,972)	113,474	1,082	(275,416)
Accrued payroll payable	71,980	-	-	71,980
Other liabilities	(354,442)	-	(1,159)	(355,601)
Total adjustments	<u>16,920,512</u>	<u>3,207,610</u>	<u>1,749</u>	<u>20,129,871</u>
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>\$ 13,244,095</b>	<b>\$ 2,087,467</b>	<b>\$ 91,726</b>	<b>\$ 15,423,288</b>
<b><u>NONCASH CAPITAL ACTIVITY</u></b>				
Contributions of capital assets from governments developers and customers	\$ 1,248,335	\$ -	\$ -	\$ 1,248,335

**Water Environment Services  
Schedule of Cash Flows  
Year Ended June 30, 2014**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Combining Totals
<b><u>CASH FLOWS FROM OPERATING ACTIVITIES</u></b>				
Received from customers	\$ 26,088,852	\$ 6,818,848	\$ 169,859	\$ 32,876,959
Paid to suppliers for goods and services	(4,710,594)	(2,797,661)	(101,398)	(7,609,653)
Paid to related entities for services	(9,797,729)	(2,849,958)	-	(12,647,687)
Other operating revenue	819,843	250,163	12,057	1,082,063
NET CASH FROM OPERATING ACTIVITIES	<u>12,400,172</u>	<u>1,221,192</u>	<u>80,318</u>	<u>13,701,682</u>
<b><u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</u></b>				
Bond principal paid	(4,025,000)	(50,300)	-	(4,075,300)
Interest paid on bonds and contracts	(4,575,651)	(6,085)	-	(4,581,736)
Assessment and contract principal collected	1,718,039	-	-	1,718,039
Interest received on assessments and contracts	(179,956)	-	-	(179,956)
Grant Revenue	2,163	-	-	2,163
Capital contributed by customer/governments	3,859,431	-	-	3,859,431
Payments made on note payable	(450,633)	-	-	(450,633)
Connection charges collected	-	505,768	-	505,768
Collection of property taxes	-	106	-	106
Acquisition of capital assets, net of dispositions	(3,578,801)	(1,396,820)	-	(4,975,621)
NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES	<u>(7,230,408)</u>	<u>(947,331)</u>	<u>-</u>	<u>(8,177,739)</u>
<b><u>CASH FLOWS FROM INVESTING ACTIVITIES</u></b>				
Interest received on investments	613,155	29,019	951	643,125
NET CASH FROM INVESTING ACTIVITIES	<u>613,155</u>	<u>29,019</u>	<u>951</u>	<u>643,125</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	5,782,919	302,880	81,269	6,167,068
<b><u>POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR</u></b>	<u>37,268,374</u>	<u>8,278,252</u>	<u>218,643</u>	<u>45,765,269</u>
<b><u>POOLED CASH AND INVESTMENTS, END OF YEAR</u></b>	<u>\$ 43,051,293</u>	<u>\$ 8,581,132</u>	<u>\$ 299,912</u>	<u>\$ 51,932,337</u>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</b>				
Operating income (loss)	\$ (6,604,300)	\$ (1,903,459)	\$ 91,569	\$ (8,416,190)
Adjustments to reconcile operating income to net cash from operating activities:				
Depreciation and amortization	17,813,020	2,985,897	2,267	20,811,184
Changes in assets and liabilities:				
Other receivables	660,490	81,821	(5,742)	736,369
Prepaid expenses	4,063	11,487	(909)	14,641
Accounts payable	672,157	35,646	(9,323)	698,480
Accrued payroll payable	(10,950)	-	-	(10,950)
Other liabilities	(134,308)	-	2,456	(131,852)
Total adjustments	<u>19,004,472</u>	<u>3,124,651</u>	<u>(11,251)</u>	<u>22,117,872</u>
NET CASH FROM OPERATING ACTIVITIES	<u>\$ 12,400,172</u>	<u>\$ 1,221,192</u>	<u>\$ 80,318</u>	<u>\$ 13,701,682</u>
<b>NONCASH CAPITAL ACTIVITY</b>				
Contributions of capital assets from governments developers and customers	\$ 1,750,047	\$ -	\$ -	\$ 1,750,047

**Water Environment Services  
Schedule of Cash Flows  
Year Ended June 30, 2013**

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Combining Totals
<b><u>CASH FLOWS FROM OPERATING ACTIVITIES</u></b>				
Received from customers	\$ 23,834,820	\$ 5,861,570	\$ 176,783	\$ 29,873,173
Paid to suppliers for goods and services	(5,773,299)	(2,408,678)	(117,497)	(8,299,474)
Paid to related entities for services	(9,699,708)	(2,822,575)		(12,522,283)
Other operating revenue	1,068,949	256,369	18,713	1,344,031
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>9,430,762</b>	<b>886,686</b>	<b>77,999</b>	<b>10,395,447</b>
<b><u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</u></b>				
Bond principal paid	(3,905,000)	(48,357)	-	(3,953,357)
Interest paid on bonds and contracts	(4,162,647)	(6,153)	-	(4,170,800)
Assessment and contract principal collected	(7,753,493)		-	(7,753,493)
Interest received on assessments and contracts	(69,839)		-	(69,839)
Grant Revenue	161,926		-	161,926
Capital contributed by customer/governments	12,448,801		-	12,448,801
Payments made on note payable	(194,756)		-	(194,756)
Proceeds from loans	410,981		-	410,981
Connection charges collected		955,250	-	955,250
Collection of property taxes		137	-	137
Acquisition of capital assets, net of dispositions	(6,473,781)	(2,003,181)	-	(8,476,962)
<b>NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>	<b>(9,537,808)</b>	<b>(1,104,304)</b>	<b>-</b>	<b>(10,642,112)</b>
<b><u>CASH FLOWS FROM NON-CAPITAL ACTIVITIES</u></b>				
Dispatchable power agreement	113,000	-	-	113,000
<b>NET CASH FROM NON-CAPITAL ACTIVITIES</b>	<b>113,000</b>	<b>-</b>	<b>-</b>	<b>113,000</b>
<b><u>CASH FLOWS FROM INVESTING ACTIVITIES</u></b>				
Interest received on investments	469,050	47,299	1,096	517,445
<b>NET CASH FROM INVESTING ACTIVITIES</b>	<b>469,050</b>	<b>47,299</b>	<b>1,096</b>	<b>517,445</b>
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>475,004</b>	<b>(170,319)</b>	<b>79,095</b>	<b>383,780</b>
<b>POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR</b>	<b>36,793,370</b>	<b>8,448,571</b>	<b>139,548</b>	<b>45,381,489</b>
<b>POOLED CASH AND INVESTMENTS, END OF YEAR</b>	<b>\$ 37,268,374</b>	<b>\$ 8,278,252</b>	<b>\$ 218,643</b>	<b>\$ 45,765,269</b>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</b>				
Operating income (loss)	\$ (4,243,933)	\$ (1,865,420)	\$ 75,437	\$ (6,033,916)
Adjustments to reconcile operating income to net cash from operating activities:				
Depreciation and amortization	15,257,264	3,001,195	2,267	18,260,726
Changes in assets and liabilities:				
Other receivables	(632,448)	(241,669)	7,936	(866,179)
Prepaid expenses	(19,867)	(34,393)	(2)	(54,262)
Accounts payable	(1,487,740)	26,973	2,201	(1,458,566)
Accrued payroll payable	14,399	-	-	14,399
Other liabilities	543,085	-	(9,840)	533,245
Total adjustments	13,674,695	2,752,106	2,562	16,429,363
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>\$ 9,430,762</b>	<b>\$ 886,686</b>	<b>\$ 77,999</b>	<b>\$ 10,395,447</b>
<b>NONCASH CAPITAL ACTIVITY</b>				
Contributions of capital assets from governments developers and customers	\$ 468,763	\$ -	\$ -	\$ 468,763



# Water Environment Services

## Schedule of Cash Flows

### Year Ended June 30, 2012

	Clackamas County Service District No. 1	Tri-City Service District	Surface Water Management Agency of Clackamas County	Combining Totals
<b><u>CASH FLOWS FROM OPERATING ACTIVITIES</u></b>				
Received from customers	\$ 22,719,885	\$ 5,069,387	\$ 163,874	\$ 27,953,146
Paid to suppliers for goods and services	(5,389,607)	(2,339,545)	(223,464)	(7,952,616)
Paid to related entities for services	(8,151,101)	(2,618,832)	-	(10,769,933)
Other operating revenue	932,497	72,597	11,017	1,016,111
NET CASH FROM OPERATING ACTIVITIES	<u>10,111,674</u>	<u>183,607</u>	<u>(48,573)</u>	<u>10,246,708</u>
<b><u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</u></b>				
Bond principal paid	(3,395,000)	(46,488)	-	(3,441,488)
Interest paid on bonds and contracts	(3,462,282)	(10,712)	-	(3,472,994)
Assessment and contract principal collected	113,613	-	-	113,613
Interest received on assessments and contracts	50,913	-	-	50,913
Grant Revenue	11,204	-	-	11,204
Capital contributed by customer/governments	5,073,545	-	-	5,073,545
Payments made on note payable	(186,992)	-	-	(186,992)
Proceeds from Loans	2,860,053	-	-	2,860,053
Connection charges collected	-	548,767	-	548,767
Collection of property taxes	-	96	-	96
Acquisition of capital assets, net of dispositions	(21,396,260)	(3,435,540)	-	(24,831,800)
NET CASH FROM CAPITAL AND RELATED FINANCING ACTIVITIES	<u>(20,331,206)</u>	<u>(2,943,877)</u>	<u>-</u>	<u>(23,275,083)</u>
<b><u>CASH FLOWS FROM INVESTING ACTIVITIES</u></b>				
Interest received on investments	187,341	37,941	709	225,991
NET CASH FROM INVESTING ACTIVITIES	<u>187,341</u>	<u>37,941</u>	<u>709</u>	<u>225,991</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	(10,032,191)	(2,722,329)	(47,864)	(12,802,384)
<b><u>POOLED CASH AND INVESTMENTS, BEGINNING OF YEAR</u></b>	<u>46,825,561</u>	<u>11,170,900</u>	<u>187,412</u>	<u>58,183,873</u>
<b><u>POOLED CASH AND INVESTMENTS, END OF YEAR</u></b>	<u>\$ 36,793,370</u>	<u>\$ 8,448,571</u>	<u>\$ 139,548</u>	<u>\$ 45,381,489</u>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH FROM OPERATING ACTIVITIES:</b>				
Operating loss	\$ (4,546,764)	\$ (2,848,583)	\$ (41,231)	\$ (7,436,558)
Adjustments to reconcile operating income to net cash from operating activities:				
Depreciation and amortization	14,855,084	2,725,761	2,267	17,383,112
Changes in assets and liabilities:				
Other receivables	112,640	225,111	(6,999)	330,752
Prepaid expenses	(52,258)	(5,442)	(71)	(57,771)
Accounts payable	(80,747)	86,740	596	6,589
Accrued payroll payable	21,844	-	-	21,844
Other liabilities	1,875	-	(3,135)	(1,260)
Total adjustments	<u>14,858,438</u>	<u>3,032,170</u>	<u>(7,342)</u>	<u>17,683,266</u>
NET CASH FROM OPERATING ACTIVITIES	<u>\$ 10,111,674</u>	<u>\$ 183,607</u>	<u>\$ (48,573)</u>	<u>\$ 10,246,708</u>
<b>NONCASH CAPITAL ACTIVITY</b>				
Contributions of capital assets from governments developers and customers	\$ 1,096,708	\$ -	\$ -	\$ 1,096,708



May 16, 2018

Mr. Jim Bernard, Chair  
Clackamas County Board of Commissioners  
150 Beaver Creek Road  
Oregon City, Oregon 97045

INFRASTRUCTURE  
FINANCIAL  
MANAGEMENT  
CONSULTING  
LAND USE PLANNING

Mr. Ken Humberston – Commissioner  
Ms. Sonya Fischer - Commissioner  
Mr. Paul Savas – Commissioner  
Ms. Martha Schrader - Commissioner  
Mr. Don Krupp - Administrator

Dear Mr. Bernard, Commissioners, and Mr. Krupp,

As you are aware, Clackamas County has reorganized its wastewater and stormwater enterprises into a municipal partnership pursuant to Oregon Revised Statutes (ORS) 190. The partnership consists of Clackamas County Service District No. 1 (CCSD#1), the Tri-City Service District (TCSD), and the Surface Water Management Agency of Clackamas County (SWMACC). The new intergovernmental entity that is tasked with managing this partnership is Water Environment Services (WES). To facilitate the orderly integration of these enterprises into WES, it is the intention of the Partners to contribute the ownership and management of all existing facilities, assets, and related properties and interests into WES. It is also the intention of the Partners to contribute all liabilities, payables, and outstanding borrowings into WES.

Currently, the only Partner that has outstanding borrowings is CCSD#1. As of June 30, 2017, CCSD#1 had \$1,646,239 in principal outstanding on Clean Water State Revolving Fund loans, and \$92,945,000 in principal outstanding on senior lien revenue refunding bonds and revenue obligations. To transfer these borrowings to WES, management is proposing to amend the CCSD#1 Master Sewer Revenue Bond Declaration (Master Declaration) dated August 30, 2016 to define the issuer of the borrowings as WES (from CCSD#1), and to expand the definition of the sewer system to encompass all of the comingled assets of WES. Section 13.1.7 of the Master Declaration allows CCSD#1 "to make any change which, in the reasonable judgment of the District, does not materially and adversely affect the rights of the owners of any Outstanding Bonds." The purpose of this letter and the accompanying financial analysis is to verify, that in our judgment, the transfer of the CCSD#1 borrowings into WES does not materially and adversely affect the rights of the owners of the outstanding bonds.

Voice: 893.517.6871  
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Black West  
Business Center

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Tigard, Oregon 97143

## ***Historical Analysis***

From a financial perspective, the lens that we use to evaluate the impact on owners of the outstanding bonds is the rate covenant (promise) that CCSD#1 has made to the owners and how that promise would have been fulfilled if WES was the responsible party. Section 6.1 of the Master Declaration defines the general covenant, and Section 6.2 defines the "Net Revenue Covenant" which is the formula that is to be used to calculate rate covenant compliance. Both sections are shown below:

**6.1. General Covenant.** The District covenants for the benefit of the Owners that it will establish and maintain rates and charges in connection with the ownership and operation of the Sewer System which are sufficient to permit the District to pay all Operating Expenses and all lawful charges against the Net Revenues, to remain in compliance with its duties under this Master Declaration and any Supplemental Declaration, and to make all transfers required by this Master Declaration to the Revenue Bond Account, the Revenue Bond Reserve Account, and the Subordinate Obligations Account.

**6.2. Net Revenue Covenant.** The District covenants for the benefit of the Owners of all Bonds that it shall impose fees, rates and charges in connection with the ownership and operation of the Sewer System which, when combined with other Gross Revenues, are adequate:

6.2.1. To produce Net Revenues in each fiscal Year at least equal to one hundred ten percent (110.00%) of Annual Debt Service due in that Fiscal Year; and

6.2.2. To produce Stabilized Net Revenues each Fiscal Year at least equal to one hundred twenty percent (120.00%) of Annual Debt Service due in that Fiscal Year.

For this analysis, we have focused on the calculation that is defined in Section 6.2.2. In this case, the term Stabilized Net Revenues means Net Revenues (i.e., Gross Revenues Less Operating Expenses) for a period less deposits to the Rate Stabilization Account for the period, and plus withdrawals from the Rate Stabilization Account for the period. We have reviewed CCSD#1 financial records and have determined there have never been any transfers to or from the rate stabilization account. So, we are treating Section 6.2.2 as requiring a ratio of Net Revenues to Annual Debt Service that must always be equal to or greater than 120%.

Now that we have established the criteria for the Net Revenue Covenant compliance, we need to see two things in terms of material impact on owners of the bonds. First, has CCSD#1 historically met this test, and second, would WES have met this test at the same or stronger levels if they were the issuer of the bonds over the same historical timeframe.

### ***Sources of Historical Financial Data***

To perform the Net Revenue Covenant tests discussed above, we had to analyze the historical financial data of the WES Partners. This data was provided to us by WES Staff in budget line item format and is the same source data that has been used by the County's independent auditors to produce the historical Comprehensive Annual Financial Reports (CAFRs) for each Partner. There are differences between this source (budgetary basis) data, and the final financial data that is reported in the CAFRs. The principal difference is depreciation expense (a non-cash expense). A reconciliation of the budgetary basis data we used for this analysis and the reported CAFR data (for each Partner's historical data) has been prepared by WES's auditors and is in a separate report available for your review.

Based on the historical financial records from CCSD#1 and the WES Partners from fiscal 2012-13 through fiscal 2016-17, we have calculated the actual ratios of Net Revenues to Annual Debt Service. The results of that analysis are shown graphically in Figure 1.



Figure 1 - Historical Net Revenue Covenant Compliance Including SDCs

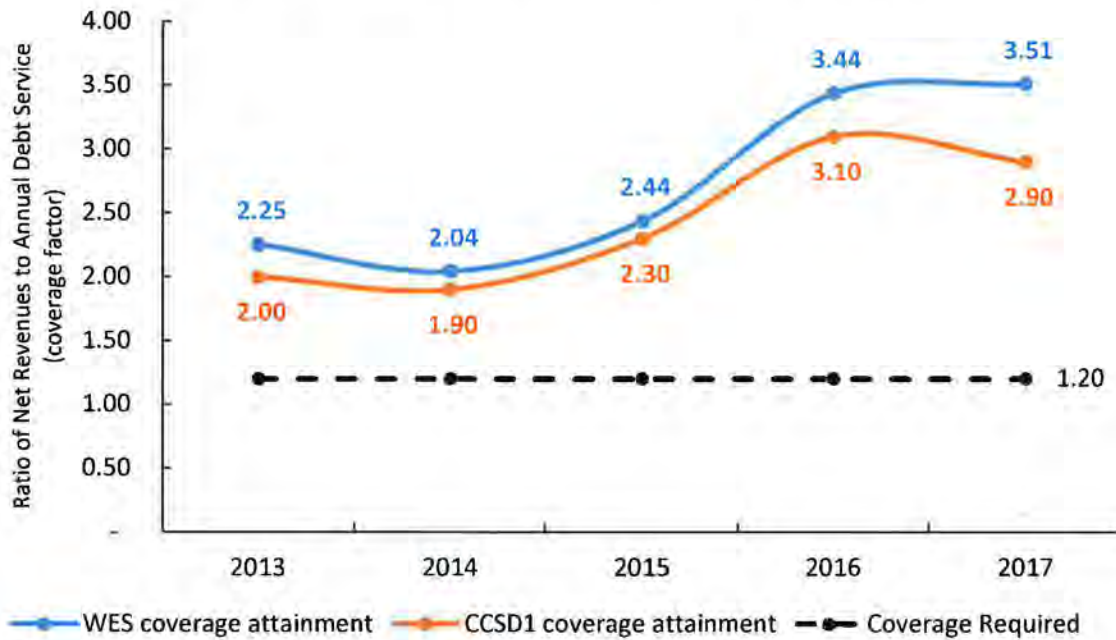
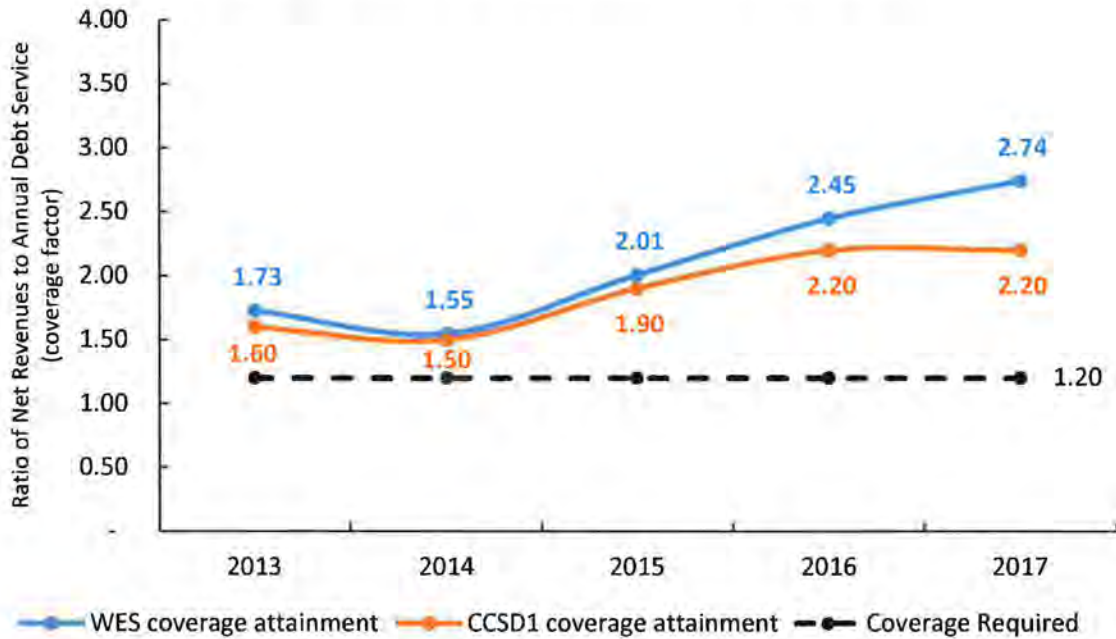


Figure 1 clearly shows over the past five years the Net Revenue Covenant has been met by CCSD#1 as the issuer of the bonds, and by WES if they were the issuer of the bonds. From the owners' perspective, Figure 1 also shows WES producing superior results in each year of the five-year historical period. For example, in fiscal 2016-17, for every dollar of debt service due, WES covered that dollar with \$3.51 of Net Revenues (i.e., coverage factor). In that same year, CCSD#1 covered that dollar of debt service with \$2.90 of Net Revenues. This indicates to us, from a historical perspective, the owners of the bonds would be better served having WES as the issuer of the bonds versus the current condition of CCSD#1 being the issuer.

The data that created Figure 1 is based on a strict reading of the Net Revenue Covenant. To delve deeper into the analysis, we recalculated the historical coverage attainment by excluding system development charges (SDCs) from the calculations. Even though the Master Declaration explicitly allows SDCs to be included as Gross Revenues of the Sewer System, we wanted to see the impact the exclusion of these revenues would have on coverage attainment with CCSD#1 and WES as issuers of the bonds. SDC receipts are not as predictable a revenue sources as rate revenues. For this reason, we felt it prudent to rerun the coverage calculations with SDCs excluded. The results of that recalculation are shown below in Figure 2.



Figure 2 - Historical Net Revenue Covenant Compliance with SDC Excluded



Even with SDCs excluded from the calculations, both CCSD#1 and WES (as issuers of the bonds) produce coverage more than the Net Revenue Covenant requirement. And, as in the case of the coverage attainments shown in Figure 1, the historical WES results are superior to the CCSD#1 results in every year of the five-year historical period.

Based on our analysis of five years of historical financial data for the WES Partners, we conclude the owners of the bonds, from a historical perspective, are not materially adversely affected by management’s proposal to amend the Master Declaration to define WES as the issuer of the bonds and to expand the definition of the Sewer System to include all of the comingled assets of the WES partnership.

## ***WES and CCSD#1 Pro Forma Analysis***

WES has formulated a five-year business plan that incorporates forecasted growth in the combined customer base, a capital improvement funding plan, and projected trends in operations and maintenance costs. The purpose of the plan is to solve for rates and charges that will be required to fully fund the planning assumptions that are incorporated in the plan. We have analyzed this business plan to determine if the substitution of WES for CCSD#1 will materially and adversely affect the rights of the owners of the Outstanding Bonds.

As in the case of the historical analysis, our lens for evaluating impacts on the owners of the bonds is the Net Revenue Covenant. In addition to evaluating the "base line" five-year plan, we have developed three (3) sensitivity cases to further test WES planning assumptions relative to impacts on the owners of the bonds. A description of the baseline and sensitivity cases are as follows:

- *The baseline case* – This case strips out the future capital improvement plans for WES and CCSD#1 and only incorporates forecasted growth in the customer base, and operations and maintenance expenses for both scenarios. No new senior or subordinate lien borrowings are added to the forecast. This baseline case is a forecast of the status quo without injecting the noise of future capital funding strategies.
- *The pooled resources sensitivity case* – This case models the WES partnership strategy in that all the Partners pool their resources to achieve economies of scale in the delivery of wastewater treatment services. The Capital improvement plan that is incorporated in this case assumes the collocation of future treatment capacity increments to the maximum extent possible along with other capital improvements that will be required over the five-year forecast horizon (i.e., collection system improvements, machinery, and equipment). This case also assumes that cash reserves of the Partners are deployed to "buy down" future borrowing needs to the extent there is matching cash contributions from both CCSD#1 and TCSD. (A more detailed discussion of how each Partner's cash reserves are contributed over time is the body of this analysis). The coverage factors that are achieved in this case are then compared to the coverage attainment of CCSD#1 if it was not part of the WES partnership.
- *The CCSD#1 premium payment sensitivity case* – This case compares the WES pooled resources model to an independent CCSD#1 model but adds a caveat. Under the WES pooled strategy, all the Partners work cooperatively to achieve financial and operational efficiencies. In the independent CCSD#1 model, we still assume the parties will collocate critical wastewater treatment infrastructure, but, because there is no formal partnership agreement, CCSD#1 will be required to pay a fee to TCSD for hosting the collocated assets within its service area. This has happened in the past when the last increment of liquids handling infrastructure was collocated in the TCSD service area (i.e., at the Tri-City wastewater treatment plant). At that time, CCSD#1 paid a host fee of \$4m to TCSD. In this case, we have assumed that upon completion of the collocated solids handling capacity improvements at the Tri-City plant in 2021, CCSD#1 will pay TCSD an additional premium of 15% of the cost of CCSD#1 assets that will be collocated in the TCSD service area. Based on the current capital plan, CCSD#1 is expected to invest \$29.3m (expressed in 2018 dollars) at the Tri-City wastewater treatment plant through fiscal 2021-22, principally in the expanded joint solids handling project. At a premium rate of 15%, the total hosting premium paid to TCSD by CCSD#1 amounts to \$4.4m. The coverage factors that are achieved in this case are then compared to the coverage attainment of WES under the pooled resources case.
- *The go alone sensitivity case* – This case assumes the WES partnership does not exist. All the current Partners go their separate ways and fund their future capital and operating requirements

independently. It also assumes there will be no more collocation of wastewater treatment facilities. In this case, CCSD#1 will have to expand the Kellogg wastewater treatment plant (the "Kellogg Plant") to meet all the projected future wastewater flows of the District. Placed in operation in 1974, the facility is a secondary treatment plant that serves 77,800 people in unincorporated Clackamas County, Milwaukie, and Johnson City. The Kellogg Plant is located on the banks of the Willamette River inside the city limits of Milwaukie.

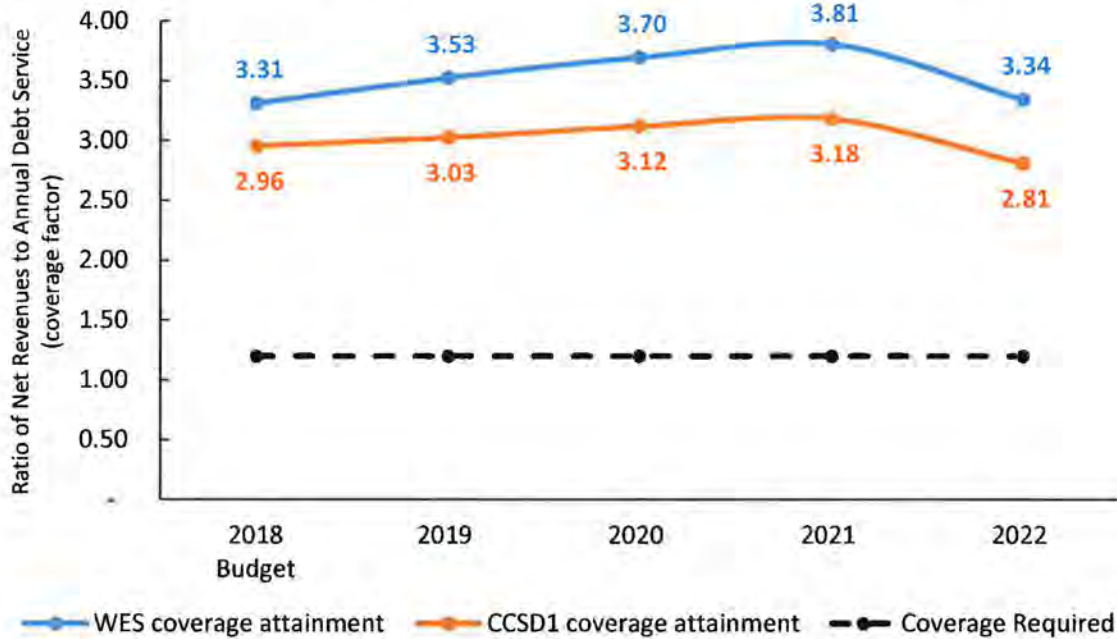
CCSD#1 Wastewater flows that are currently diverted to the Tri-City Resource Recovery Facility (the "TCSD-City Plant") under contract with the TCSD would continue to flow to that facility through the duration of the contract (i.e., December 21, 2030). This facility was originally placed in service in 1986. On December 18, 2008, CCSD#1 entered into a new IGA with TCSD (the "Phase I Agreement") that replaced a prior interim diversion agreement. The Phase I Agreement incorporated the operational terms of the prior diversion agreement for such things as the rental of capacity, and further provided for the leasing of ground and a capital return on investment ("ROI") for the connection of wastewater treatment capital assets to existing TCSD-City Plant infrastructure. It also laid out the terms for the sharing of O&M expenses, and cooperation on financial matters such as the calculation of system development charges. The TCSD-City Plant now serves a total population of 98,000, 72,000 TCSD; and 26,000 CCSD#1. TCSD-City Plant is located on the banks of the Willamette River inside the City limits of Oregon City.

This scenario has been modeled in the past, and the engineering estimate of the costs to expand the Kellogg Plant to treat the future flows of CCSD#1 was \$155m. It was also assumed it would take five (5) years to complete the retrofit and expansion of the Kellogg Plant. These capital costs would be in addition to the other capital costs that would have been budgeted for the District over the five-year forecast. For sake of comparison, the coverage factors that are achieved in this case are compared to the coverage attainment of WES under the pooled resources case. Note, we recognize the go alone sensitivity case explicitly assumes the dissolution of WES, but we felt some frame of reference would be helpful to the reader.

### ***The Baseline Case Results***

As discussed above, the baseline case models the status quo moving forward. This would be a moot case because it assumes neither WES nor CCSD#1 would be investing in their respective wastewater collection and treatment systems over the next five years. However, we do find the results of this case compelling because it projects the recent actual coverage attainment of both entities, and, ceteris paribus, projects the trend of recent coverage attainment experience. Figures 3 and 4 contain the forecasted coverage attainment of WES and CCSD#1 under the baseline case (with and without SDCs, respectively).

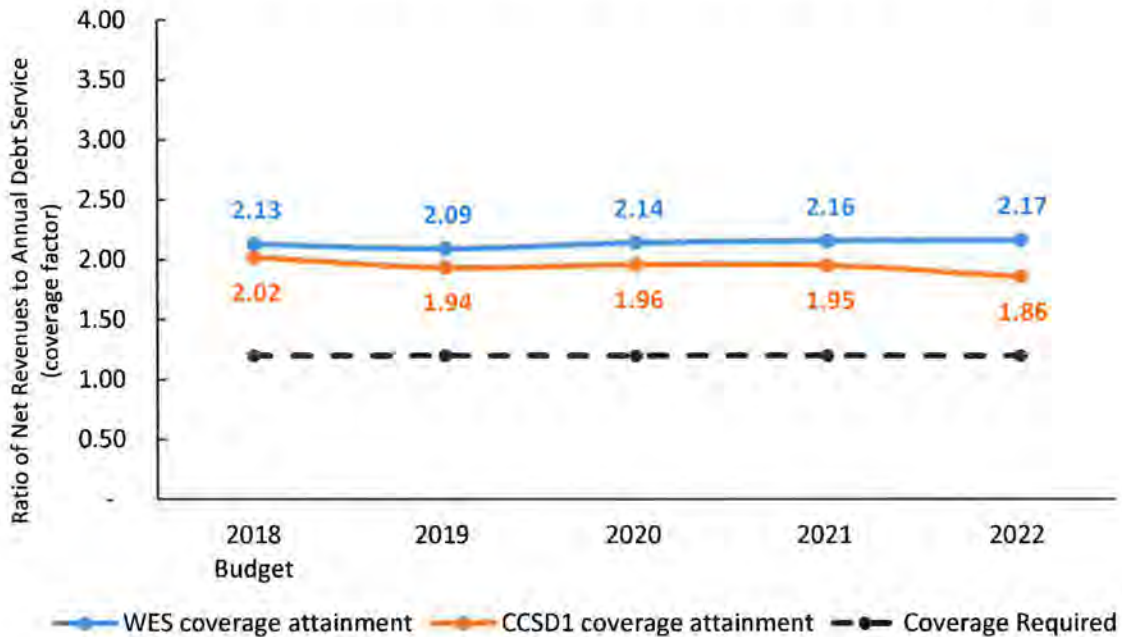
Figure 3 – Projected Net Revenue Covenant Compliance under the Baseline Case including SDCs



The data in Figure 3 shows steady growth in coverage attainment for both WES and CCSD#1 until 2022 when the current population growth spurt in the region is expected to abate and SDC receipts drop. It also shows the continuation of the superior coverage attainment of WES vs. CCSD#1 on its own over the entire five-year forecast horizon.



Figure 4 – Projected Net Revenue Covenant Compliance with SDCs Excluded under the Baseline Case



The data in Figure 4 strips out the benefit of SDCs and charts out the coverage attainment of WES and CCSD#1 based on the growth in rate revenues, the most predictable future revenue sources for both entities. As the data shows for the baseline case, WES coverage attainment is superior to that of CCSD#1 and is effectively steady from year to year over the forecast. Conversely, CCSD#1 coverage attainment is expected to degrade slightly by the end of the forecast as growth abates. WES produces superior coverage results because it has a larger rate base to absorb anticipated future inflation-based cost increases.

**The Pooled Resources Case Results**

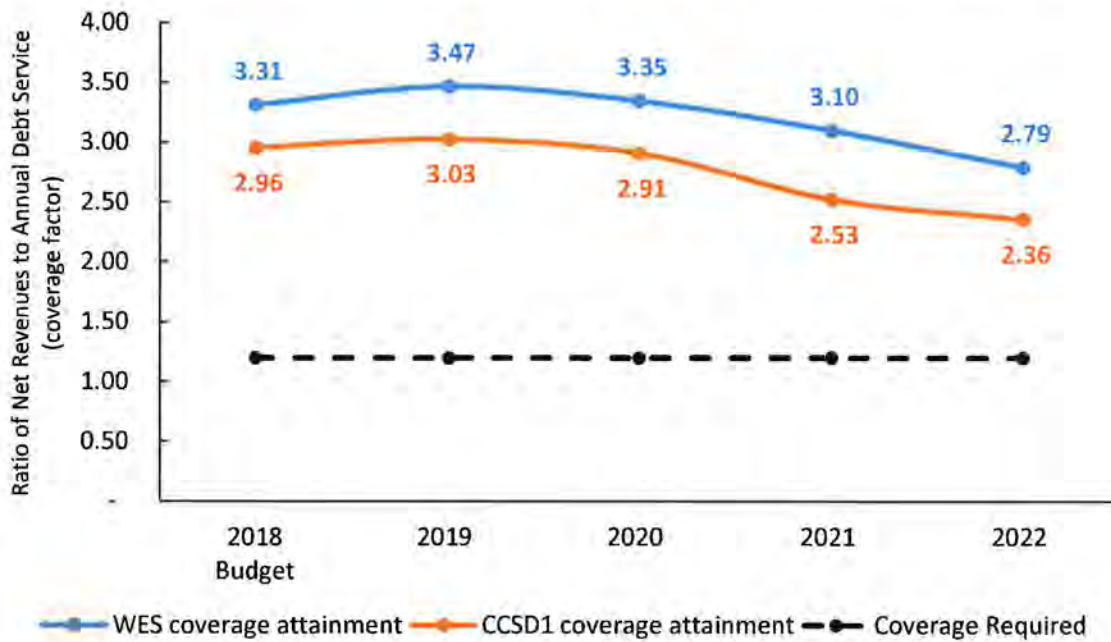
The pooled resources case embodies the regionalization service delivery strategy. Under this strategy, heretofore separate service districts combine forces to share risk. This allows for flow management and balancing between the Partners’ systems to better ensure compliance with regulatory requirements and to allow equipment to go offline for routine maintenance. The desire to move to this regional service delivery model was the primary reason for the creation of WES.

Over the next five years (i.e., fiscal 2017-18 through fiscal 2021-22) capital improvement investments are expected to be substantial for CCSD#1 if it were to not join WES, and for WES in the pooled resources strategy. For CCSD#1 on a go alone basis, the inflated costs of needed capital improvements are approximately \$139.3 million. For WES as a partnership, the inflated costs of needed capital improvements are approximately \$174.1 million. In either case, cash reserves and free cash flows will not be sufficient to fund these projected capital improvement costs. Our modeling indicates new senior lien borrowings will have to be issued by CCSD#1 (on its own), and by WES (under the pooled resources case). Our pooled resources case models this strategy over time and assumes reserves of the Partners are deployed to “buy down” future borrowing needs to the extent there is matching cash contributions from both CCSD#1 and TCSD. To put this parity of cash contributions into perspective, as of July 1, 2018, we estimate CCSD#1 had total cash reserves of \$52.0m while TCSD had cash reserves of \$13.2m. To avoid the appearance of CCSD#1 subsidizing TCSD’s capital cost responsibilities, we have assumed that existing cash will be used to buy down borrowing needs only to the extent there is matching contributions from

both CCSD#1 and TCSD (i.e., an initial cap of the \$26.4m, or \$13.2m each). CCSD#1 cash reserves more than this cap are retained for future rate zone 2 capital project funding support until they are exhausted.

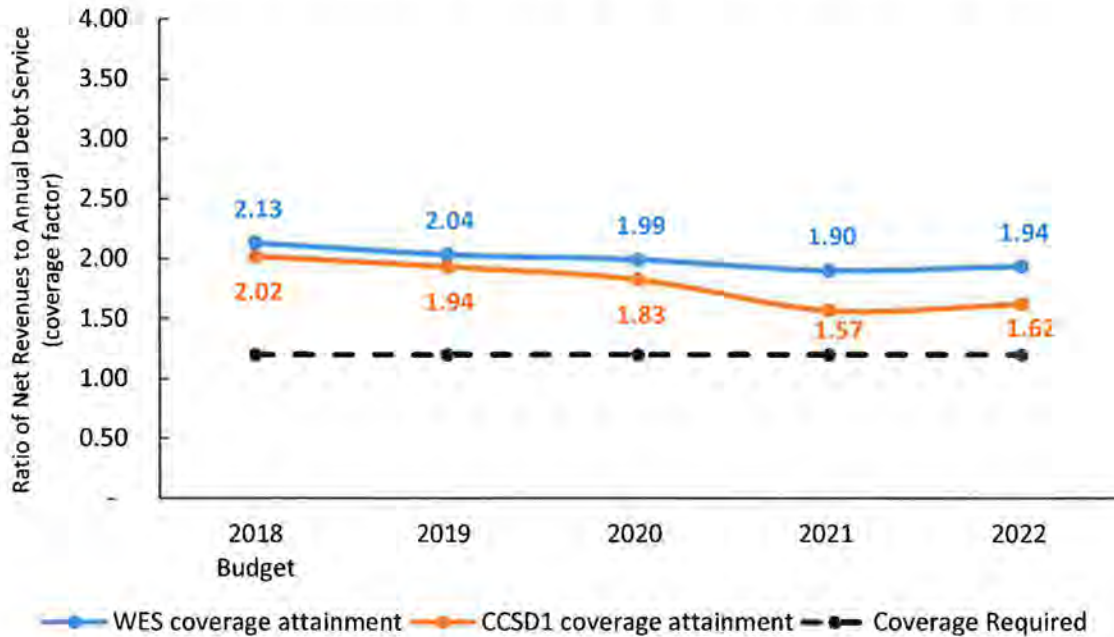
The forecasted coverage attainment of WES and CCSD#1 under the pooled resources case (with and without SDCs, respectively) is shown below in Figures 5 and 6.

Figure 5 – Projected Net Revenue Covenant Compliance under the Pooled Resources Case including SDCs



The pooled resources case (with the benefit of SDCs) produces coverage attainment for WES and CCSD#1 that is less than the coverage attainment shown in the baseline case, and that makes sense. In the pooled resources case, we have now introduced the funding strategy for the five-year capital improvement plans for WES and CCSD#1 respectively. The funding of these capital plans necessitates the issuance of new long-term borrowings in future years which is a drag on coverage attainment. What we see in Figure 5 is the relative advantage WES has in producing superior coverage vs. CCSD#1 on a stand-alone basis in every year of the forecast.

Figure 6 – Projected Net Revenue Covenant Compliance with SDCs Excluded under the Pooled Resources Case



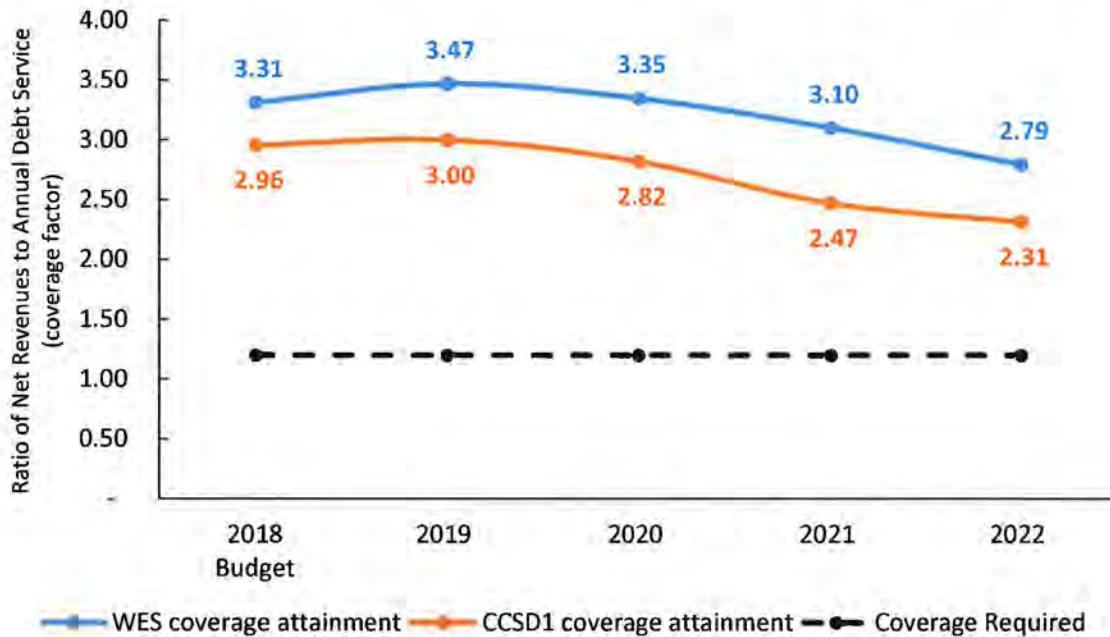
The data in Figure 6 clearly shows the WES economies of scale advantage over CCSD#1 when we strip out the benefit of SDCs in the coverage calculation. When SDCs are stripped out and each entity must embark on the funding of future capital improvements, WES produces a stable coverage attainment trend while CCSD#1's coverage attainment trend is eroding over time, but still above the minimum net revenue covenant threshold of 1.20.

**The CCSD#1 Premium Payment Case Results**

This case compares the WES pooled resources model to an independent CCSD#1 model but adds the caveat of CCSD#1 paying a premium to TCSD for hosting collocated facilities in the TCSD service area. As discussed earlier, CCSD#1 is expected to invest \$29.3m at the Tri-City wastewater treatment plant through fiscal 2021-22, principally in the expanded joint solids handling project. At a premium rate of 15%, the total hosting premium paid to TCSD by CCSD#1 amounts to \$4.4m. The coverage factors that are achieved in this case are then compared to the coverage attainment of WES under the pooled resources case. The forecasted coverage attainment of WES and CCSD#1 under the CCSD#1 premium payment case (with and without SDCs, respectively) is shown below in Figures 7 and 8.



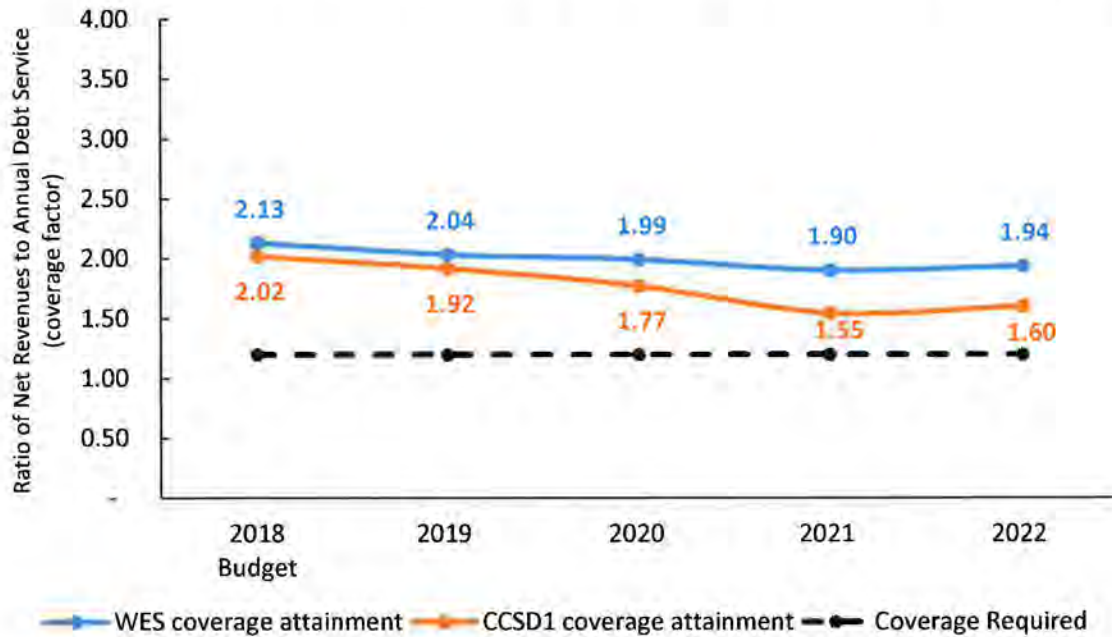
Figure 7 – Projected Net Revenue Covenant Compliance under the CCSD#1 Premium Payment Case including SDCs



In this case, the WES coverage attainment line shown in Figure 7 above is identical to the WES coverage attainment line for the pooled resources case (i.e. Figure 5). The CCSD#1 coverage attainment for this case is degraded vs. the CCSD#1 coverage attainment in the pooled resources case (i.e. the orange line shown in Figure 5) because of the premium CCSD#1 must pay to TCSD for the hosting of collocated facilities in the Tri-City service area. Under the WES pooled strategy, no such premium would be paid.



Figure 8 – Projected Net Revenue Covenant Compliance with SDCs Excluded under the CCSD#1 Premium Payment Case



The data in Figure 8 is very similar to the data shown in Figure 6. Once again, Figure 8 clearly shows the WES economies of scale advantage over CCSD#1 when we strip out the benefit of SDCs in the coverage calculation. When SDCs are stripped out and each entity has to embark on the funding of future capital improvements, WES produces a stable coverage attainment trend while CCSD#1's coverage attainment trend is eroding over time, even more so in this case because CCSD#1 standing alone is also burdened with the responsibility of paying a premium to TCSD for hosting collocated facilities in the Tri-City service area.

**The Go Alone Case Results**

This is the most troubling case to model and will produce the most adverse impacts on CCSD#1 ratepayers and the owners of the CCSD#1 bonds. In this case, we assume the WES partnership does not exist, and future growth related CCSD#1 wastewater flows are diverted from the TCSD-City Plant. All future CCSD#1 treatment capacity is built at the Kellogg Plant and will require an entirely new, and insular service delivery model going forward.

This scenario was modeled in 2015 for the Regional Advisory Committee. The engineering estimate of the costs to expand the Kellogg Plant to treat the future flows of CCSD#1 was \$155m at that time. It was also assumed that the Kellogg Plant would continue to operate during the expansion which was estimated to take five years to complete. The expansion consisted of retrofit and expansion of primary clarifiers, the addition of two and possibly more secondary clarifiers and anaerobic digesters, and a completely new biosolids handling, storage, and disposal system. These capital costs were in addition to the other capital costs that had been budgeted for CCSD#1 over that five-year forecast.

Even though future CCSD#1 flows were assumed to be diverted away from the TCSD-City Plant, there was still a need to expand that plant to add secondary digester capacity. In 2015, this cost was estimated to be \$41.5m, and all this incremental cost would have to be funded from TCSD ratepayers. These capital

costs were in addition to the other capital costs that had been budgeted for TCSD over that five-year forecast.

On October 8, 2015, the financial modeling results of this go alone scenario were presented to the Regional Advisory Committee. Itemized below are the forecasted capital costs and estimated funding requirements to each District if the go alone strategy was undertaken:<sup>1</sup>

	Tri-City	CCSD No. 1	Total
<b><i>Each district moves forward alone</i></b>			
5 year CIP inflated	\$ 54,524,626	\$ 212,306,411	\$ 266,831,037
SDCs in support of construction	(4,134,271)	(23,441,773)	(27,576,044)
Fund balance in support of construction	<u>(4,677,631)</u>	<u>(12,963,564)</u>	<u>(17,641,195)</u>
Net capital financing requirement	<u>\$ 45,712,724</u>	<u>\$ 175,901,075</u>	<u>\$ 221,613,799</u>
Gross borrowings	\$ 50,717,492	\$ 193,697,230	\$ 244,414,722
Issuance cost (legal, underwriting, etc.)	(760,762)	(2,905,458)	(3,666,221)
Debt service reserve requirement	<u>(4,244,006)</u>	<u>(14,890,696)</u>	<u>(19,134,702)</u>
Net bond proceeds available for projects	<u>\$ 45,712,724</u>	<u>\$ 175,901,075</u>	<u>\$ 221,613,799</u>
New annual debt service by June 30, 2020	\$ 4,244,006	\$ 14,890,696	\$ 19,134,702
Current fiscal year debt service (2015-16)	\$ 56,193	\$ 7,721,325	\$ 7,777,518

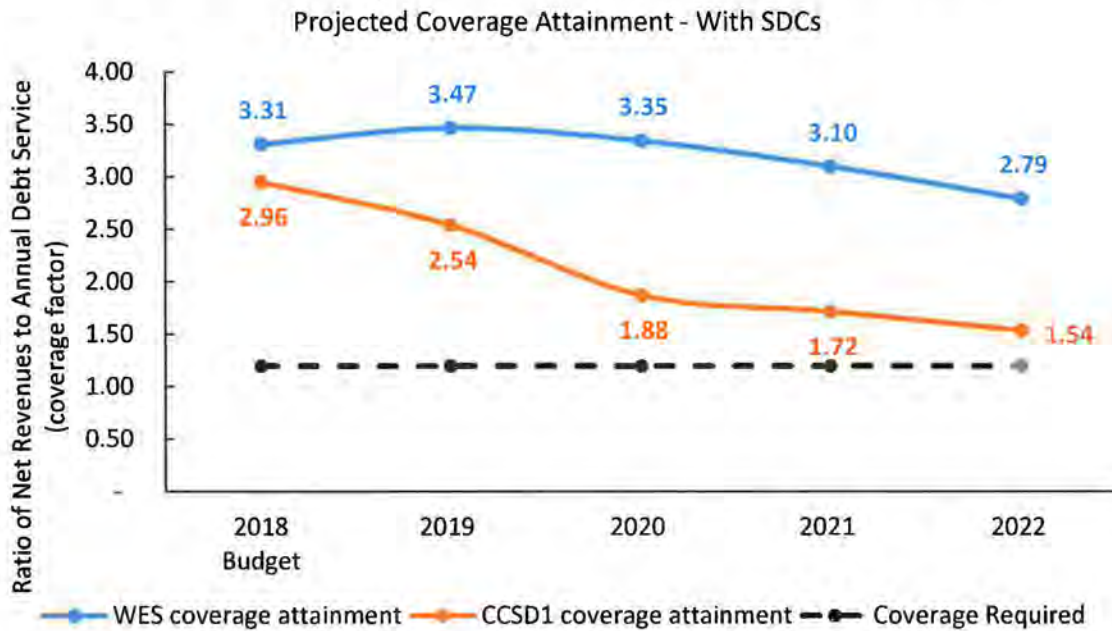
Due to the magnitude of the costs and resulting future borrowing needs for each service district, this go alone strategy was rejected for further consideration by the Regional Advisory Committee.

For this analysis, we have resurrected the go alone case for theoretical comparison purposes. This required the modeling of a new CCSD#1-specific five-year capital improvement plan that will be very expensive and require substantial new CCSD#1 borrowing that will degrade future coverage attainment and greatly exacerbate future rate increases.

We have completed the resurrected modeling of this case, and the coverage attainment results are shown in Figures 9 and 10.

<sup>1</sup> Please note, the data shown below was prepared in 2015 and contained estimated SDCs and fund balance in support of construction estimates at that time. In the Pooled Resources case description, we used SDC and fund balance data that was estimated as of July 1, 2017. The two data sets are different.

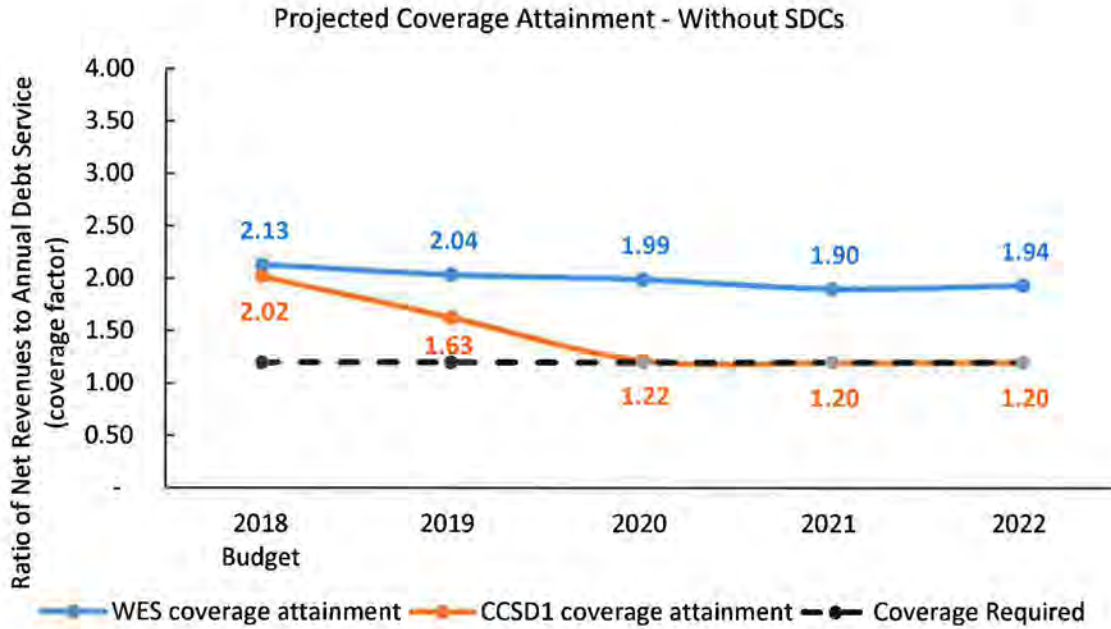
Figure 9 – Projected Net Revenue Covenant Compliance under the Go Alone Case including SDCs



The CCSD#1 coverage attainment data shown in Figure 9, even with the benefit of SDCs to bolster the calculations, paints a picture of rapid and sustained coverage degradation. Also, to achieve this degradation of coverage attainment, the Board would have to approve annual general wastewater rate increases of ~19% per year over the five-year forecast.

For sake of comparison, the coverage factors that are achieved in this case for CCSD#1 are compared to the coverage attainment of WES under the pooled resources case. We recognize the go alone sensitivity case explicitly assumes the dissolution of WES, but we felt some frame of reference would be helpful to you the reader.

Figure 10 – Projected Net Revenue Covenant Compliance with SDCs Excluded under the Go Alone Case



The Go Alone case reduces coverage attainment when SDCs are stripped out of the coverage calculations. As the data in Figure 10 shows, by as early as Fiscal 2019-20, coverage attainment dips down to the 1.20 attainment reference line. Keep in mind, these CCSD#1 coverage attainment values assume annual general rate increases of ~19% per year



### ***Study Conclusions and Recommendations to the Board***

We have analyzed historical financial results for the Partners that comprise WES. We have also analyzed the five-year pro forma business plan WES has produced, along with three (3) sensitivity cases against the plan. In all cases, we find if WES were the issuer of the bonds, the owners of the bonds will not be materially adversely affected in terms of WES' ability to repay the historical and projected annual debt service on the bonds. As we have pointed out in our analysis, we believe the regional WES service delivery model will add financial strength to the bond owners' interests versus having CCSD#1 stand alone and be the issuer of the bonds. Therefore, we conclude that in our reasonable judgment the amendment does not materially and adversely affect the rights of the owners of the Outstanding Bonds.

We recommend the Board of County Commissioners adopt the proposed amended Master Bond Declaration to define WES as the issuer of the bonds and to expand the definition of the Sewer System to include all the comingled assets of the WES partnership that was formed on November 3, 2016 and expanded on May 18, 2017.

It has been our privilege to serve you and the customers of WES. If you have any questions concerning the content of this report or the analyses that were developed to support its content, please do not hesitate to contact us at your earliest convenience.

Very truly yours,

A handwritten signature in black ink that reads "Steven J. Donovan". The signature is written in a cursive, flowing style.

Steven J. Donovan  
President

**Findings of the Board  
Regarding the Substitution of Water Environment Services  
For CCSD#1 on Currently Outstanding CCSD#1 Borrowings**

**INTRODUCTION & SUMMARY OF DETERMINATIONS**

This document is approved by the Board of County Commissioners (“Board”) as the governing body of Clackamas County Service District No. 1 (“CCSD#1”) to summarize and present for clarity the facts, and determinations made by the Board in connection with the Board’s approval of an Amended Master Sewer Revenue Bond Declaration dated as of May 24, 2018 (the “Amended Declaration”). The Amended Declaration amends CCSD#1’s Master Sewer Revenue Bond Declaration dated as of August 30, 2016 (the “Master Declaration”).

CCSD#1 has issued bonds (the “Outstanding Bonds”) under the Master Declaration, which forms a contract with the owners of the Outstanding Bonds and describes their rights. The Board of CCSD#1 is permitted by Section 13.1.7 of the Master Declaration to amend the Master Declaration without the consent of the owners of the Outstanding Bonds “[t]o make any change which, in the reasonable judgment of the District, does not materially and adversely affect the rights of the owners of any Outstanding Bonds.”

Similarly, Section 20.1.2.13 of the Master Declaration allows amendment of the Master Declaration by the Board without consent unless such change would be “...in a manner that could adversely materially affect the payment obligations of the District” to the 2016 Bonds Reserve Credit Provider under Section 20 of the Master Declaration or “the priority accorded to the reimbursement of Policy Costs” to the 2016 Bonds Reserve Credit Provider.

The Amended Declaration substitutes Water Environment Services, a municipal partnership (“WES”) formed jointly by CCSD#1, the Tri-City Service District (“TCSD”), and the Surface Water Management Agency of Clackamas County (“SWMACC”) for CCSD#1 and makes related changes to implement that substitution. The Amended Declaration does not make any other changes to the rights of the owners of the Outstanding Bonds.

The Board of CCSD#1 expects that substituting WES for CCSD#1 as issuer of the Outstanding Bonds will improve the financial performance and operating efficiency, reduce the capital needs, and improve the regulatory management of the issuer, as discussed in more detail below. Because the only changes to the Master Declaration relate to substituting WES for CCSD#1, the Board of CCSD#1 reasonably judges that adoption of the Amended Declaration will not materially and adversely affect the rights of any owners of Outstanding Bonds or the Reserve Credit Provider.

CCSD#1 also provided information about the substitution to Standard and Poor's Corporation, the rating agency which rated the Outstanding Bonds. Standard and Poor's conducted a scenario analysis and presented an indicative rating conclusion that having WES hold the debt rather than CCSD#1 alone was a material positive event. As a result of Standard and Poor's review, they have issued a positive credit watch for the Outstanding Bonds which indicates that, if fully implemented as presented, the Outstanding Bonds' rating would likely be upgraded from their current AA+/Stable to AAA/Stable.

CCSD#1 is also obligated to file a notice of adoption of the Amended Declaration on EMMA, the securities disclosure website maintained by the Municipal Securities Rulemaking Board. Notices filed on EMMA are used in connection with secondary market trading of the Outstanding Bonds. Traders in the secondary market are broadly concerned about the effects of amendments to bond documents, and not concerned just about changes to the rights of bond owners.

Although not required for the adoption of the Amended Declaration, to fulfill its obligation under the securities laws not to make any untrue statement of a material fact and not to omit to state a material fact when CCSD#1 files the notice of amendment on EMMA, the Board has considered additional information relating to the general effect of the amendments on the Outstanding Bonds. This additional information consists of the type of information that is normally provided to investors when bonds are issued.

The additional information is summarized below in the "ADDITIONAL INFORMATION" section of this document. After considering the expected effects of substitution of WES for CCSD#1 and the information summarized in this document, the Board of CCSD#1 reasonably judges that adoption of the Amended Declaration will not materially and adversely affect the owners of any Outstanding Bonds.

CCSD#1 also entered into one State Revolving Fund Loan Agreement that is a Subordinate Obligations under the Master Declaration. CCSD#1 has received consent from the State to substitute WES for CCSD#1 as the issuer of those Loan Agreements.

The Board's determinations, and the factual support for them, are specified in greater detail below.

## **I. OVERVIEW**

WES is an intergovernmental partnership formed under Oregon Revised Statutes ("ORS") Chapter 190 through an Intergovernmental Agreement dated November 6, 2016 ("IGA"), under the direction of the Board, as the governing body of three county service districts: CCSD#1, TCSD, and SWMACC. The three county services districts together comprise the new legal entity known as WES and are referred to herein as "Partners." All three Partners were formed by, and

are governed by, the Board of County Commissioners. All three Partners continue to exist after formation of WES. The Partners' jurisdictional boundaries, as may change from time to time, define the area comprising WES.

The IGA is the master document describing the powers and limitations of WES. It was approved by an ordinance adopted by each Partner, and cannot be amended except in accordance with its terms. The IGA as amended is attached to this document as Appendix A.

The IGA contemplated the contribution of all assets, borrowings and operations of each of the Partners into the new WES legal entity. In essence, WES becomes an operating company while each of the three Partners, as continuing legal entities, will be shells with no budgets or assets, but defined boundaries. The IGA calls for each of the Partners to contribute their assets over a transition period with a target completion date of July 1, 2018. Both SWMACC and TCSD have already completed their contribution of assets. CCSD#1 is in the process of doing the same, and the transfer of the Outstanding Bonds contemplated by this document is a key component of that implementation.

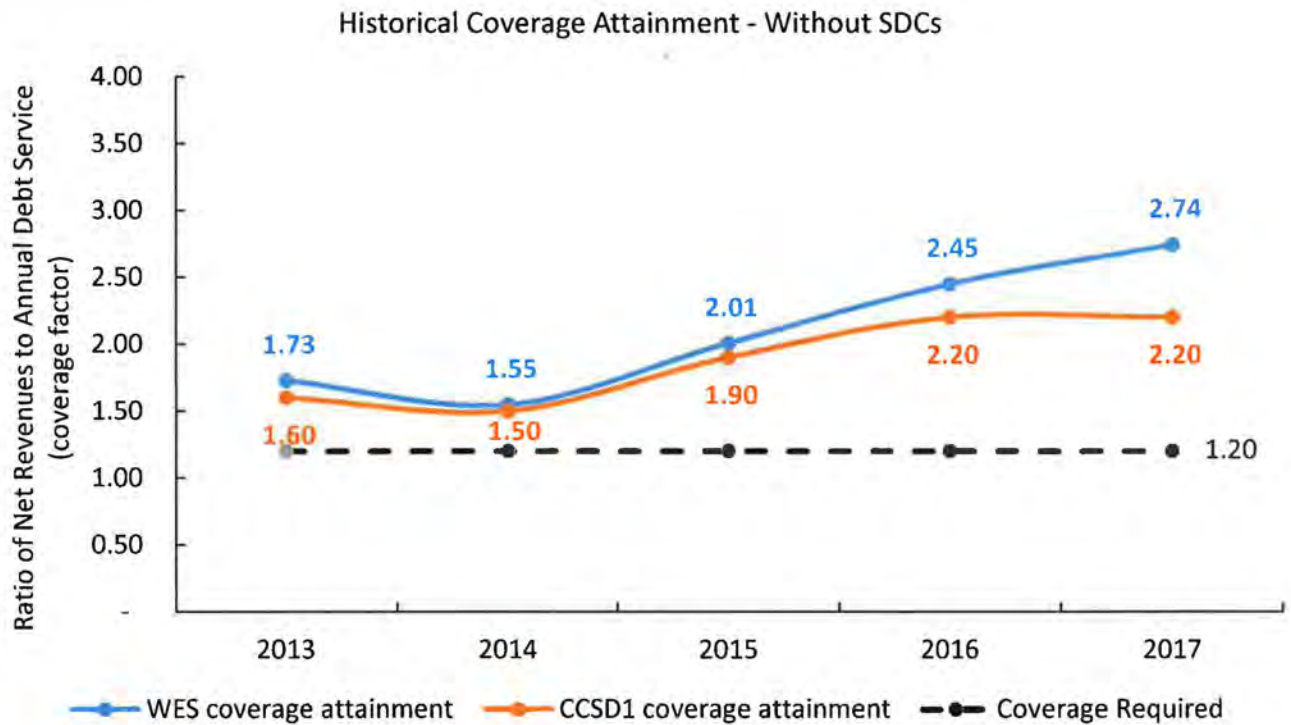
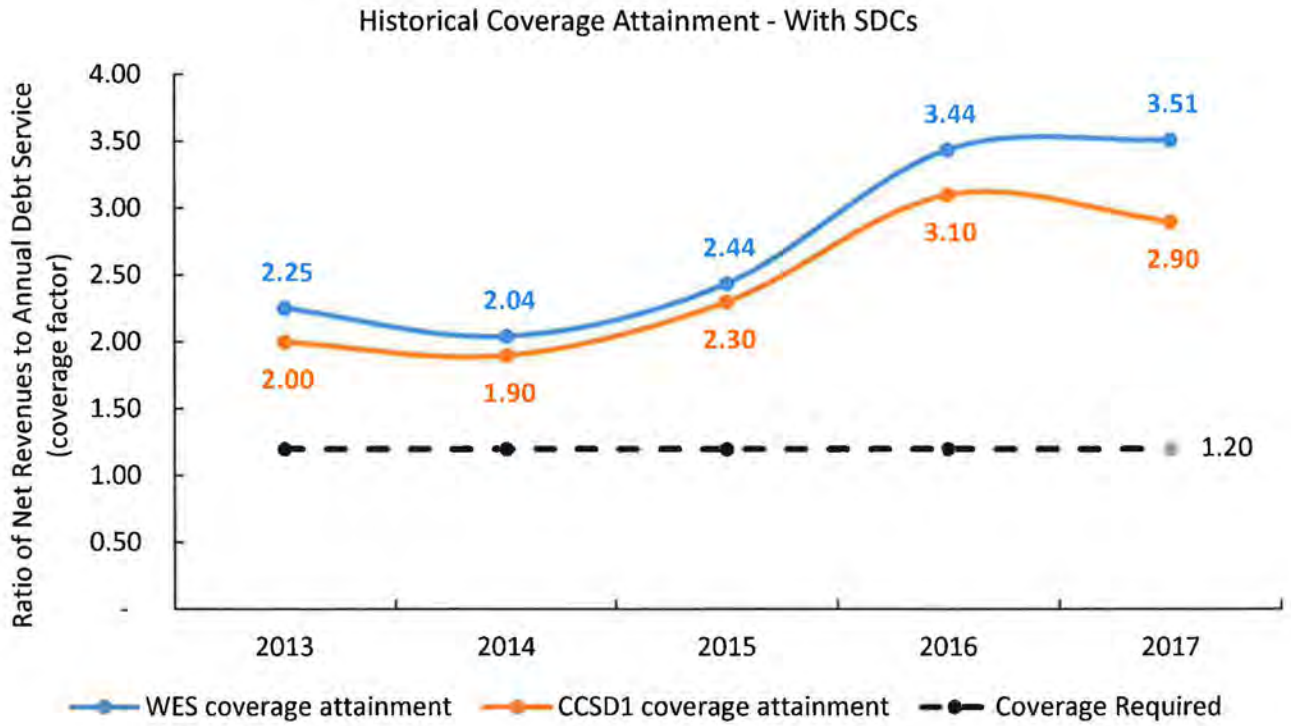
After lengthy study, the Board concluded that services could be delivered by WES more efficiently than by the three Partners operating separately. The major benefits of the partnership are found in financial performance, regulatory management, and capital expenditures related to regulatory, asset replacement, and growth needs. This was consistent with historical performance and discussions amongst its stakeholders for a period of over two decades.

#### Financial Performance.

Enhanced financial performance of WES compared to CCSD#1 only is best demonstrated through an examination of the partnership's enhanced ability to pay for all outstanding obligations. At the time of formation, CCSD#1 was the only Partner with outstanding long-term borrowings and was in full compliance with all applicable covenants in its borrowing documents. TCSD has no outstanding debt and as of June 30, 2017 generated \$2,461,069 of operating income before depreciation. SWMACC too has no outstanding borrowings and as of June 30, 2017 generated \$62,257 of operating income before depreciation. When combined, the partnership presents an enhanced ability to comply with all existing bond covenants for the Outstanding Bonds. Combining CCSD#1 into WES and transferring the obligations of the Master Declaration from CCSD#1 to WES are not materially adverse to the rights of the CCSD#1 Bondowners. This is summarized in the following graphs:



## Historical Coverage Attainment



The Board, in seeking to determine whether the substitution of WES for CCSD#1 under the proposed Amended Declaration does or does not materially and adversely affect the rights of the owners of any Outstanding Bonds, had to construct hypothetical scenarios. The formation of WES removed the uncertainty that CCSD#1 and TCSD were experiencing under prior practice of an ad hoc approach to investment, and separateness from a regulatory perspective. To appropriately determine the impact of the substitution of WES for CCSD#1, the Board necessarily had to consider scenarios for comparison purposes. These scenarios are incorporated in the report by Donovan Enterprises, Inc. as attached to the Order Adopting Findings to which these Findings are an Exhibit (the "Order") as Exhibit B thereof and are relied upon hereby in the conclusion made.

There were four cases reviewed as informative in making a determination. In the baseline case, the variables of allocating capital projects to each district is removed and it simply compares CCSD#1 and WES from an operating perspective. The remaining three cases are theoretical comparisons of CCSD#1 and WES based on prior possible outcomes. The first theoretical case is the "pooled resources" case which modeled an approach where CCSD#1 and TCSD each agree to participate in WES' capital needs to an equal amount, without any requirement of any payment or premium by CCSD#1 for co-location of investment on TCSD-owned assets. It then compares it to CCSD#1 having to pursue a similar level of investment on its' own. The second scenario considered where CCSD#1 would have to pay a premium of \$4.4 million for access to TCSD assets, modeled on a 15% premium presumption and similar to the premium paid by CCSD#1 in its agreement in 2009. The third theoretical scenario, the "CCSD#1 go alone" case, examined high level engineering studies conducted for policy review purposes on what it would mean for the two districts to not co-invest at all but each operate and invest separately. This resulted in significantly higher capital expenses for both CCSD#1 and TCSD and was one of the major reasons why the Board agreed to pursue the formation of WES. It is included here as an illustration of the reliance and benefit to CCSD#1 (and TCSD) in the closest possible integration as represented by the WES partnership. This is discussed in greater detail below.

#### Regulatory Management.

Enhanced regulatory management will be derived through combining existing, separate Clean Water Act permits under a watershed permit. A watershed permit allows multiple points of discharge to be considered under one single permit limit for them all. For example, under the prior separate district arrangement, there was a limitation on discharge of total suspended solids at both the Kellogg Creek Resource Recovery Facility and the Tri-City Resource Recovery Facility. Kellogg Creek was owned by CCSD#1, and Tri-City by TCSD. If there was an exceedance at any one point, it could result in a fine under the Clean Water Act. So long as the treatment works were owned by different entities, the measurement of compliance was at each discharge point as required by the law.

However, once both Kellogg Creek and Tri-City are owned by WES, this creates the possibility of one single permit held by WES that covers both plants, which is called a watershed permit. The limitations for discharge are not calculated per discharge point, but the sum of the total discharge allowed from both facilities. Then, to continue the hypothetical, if there is an exceedance at Tri-City but Kellogg was discharging far enough below the limit to allow the sum total to be below the watershed permit limit, there is no violation of the Clean Water Act since the total discharged into the receiving waters is below the limit.

Combined permits will create significant efficiencies in meeting discharge limitations by allowing compliance across the broader watershed. It will allow WES to target investments not on a per-site requirement but watershed perspective, which will help to avoid unnecessary investment in required redundancy through a collective approach to meet required thresholds rather than meeting them at each individual facility. This is discussed in greater detail below.

### Capital Expenditures.

A similar approach will provide benefits in capital expenditures. Capital needs to meet regulatory requirements can be focused on our newest technologies to develop a combined approach, rather than each Partner trying to meet increasingly restrictive discharge limitations on their own. CCSD#1 and TCSD both have aging infrastructure requiring replacement. Optimizing the reinvestment strategy across a regional system will allow for optimized investment and will reflect existing practices of shared maintenance and engineering staff. Growth related expenditures will benefit from constructing joint facilities (including solids handling and liquids handling) rather than separate, independent, and expensive sets of these for each Partner. This is discussed in greater detail below.

The next section will provide more detailed information about the history of the Partners and what lead to the formation of WES. Other sections will provide additional information about projected financial benefits, capital efficiencies, and regulatory enhancements.

## **II. HISTORY**

On November 3, 2016, CCSD#1 and TCSD entered into an intergovernmental agreement forming WES and contemplating that the assets and operations of CCSD#1 and TCSD would eventually be transferred to WES and combined. On May 18<sup>th</sup>, 2017 the Board amended the IGA to add SWMACC as a participating Partner.

CCSD#1, SWMACC and TCSD are all county service districts organized under Oregon Revised Statutes ("ORS") Chapter 451. They are separate units of local government. Each are governed by the Board of County Commissioners per that statute.

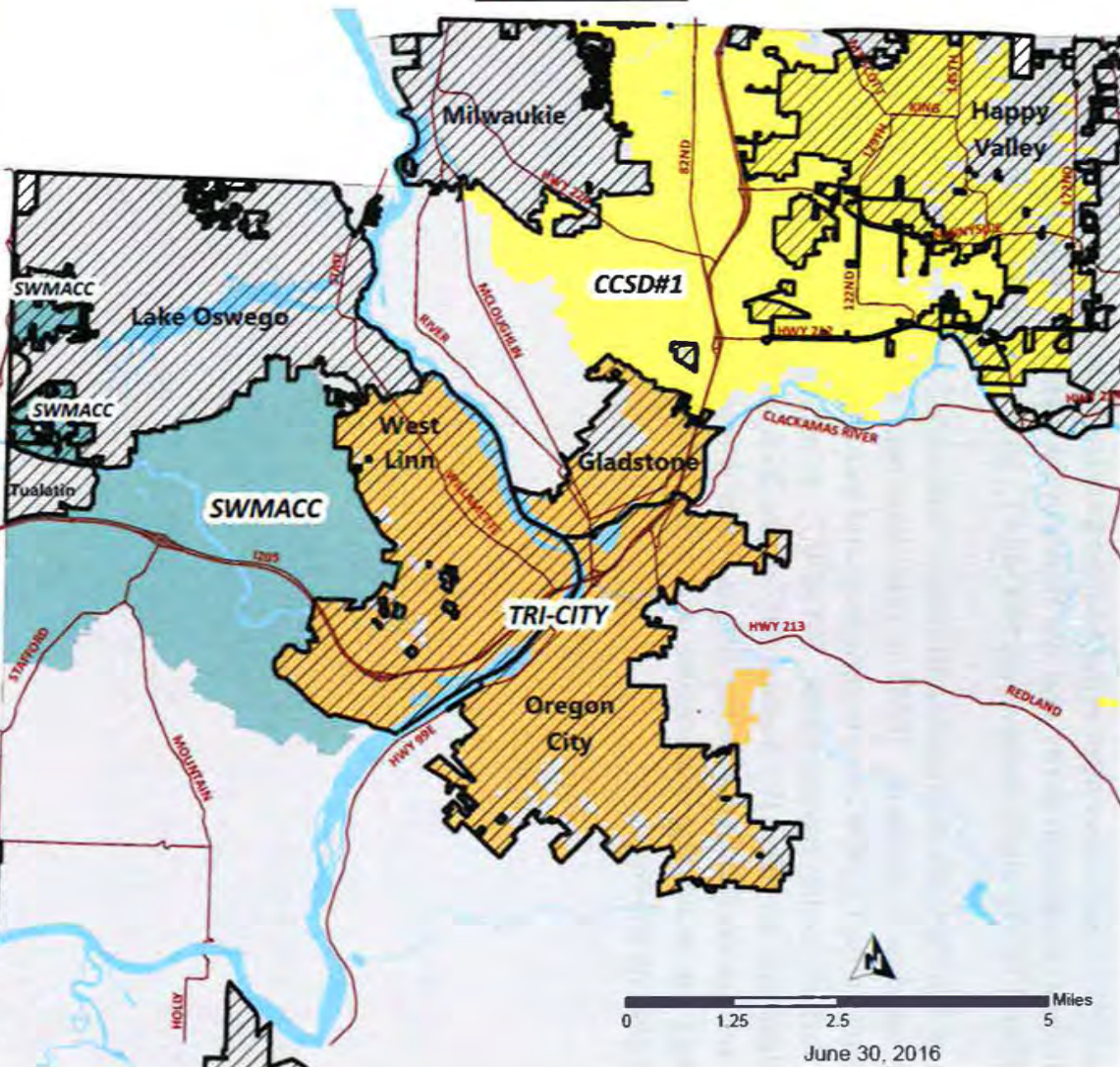
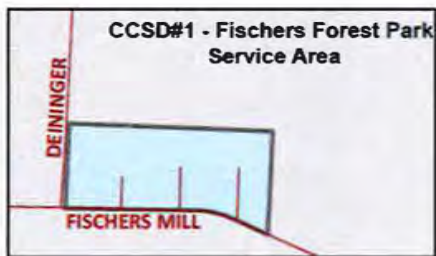
WES is an intergovernmental entity formed pursuant to ORS Chapter 190. Intergovernmental entities are formed under ORS Chapter 190 when two or more units of local government sign

and adopt an ordinance approving an intergovernmental agreement describing the functions of the intergovernmental entity and the rights of the participants in the intergovernmental entity. CCSD and TCSD, and subsequently SWMACC, took those actions and became Partners in WES.

Each of the Partners represent a different “rate zone” within WES. Each area is billed only for those services it receives. TCSD is rate zone one, and is primarily a wholesale wastewater treatment area. CCSD#1 is rate zone two, and includes wholesale and retail wastewater services, and surface water management. SWMACC is rate zone three, and provides surface water management services. Per Section 3.07 of the IGA, only rate zone two will be charged for the debt service on the Outstanding Bonds. WES is intended to facilitate a regional management strategy for providing wastewater and surface water services in Clackamas County. WES is organized as follows:



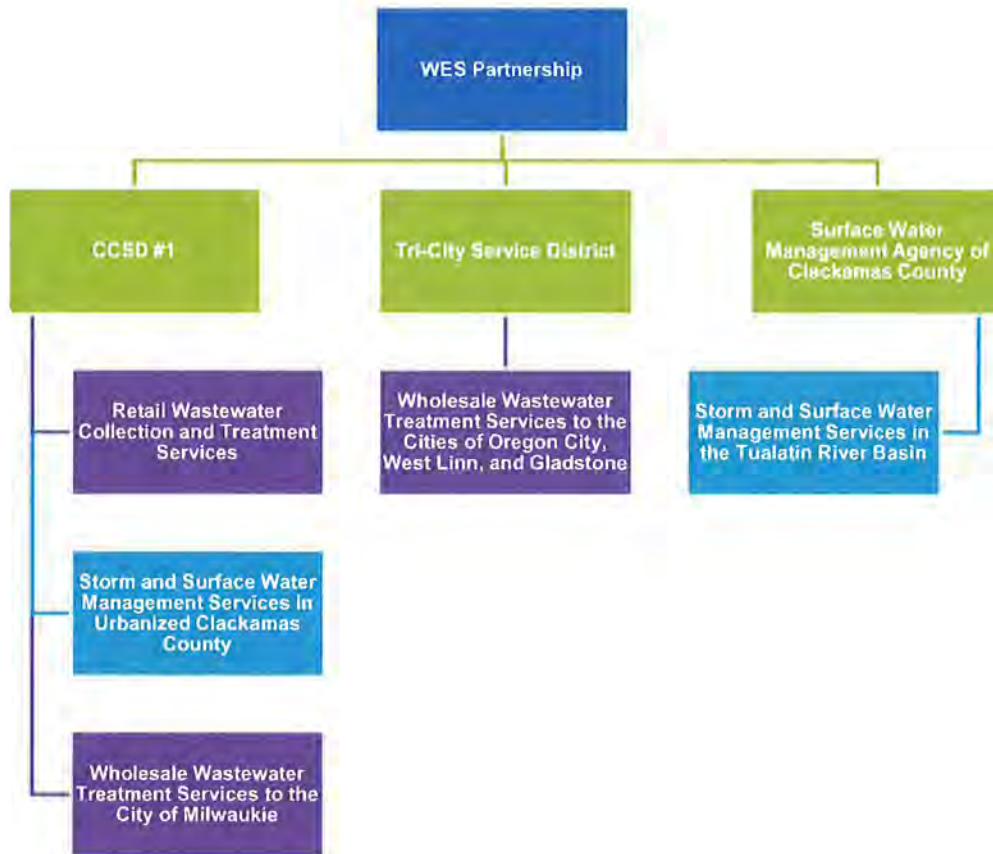
# WES Service Districts and the Surrounding Area



June 30, 2016

Source: CCSD#1, June 2016. [Can this table include a legend helping to explain what's in and what's out of the area?]





**Brief History of CCSD#1**

CCSD#1 was organized in March 1967 under the provisions of ORS Chapter 451 to construct and operate a sanitary sewer system in a particular area of Clackamas County, Oregon. CCSD#1 directly serves an estimated population of approximately 75,000 residents as well as varied industrial, wholesale and commercial customers, plus another approximately 25,000 as contract customers.

CCSD#1 has historically had four service areas for sewer and one for surface water management. The sewer service areas include the North Clackamas Service Area (“NCSA”) and the Hoodland, Boring, and Fischer’s Forest Park sewer service areas, which are subdivisions of unincorporated Clackamas County. Each service area has its own independent wastewater collection and treatment facilities. In addition to the full retail services provided to these four areas, CCSD#1 provides wholesale services to customers in the cities of Milwaukie and Johnson City. The City of Happy Valley receives full retail wastewater and surface water management services from CCSD#1 by being annexed into the district. CCSD#1 also includes the North Clackamas Surface Water Area (“NCSWA”) which overlaps the NCSA.

### Brief History of TCSD

Voters originally formed TCSD in 1980 to provide wholesale wastewater transmission and treatment services only, after city-managed facilities were failing and moratoriums were placed by regulatory authorities. TCSD's facilities convey wastewater from the cities of Oregon City, West Linn and Gladstone to the Tri-City Water Resource Recovery Facility ("Tri-City WRRF"). The three cities provide retail services (collection, billing) to their citizens separately.

### Brief History of SWMACC

SWMACC was created to address the Oregon Department of Environmental Quality ("DEQ") regulations applied to the Tualatin River as a result of the topography of the basin and density of development. The Tualatin River watershed is 712 square miles in size. Most of this area is in Washington County. Approximately 16 square miles are within the SWMACC boundaries. SWMACC was created in 1992 in response to Tualatin River regulations called Total Maximum Daily Loadings ("TMDLs"). It encompasses all areas of the Tualatin River basin that are within Clackamas County. SWMACC is adjacent to West Linn, Lake Oswego, Tualatin, and Sherwood. It includes incorporated areas of the City of Rivergrove and unincorporated suburban areas in Lake Grove as well as tracts of unincorporated agricultural and rural residential land south of Sherwood and Lake Oswego. Because SWMACC is comprised almost entirely of unincorporated land, it is not highly developed. SWMACC's area is not currently served by a public sanitary sewer system.

### History of Cooperation Between the Partners

CCSD#1 and TCSD have a history of cooperating on regional projects, such as constructing a shared laboratory (1996), sharing of treatment plant capacity (1999) and an agreement to consolidate future wastewater treatment (2003).

In 2008, a "blue ribbon" group was formed, consisting of members of the business community, environmental groups, ratepayers, and elected officials from all affected cities including Gladstone, Happy Valley, Oregon City, Milwaukie, and West Linn (the "Blue Ribbon Committee"). This Blue Ribbon Committee participated in a thorough examination of the potential costs and benefits of closer cooperation and partnership between TCSD and CCSD#1. The Blue Ribbon Committee found that: (i) there were significant financial benefits to each of the participants' ratepayers by making collective investment and management decisions, with millions in projected savings; (ii) there was an equitable fiscal and operational model that ensured fairness for all; and (iii) governance and ratepayer interests of all stakeholders could be addressed in a collective investment and operational approach.

A copy of the Blue Ribbon Committee report is attached as Exhibit A to the WES IGA that is included in these Findings as Attachment A.

In 2010, the Tri-City WRRF plant was expanded to provide additional capacity with a membrane bioreactor facility which produces the highest quality effluent of all the treatment processes currently in use by WES. The facility was financed by CCSD#1 and is jointly operated by CCSD#1 and TCSD through an IGA to support area growth. The facility was needed to address permit violations for CCSD#1 at its Kellogg facility due to capacity limitations and due to TCSD needing its remaining capacity to serve its own growth which it had allowed CCSD#1 to use previously (see above comments about sharing capacity in 1999 and 2003).

In May of 2015, the Regional Wastewater Treatment Capacity Advisory Committee (the "Regional Committee") decided to explore combining CCSD#1 and TCSD to see whether it would be likely to result in greater efficiency and lower costs to ratepayers. The Regional Committee included representatives from the cities of West Linn, Oregon City, Milwaukie, Johnson City, Happy Valley and Gladstone, as well as representatives from unincorporated Clackamas County. In July of 2015, the Regional Committee received the "White Paper: Analysis of Benefits of Regionalization to Clackamas County Service District No. 1 and the Tri-City Service District" (the "White Paper"). The White Paper was prepared by County staff. The White Paper concluded that combining CCSD#1 and TCSD could save ratepayers "hundreds of millions of dollars" by allowing the two entities to meet regulatory requirements collectively, and allowing the least-cost capital investment strategy to meet regulatory, asset replacement, and growth needs. The White Paper is attached to this document as Attachment B.

The establishment of WES in November 2016 was the culmination and implementation of these recommendations and synergies. It answered definitively the question of whether or not the Partners would work cooperatively in a regional approach to service delivery.

### **III. FINANCIAL ANALYSIS**

The analyses of both the Blue Ribbon Committee and the White Paper assumed that ratepayers of CCSD#1, TCSD and SWMACC would be individually financially responsible for bonds and other borrowings they entered into before they were combined. The IGA implements this assumption by providing for three rate zones within WES. Rate Zone One includes the land within TCSD, and Rate Zone Two includes the land within CCSD#1, and Rate Zone Three includes the land area within SWMACC. The IGA provides that rates in Rate Zone Two must be sufficient to pay the debt service on the Outstanding Bonds, as well as other costs allocable to ratepayers in Rate Zone Two. Simultaneously with the adoption of the Amended Declaration, the Board will adopt an order detailing how it will be demonstrated that the rates in Rate Zone Two will be sufficient to cover all of its costs.



Currently, CCSD#1 is the only Partner with outstanding long-term borrowings. Though Rate Zone Two will generate funds sufficient to pay its borrowings, the borrowings themselves will be assumed by WES via substitution as part of the IGA. To do this, the Board will approve the Amended Declaration. The Amended Declaration is attached to the Order as Exhibit E.

The amendments made by the Amended Declaration affect all Outstanding Bonds issued by CCSD#1 under the Master Declaration. Those amendments will also affect all bonds issued by WES in the future under the Master Declaration as amended.

### **Description of Changes made by Amended Declaration**

The Amended Declaration makes only the following four changes to the Master Declaration:

#### **1. Definition of "District."**

Section 3.19 of the Master Declaration will define "District" as follows:

3.19. "District" means the Water Environment Services, in Clackamas County, Oregon, an intergovernmental entity formed pursuant to ORS 190.010.

The Master Declaration currently defines "District" as follows:

3.19. "District" means the Clackamas County Service District No. 1, in Clackamas County, Oregon, a municipal corporation of the State of Oregon.

This will allow WES to be substituted under this definition and operate in the place of CCSD#1 with respect to making payments, meeting bond covenants, and generally operating the utility system. This aligns the responsibility for any borrowings with the location of the operations and asset ownership.

#### **2. Definition of "Sewer System."**

Section 3.66 of the Master Declaration will define "Sewer System" as follows:

3.66. "Sewer System" means all real and personal property now or hereafter owned, operated, used, or maintained by the District for sanitary sewage disposal, sanitary sewage purification, surface water management, stormwater drainage and similar services within or without the corporate limits of the District.

The Master Declaration currently defines "Sewer System" as follows:

3.66. "Sewer System" means all real and personal property now or hereafter owned, operated, used, or maintained by the District for sanitary sewage disposal or sanitary sewage purification within or without the corporate limits of the District, including but not limited to, intercepting sewers, diversion sewers, relieving or interconnection sewers, lift

stations, and plants for treatment, processing, and disposal of sanitary sewage. In addition, "Sewer System" includes all real and personal property now or hereafter owned, operated, used, or maintained by the District to provide surface water management, stormwater drainage or similar services to the North Clackamas Surface Water Management Area, as it now exists or may hereafter be expanded. However, the Sewer System does not include any Separate Utility System.

This change will expand the scope of the Sewer System to be more than just the CCSD#1 system. It will now cover the systems of SWMACC and TCSD as well, in essence broadening the scope of assets and rates supporting the Outstanding Bonds.

### **3. Covenant not to dissolve WES or adversely amend the IGA.**

The Amended Declaration will add the following new Section 10.8 to the Master Declaration:

**10.8 Termination or Dissolution of WES and Amendment of the IGA.** WES will not terminate or dissolve while any Bonds are Outstanding. WES may only amend, or consent to the amendment of, the IGA if WES reasonably judges that the amendment does not materially and adversely affect the rights of the owners of any Outstanding Bonds.

The Amended Declaration also will add a new Section 3.30 to the Master Declaration, defining the term "IGA."

This change will give assurance to bondowners that the improvements made by the creation of WES will not be withdrawn from them. The bondowners are entitled to rely on the future continuation of the commitments and changes made as part of the substitution of WES for CCSD#1.

### **4. Transition Provision**

The Amended Declaration will add the following new Section 13.5 to the Master Declaration:

**13.5. Transition Provision for Amended Master Declaration.** The District shall calculate compliance with the financial covenants in this Master Declaration for Fiscal Year 2017-2018 by using the combined financial statements of the Partners of WES for that period.

This is necessary to clarify how compliance is measured during the transition period specified in the IGA creating WES. It ensures clear reporting of information to bondholders and creates a baseline for future performance measurement.

The Amended Declaration will not make any other substantive changes to the Master Declaration.

## **Determination that the Amended Declaration does not Materially Adversely Affect the Rights of Bondowners**

The Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of CCSD#1, reasonably judges that the adoption of the Amended Declaration does not materially and adversely affect the rights of the owners of any Outstanding Bonds.

The rights of the owners of Outstanding Bonds are determined by the Master Declaration. The Amended Declaration makes only the four changes to the Master Declaration described above, and all are related to combining the assets and operations of CCSD#1 with TCSD and SWMACC within WES.

The governing body of CCSD specifically considered the following factors when it made the determination that the Amended Declaration does not materially and adversely affect the rights of the owners of any Outstanding Bonds:

1. **No adverse effect on rate covenants.** Initially, the governing body of CCSD#1 compared the historical operating results of CCSD#1 during the past six years to the historical operating results that would have been produced during those six years if the Amended Declaration had been in effect during those six years. A review report was provided by Moss Adams, the independent auditors for the three separate districts, showing what the combined basic financial statements (including the statements of Net Position, the statements of revenues, expenses, and changes in net position, and the statements of cash flows). This report is attached to the Order as Exhibit A.

WES' independent consultant, Donovan Enterprises, Inc., then used this report to develop an analysis examining historical and projected compliance with the rate covenants in Sections 6.1 and 6.2 of the Master Declaration. The analysis concluded that Net Revenues of WES historically exceeded the Net Revenues of CCSD#1 and are projected to exceed the Net Revenues of CCSD#1 if CCSD#1 did not combine with WES. The Report of Donovan Enterprises, Inc. dated May 16, 2018 is attached to the Order as Exhibit B.

### **Summary of results:**

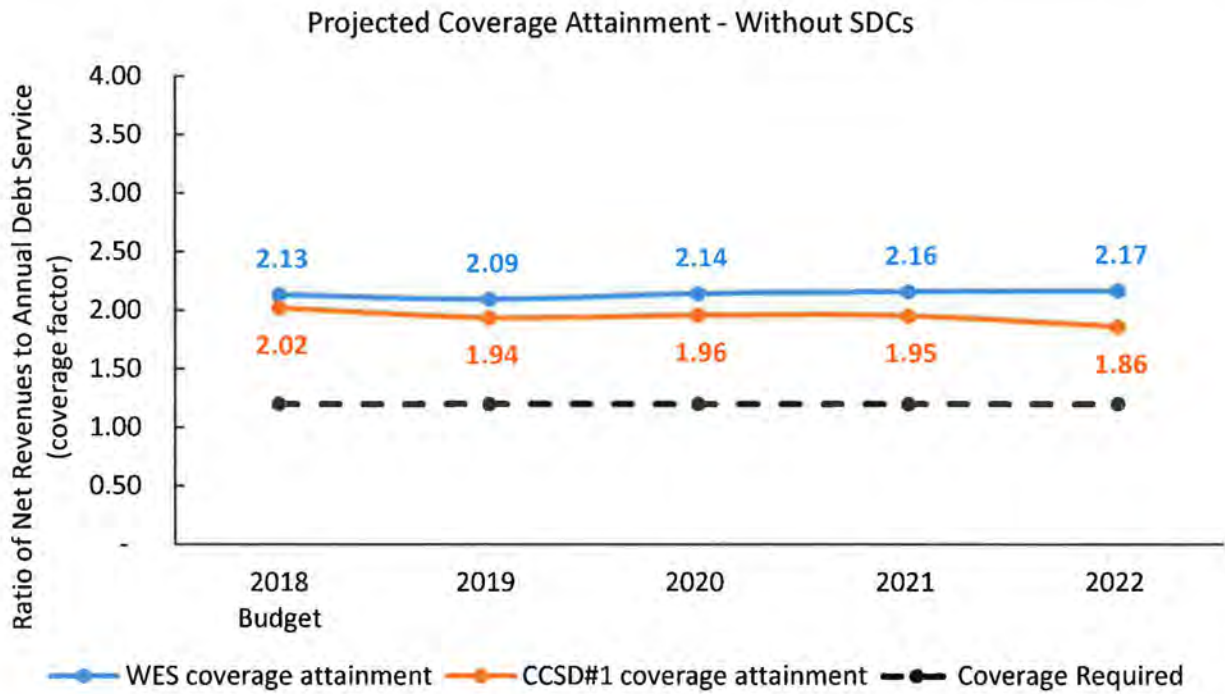
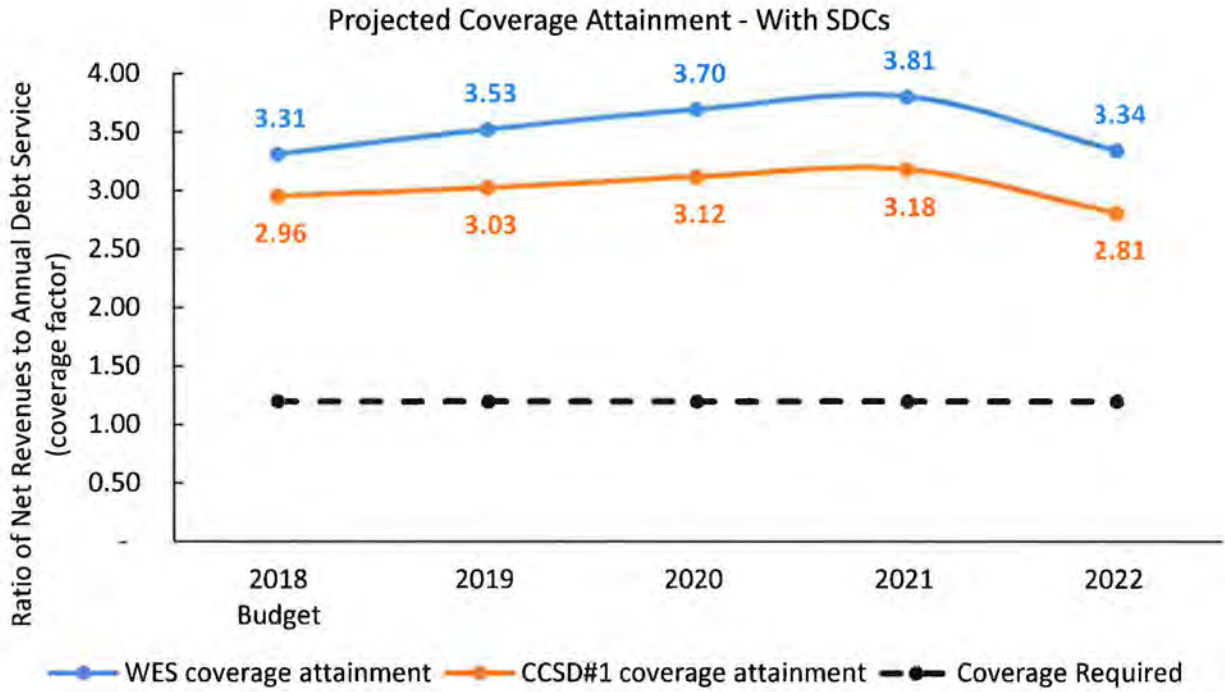
The following table shows coverage for CCSD#1's Outstanding Bonds over the past six years both with and without the impact of the Amended Declaration.

	2012	2013	2014	2015	2016	2017
WES coverage attainment						
With SDCs	1.94	2.25	2.04	2.44	3.44	3.51
Without SDCs	1.46	1.73	1.55	2.01	2.45	2.74
CCSD#1 coverage attainment						
With SDCs	1.70	2.00	1.90	2.30	3.10	2.90
Without SDCs	1.30	1.60	1.50	1.90	2.20	2.20

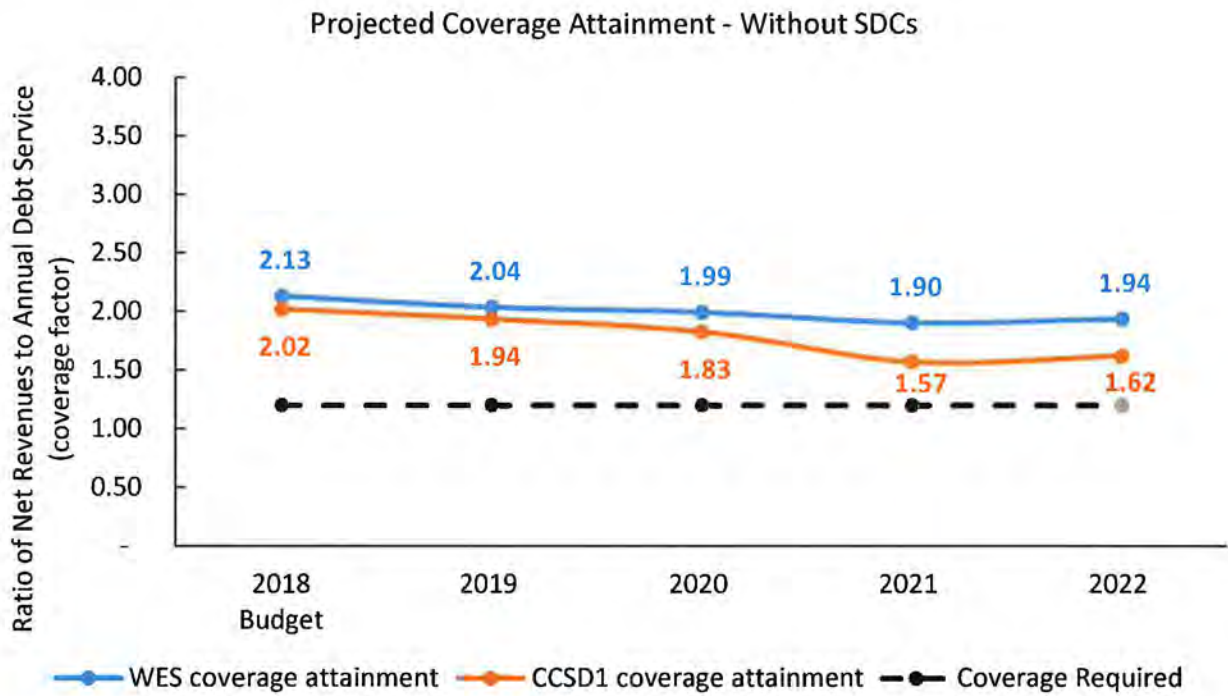
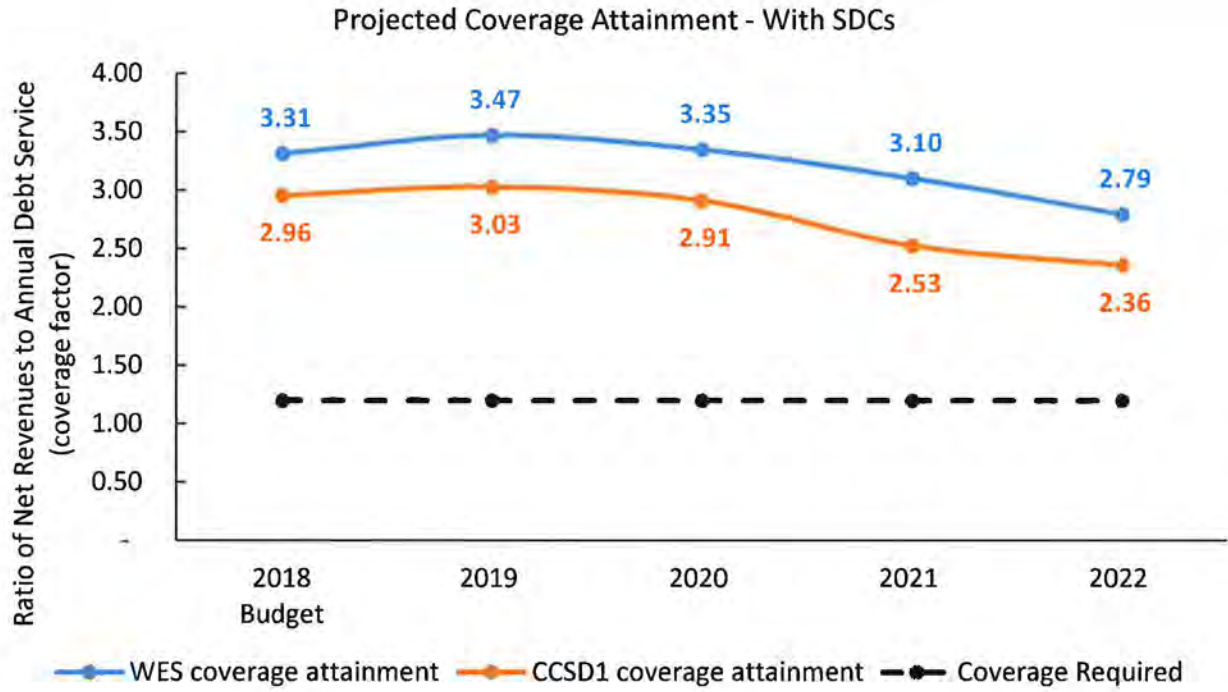
The following tables show the four cases reviewed as informative in making a determination. In the baseline case, the variables of allocating capital projects to each district is removed and it simply compares CCSD#1 and WES from an operating perspective. The remaining three cases are theoretical comparisons of CCSD#1 and WES based on prior possible outcomes. The first theoretical case is the “pooled resources” case which modeled an approach where CCSD#1 and TCSD each agree to participate in WES’ capital needs to an equal amount, without any requirement of any payment or premium by CCSD#1 for co-location of investment on TCSD-owned assets. It then compares it to CCSD#1 having to pursue a similar level of investment on its’ own. The second scenario considered where CCSD#1 would have to pay a premium of \$4.4 million for access to TCSD assets, modeled on a 15% premium presumption and similar to the premium paid by CCSD#1 in its agreement in 2009. The third theoretical scenario, the “CCSD#1 go alone” case, examined high level engineering studies conducted for policy review purposes on what it would mean for the two districts to not co-invest at all but each operate and invest separately. This resulted in significantly higher capital expenses for both CCSD#1 and TCSD and was one of the major reasons why the Board agreed to pursue the formation of WES. It is included here as an illustration of the reliance and benefit to CCSD#1 (and TCSD) in the closest possible integration as represented by the WES partnership.



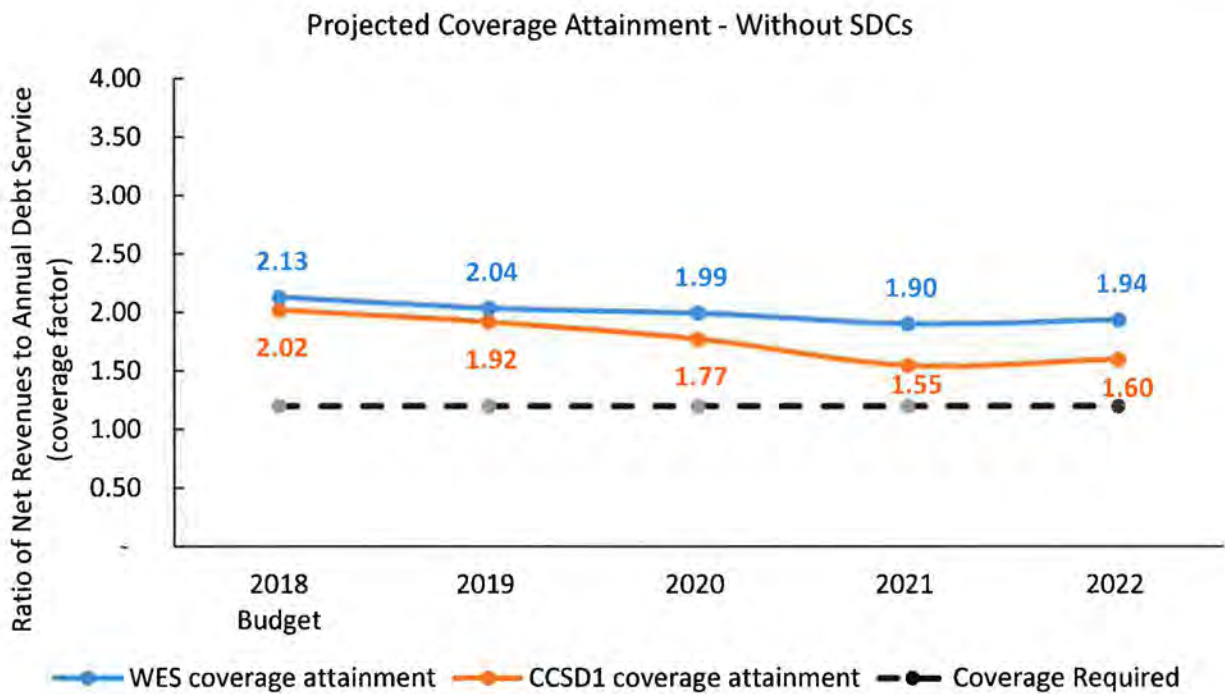
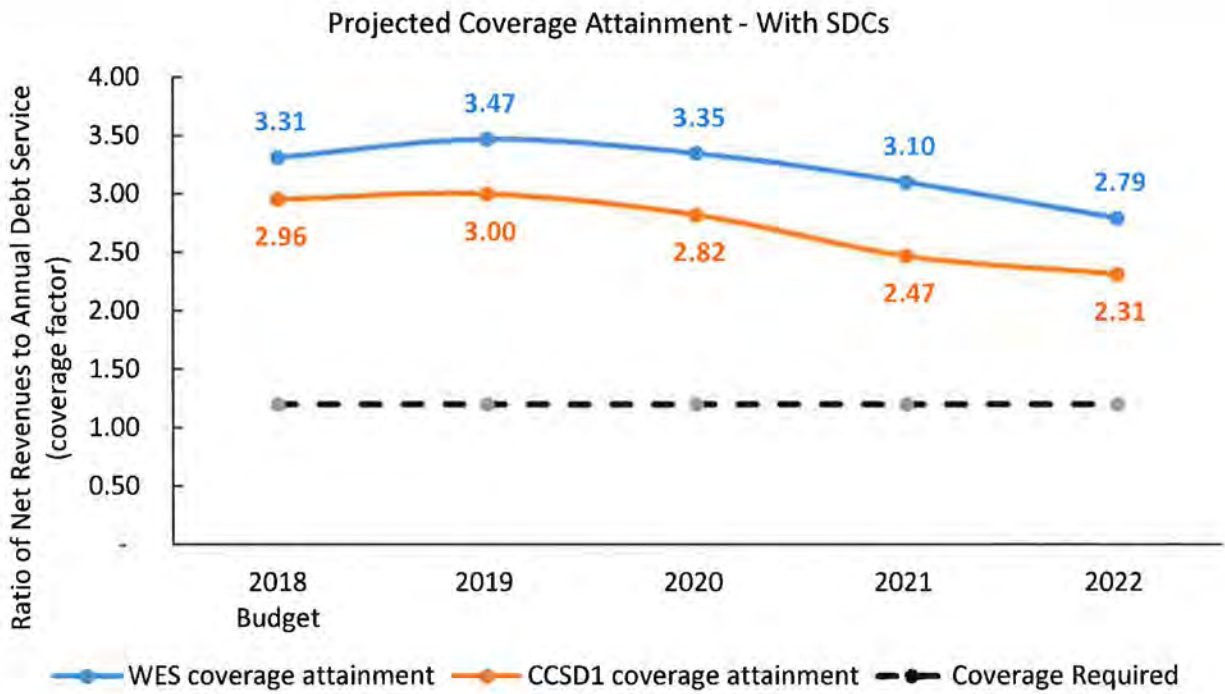
Projected Coverage Attainment for the **BASELINE CASE**



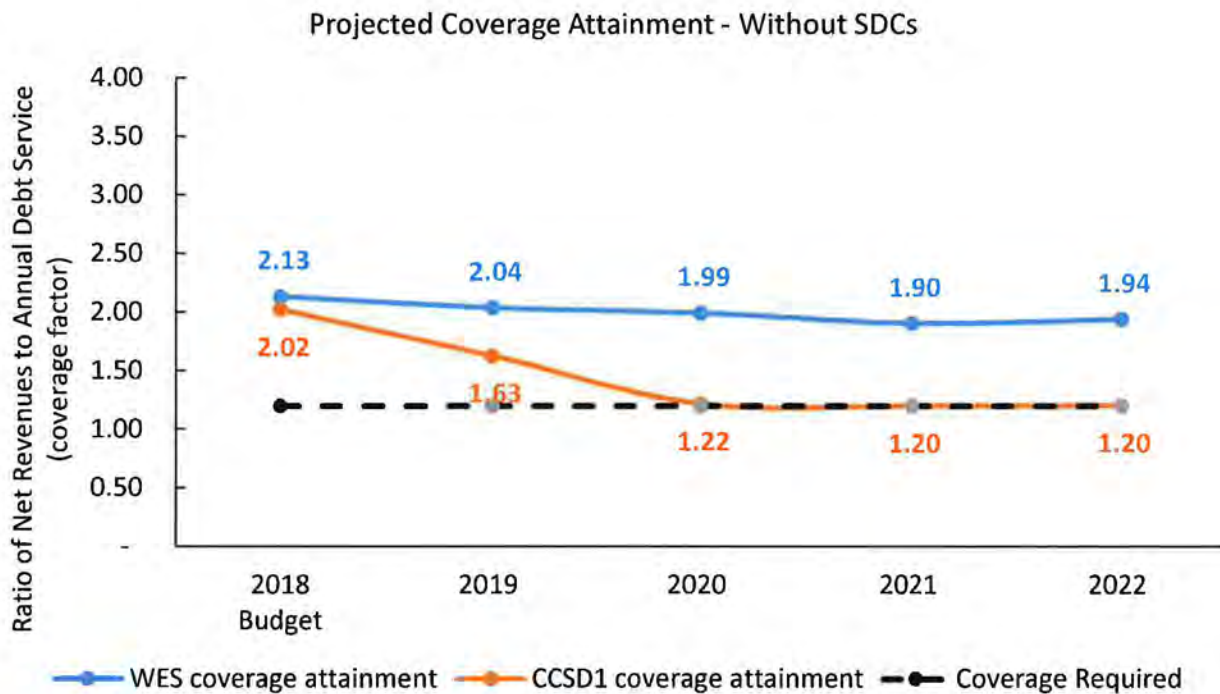
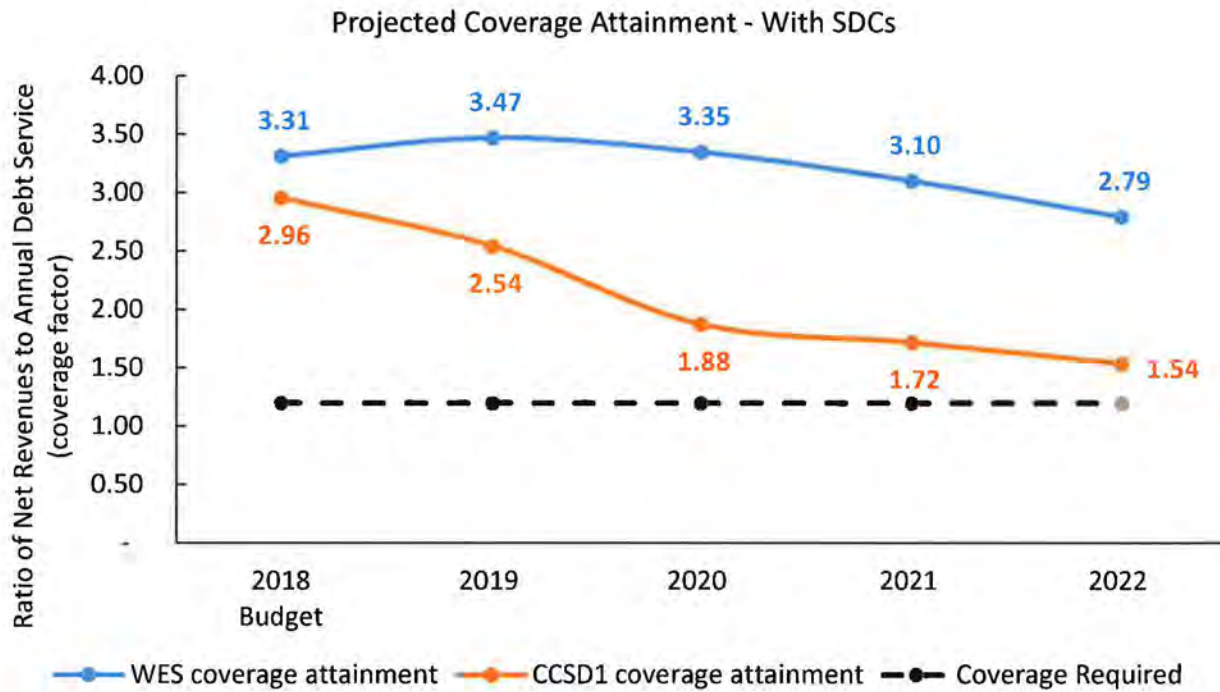
Projected Coverage Attainment for the POOLED RESOURCES CASE



## Projected Coverage Attainment for the CCSD#1 PREMIUM CASE



## Projected Coverage Attainment for the CCSD#1 Go Alone Case





The overall conclusion of this analysis is that the inclusion of the other Partners, with CCSD#1 into WES, and allowing WES to be the operating entity and substitute issuer of the Outstanding Bonds, results in a material improvement in the financial health of the entity responsible for payment. Pursuant to the proposed amendments of the Master Declaration, the pledge of revenues and assets is of the entire WES entity, not just CCSD#1. However, pursuant to that certain Board Order Effectuating Certain WES Partnership Agreement Provisions adopted by the WES Board, Rate Zone Two will be solely responsible for charges sufficient to make all necessary payments relating to the Outstanding Bonds. WES will always use any and all available revenue to make payments to the owners of the Outstanding Bonds as required by the bond covenants. To the extent revenues from either of Rate Zone One or Rate Zone Three are ever used for payments on the Outstanding Bonds, such Board Order provides the mechanism of reconciliation to ensure that those funds are reimbursed and only Rate Zone Two will be the ultimate responsible parties for the Outstanding Bonds. This is only true for the Outstanding Bonds. Future Financings (discussed below) will be the obligation of all WES ratepayers as set forth in the IGA.

## **2. No Adverse Effect from Future Financings.**

WES does anticipate borrowing over the next few years to construct additional capital assets. The first and highest priority is solids handling capacity, which is to be constructed at the Tri-City WRRF previously owned by TCSD for the benefit of both TCSD and CCSD#1.

- Priority is the solids handling capacity expansion project. Design is currently underway and groundbreaking scheduled for fall 2018.
- Collection System Master Plan is also being updated to evaluate the impact of regional growth on the existing infrastructure. Priority projects are likely to include two large diameter interceptor pipelines, and one large diameter intertie pipeline.
- Storm and surface water management projects are included in the WES CIP, but their relative costs are modest at this time.
- The next likely investment in treatment capacity will be liquids expansion to handle wet weather treatment challenges.

WES will issue the borrowings as a combined entity, allowing all customers of WES to take advantage of the greater coverage provided by the partnership. Without this partnership, each entity would have to issue its own borrowings, in addition to several significant capital projects needing to be duplicated to satisfy treatment needs within each district. These are discussed in greater detail under the Capital Investment Efficiencies section. The combined financial resources of the three Partners should allow for future financings to be made on at least the same if not better terms than if done separately.

## Capital Investment Efficiencies

Savings in capital investment are typically realized through economies of scale. Currently, CCSD#1 and TCSD are both faced with needs in solids handling capacity. Prior to the formation of WES, each would have had to design, build, and finance solids handling facilities, creating excessive redundancy and forcing the separate districts to spend millions more than necessary when compared to building one set of facilities that can serve both under WES. This is discussed in greater depth in the white paper attached as Attachment B. Similar savings will be realized from combined investments targeted at replacing portions of the combined infrastructure which are nearing the end of their useful life.

WES' five-year capital improvement plan ("CIP") and financing strategy for addressing the Partners' combined infrastructure challenges is currently under review by WES engineering staff, operations team, and finance. When completed, it will be presented to the Board for approval. A significant portion of the CIP is for solids handling, including a new digester and associated support facilities, as mentioned above. Design for this is currently being performed through a contract with CH2M Hill, a nation-wide engineering firm. Additional needs exist in the collection system. The Collection System Master Plan (the "Master Plan") for CCSD#1 was last completed in 2009 and is currently being updated. The Master Plan will evaluate the hydraulic impact of regional growth on the existing collection system infrastructure, identified new interceptors and regional pump stations that will need to be constructed to service these growth demands, and prioritized capacity upgrade projects in the existing system. The Master Plan will ultimately lead to the development of a collection system CIP, which will ultimately feed into the general CIP as well as into rate and System Development Charge ("SDC") analyses.

The currently forecasted five-year CIP for WES is shown below. The projects are separated into two categories: water resource recovery facility projects and other wastewater system improvements.

**WES - Five Year Capital Improvement Plan Forecast  
(Fiscal Years)**

Projects	2018	2019	2020	2021	2022	Uninflated Total	Percent
<i>Water Resource Recovery Facility Projects:</i>							
Tri City	\$ 9,060,000	\$ 17,958,000	\$ 13,088,000	\$ 5,450,000	\$ 5,780,000	\$ 51,336,000	30.04%
Kellogg Creek	6,250,000	8,700,000	4,710,000	2,310,000	200,000	22,170,000	12.97%
Hoodland	900,000	1,500,000	-	500,000	2,750,000	5,650,000	3.31%
<i>Subtotal WRRF Projects</i>	<u>\$ 16,210,000</u>	<u>\$ 28,158,000</u>	<u>\$ 17,798,000</u>	<u>\$ 8,260,000</u>	<u>\$ 8,730,000</u>	<u>\$ 79,156,000</u>	<u>46.31%</u>
<i>Other Wastewater System Capital Improvements:</i>							
Collection System Projects	\$ 4,525,000	\$ 11,690,000	\$ 23,960,000	\$ 27,190,000	\$ 1,600,000	\$ 68,965,000	40.35%
Blue Heron Site Improvements	-	-	-	-	6,000,000	6,000,000	3.51%
Fleet	710,000	770,000	1,005,000	1,010,000	1,090,000	4,585,000	2.68%
Tri City Asset Management	400,000	400,000	400,000	400,000	400,000	2,000,000	1.17%
Kellogg Creek Asset Management	400,000	400,000	400,000	400,000	400,000	2,000,000	1.17%
Pump Station Upgrades	450,000	450,000	450,000	450,000	450,000	2,250,000	1.32%
Development Support Projects	100,000	-	-	-	-	100,000	0.06%
Water Quality Laboratory	52,000	60,000	120,000	30,000	-	262,000	0.15%
<i>Subtotal Other Wastewater System Projects</i>	<u>\$ 6,637,000</u>	<u>\$ 13,770,000</u>	<u>\$ 26,335,000</u>	<u>\$ 29,480,000</u>	<u>\$ 9,940,000</u>	<u>\$ 86,162,000</u>	<u>50.41%</u>
<i>Storm and Surface Water Management Projects</i>							
Carli Property Regional Water Quality Facility	\$ 2,000,000	\$ -	\$ -	\$ -	\$ -	\$ 2,000,000	1.17%
Mt. Scott Oak Bluff Restoration	30,000	345,000	20,000	5,000	-	400,000	0.23%
Small Projects - Ongoing Drainage Improvements	350,000	350,000	350,000	350,000	350,000	1,750,000	1.02%
Detention Pond Repair/Rehab	250,000	250,000	250,000	250,000	250,000	1,250,000	0.73%
Decant Facility	200,000	-	-	-	-	200,000	0.12%
<i>Subtotal Storm and Surface Water Management Projects</i>	<u>\$ 2,830,000</u>	<u>\$ 945,000</u>	<u>\$ 620,000</u>	<u>\$ 605,000</u>	<u>\$ 600,000</u>	<u>\$ 5,600,000</u>	<u>3.28%</u>
<i>Total</i>	<u>\$ 25,677,000</u>	<u>\$ 42,873,000</u>	<u>\$ 44,753,000</u>	<u>\$ 38,345,000</u>	<u>\$ 19,270,000</u>	<u>\$ 170,918,000</u>	<u>100.00%</u>

**WES - Five Year Funding Plan for Capital Improvement Plan  
(Fiscal Years)**

Sources of funds:	2018	2019	2020	2021	2022	Uninflated Total	Percent
System Development Charges	\$ 8,328,375	\$ 10,090,337	\$ 10,819,064	\$ 11,406,769	\$ 8,139,862	\$ 48,784,407	28.54%
District Cash in Support of Construction	17,348,625	32,782,663	20,082,216	3,942,494	11,130,138	85,286,136	49.90%
Future Revenue Obligations	-	-	13,851,720	22,995,738	-	36,847,458	21.56%
<i>Total sources of funds</i>	<u>\$ 25,677,000</u>	<u>\$ 42,873,000</u>	<u>\$ 44,753,000</u>	<u>\$ 38,345,001</u>	<u>\$ 19,270,000</u>	<u>\$ 170,918,001</u>	<u>100.00%</u>
<i>Uses of funds:</i>							
Water Resource Recovery Facility Projects	\$ 16,210,000	\$ 28,158,000	\$ 17,798,000	\$ 8,260,000	\$ 8,730,000	\$ 79,156,000	46.31%
Other Wastewater System Capital Improvements	6,637,000	13,770,000	26,335,000	29,480,000	9,940,000	86,162,000	50.41%
Storm and Surface Water Management Projects	2,830,000	945,000	620,000	605,000	600,000	5,600,000	3.28%
<i>Total uses of funds</i>	<u>\$ 25,677,000</u>	<u>\$ 42,873,000</u>	<u>\$ 44,753,000</u>	<u>\$ 38,345,000</u>	<u>\$ 19,270,000</u>	<u>\$ 170,918,000</u>	<u>100.00%</u>

The results of a combined capital improvement plan in the WES entity is substantial cost savings. By creating a single regional provider, WES is able to avoid unnecessary, duplicative capital investments and creates sufficient certainty to justify long term combined, economy-of-scale projects for the benefit of ratepayers in all rate zones. This lower cost for capital improvements results in less rate pressure and creates a healthier, more robust financial performance. This in turn supports the conclusion that the transfer of CCSD#1 borrowings and assets to WES not only is clearly not a material adverse effect on

the rights of the bondowners, but indeed a material positive action that increases the financial resources available to repay any Outstanding Bonds.

## **REGULATORY EFFICIENCES**

### **Overview**

Each of the five facilities managed by either CCSD#1 or TCSD has a Clean Water Act-authorized National Pollution Discharge Elimination System ("NPDES") permit that establishes limits and parameters for discharges into the waters of the United States. Below the focus will be on the Kellogg NPDES permit, the Tri-City WRRF NPDES permit, and the Blue Heron NPDES permit recently acquired jointly by CCSD#1 and TCSD (collectively, the "Permits"). SWMACC, along with CCSD#1, is responsible for implementation of the relevant portion of the Municipal Separate Storm Sewer System ("MS4") permit issued to all of Clackamas County within the Urban Growth Boundary. There are material efficiencies to be gained by joint operation of this program. However, given the smaller capital outlays related to MS4 compliance compared to NPDES compliance, this review concentrates on the NPDES regulatory impacts from WES formation.

Regulators such as the Oregon Department of Environmental Quality ("DEQ") and the Environmental Protection Agency ("EPA") continue to promulgate rules that increase restrictions and/or requirements on dischargers. The Permits are covered by what is known colloquially as the "anti-backsliding rule," which means that regulations only get tighter. DEQ uses water quality standards to assess whether the quality of Oregon's rivers and lakes are adequate for fish and other aquatic life, human recreation, a source for safe drinking water, agriculture, industry and other beneficial uses. DEQ also uses the standards as regulatory tools to prevent pollution of the state's waterways. The Clean Water Act requires all states to adopt water quality standards designating beneficial uses of the state's waters and sets criteria designed to protect those uses. The Clean Water Act requires wastewater treatment facilities, and any other dischargers into the waters of the United States, to operate under NPDES permits, which set limits on what can be discharged, based on water quality standards promulgated for that specific discharge area. In addition, each plant has separate biosolids programs and industrial pretreatment programs, which also result in separate requirements for each Partner based upon the receiving stream capacity.

It is important to emphasize the significant regulatory drivers for the business of the Partners. The Clean Water Act has a complex process for establishing and imposing regulatory requirements on "point sources," such as treatment plants, and substantial fines for violations. The regulatory process, in summary form, is that a water quality standard is developed by identifying the beneficial uses sensitive to the particular pollutant and then establishing a parameter. Specific criteria are then established based on the levels needed to



protect the sensitive beneficial uses. For example, the uses typically most sensitive to dissolved oxygen are fish and aquatic life. Fish and other aquatic organisms need an adequate supply of oxygen in the water to be healthy and productive. In this case, the criteria identify the minimum amounts of dissolved oxygen that need to be in the water to protect the fish or other aquatic life. In other cases, as with many of the toxic pollutants, the criteria may identify the maximum amount that may be in the water without risk to human health or the aquatic biota. For other parameters, such as bacteria or some toxic compounds, human health is almost exclusively the most sensitive beneficial use. An analysis of each potential pollutant that could be discharged into the Willamette River and its watershed, in the case of the Permits, is made to determine the maximum that can be discharged to the river as a whole and by each permitted discharger. DEQ then builds those limits into its NPDES permitting regime, ensuring that at both an individual facility level and watershed-wide the beneficial uses are protected.

The State of Oregon has a requirement to continually update their water quality standards, which are becoming amongst the most challenging in the country, to provide for beneficial use of the State's water ways. The Partners continue to face increasingly stringent regulations, which likely will impact the technology needed to remove such pollutants if current treatment will not treat to the appropriate levels.

One of the difficulties in meeting current water quality standards is that the existing treatment infrastructure was designed to the lower standards that existed at the time of their construction. Several improvements have had to be made to both the Kellogg Plant and the Tri-City WRRF to meet current water quality standards. This is exacerbated by the current rule structure that imposes even more stringent standards every time a treatment facility undertakes major improvements. For example, the Tri-City WRRF's NPDES permit shifted from a "20/20" permit to a "10/10" NPDES permit, reducing in half certain allocations and pollutant discharge limits. Fortunately, the Membrane Bioreactor ("MBR") treatment train constructed by CCSD#1 at the Tri-City WRRF generates a high enough quality effluent that, when mixed with the lower-quality conventional treatment system used for the remainder of the plant flows, was more than sufficient to meet the enhanced compliance point requirements. There is a high likelihood that continued reliance on the MBR Facility will be necessary for effluent at the Tri-City WRRF to meet the requirements of the Clean Water Act.

New standards can be imposed without the triggering requirement of additional construction that can necessitate additional investment or operational changes at the treatment plants. New technology, testing, analysis, and environmental studies can define new pollutants of concern. For example, Senate Bill 737, which passed in the 2007 session, required DEQ to develop a list of all priority persistent bioaccumulative toxics (the "Priority Persistent Pollutant List") that have a documented effect on human health, wildlife and aquatic life. The bill also required fifty-two of the largest municipal wastewater plants

(including the Kellogg Plant and Tri-City WRRF) to pay a fee between \$10-\$20,000 over two years to fund the research behind the Prior Persistent Pollutant List, and draw samples of each major treatment facility's effluent to identify whether they had any of the toxics of concern. If any were identified, the facility had some come up with a strategy to deal with them by 2011. Fortunately, the studies found that the only toxics found in the two major treatment plants' waste streams during sampling were primarily byproducts of human digestion, and DEQ deferred the requirement for the strategy to be submitted pending additional discussion and review. Similarly, the EPA's Office of Science is continually researching the environmental impacts of existing or new products or issues in an effort to provide the scientific support for any additional regulations that may be required.

In the near term, staff anticipated that both the Tri-City WRRF and Kellogg Plant will be dealing with compliance challenges arising from several existing discharge limitations, including: (i) temperature, (ii) ammonia, (iii) biological oxygen demand ("BOD") loading, (iv) total suspended solids ("TSS") loading, and (v) copper. Some arise from additional connections to the systems, while others are likely to become issues because of decreased allowances for existing discharges. In addition to anticipated problems in existing discharge limitations, staff also anticipates that some or all of the following "pollutants" may be added as new limitations within the NPDES Permits in the next several years: mercury, cadmium, silver, zinc, nickel, lead, and chromium.

In complying with the NPDES permits and associated regulatory structure, the districts currently achieve some costs savings by sharing staff to perform tasks. However, they are separate districts, and accordingly WES must maintain a degree of separation to follow the individual permits and legal requirements. Additionally, technical analyses are required for each district as well. The districts must also have separate rules and regulations, which govern activities that may impact the collection system and treatment works. Hence, the department has separate accounting, reporting and administrative needs to meet permit requirements of each Partner.

The current system of administration and compliance meets the demands of the regulatory system, but is not the most efficient. However, the primary gains that could be experienced by the Partners through a cooperative partnership are not on the staff side, but on regulatory permit compliance efforts themselves through the utilization of a watershed-based permit.

## Watershed-Based Permitting

Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis. Watershed-based permitting can encompass a variety of activities ranging from synchronizing permits within a basin to developing water quality-based effluent limits using a multiple discharger modeling analysis. The type of permitting activity will vary depending on the unique characteristics of the watershed and the sources of pollution impacting it. The ultimate goal of this effort is to develop and issue NPDES permits that better protect entire watersheds. The scope of the permits could cover the entirety of watersheds, or portions thereof. WES would be seeking a permit that covers multiple discharge points in the same watershed, but not one that covers the entirety of a watershed given two other wastewater plant operations, Oak Lodge Water and City of Portland's Trion Creek, both separately discharge into the same Willamette watershed.

Having a watershed-based permit would greatly benefit the Partners in meeting their Clean Water Act obligations, potentially allowing them to combine their respective allocations so that trading of NPDES permit discharge allocations could occur, as long as the collective discharge would be below the combined allocation. For example, under the current permitting situation if there is a high flow event at the Tri-City WRRF that leads to an exceedance on TSS allowed to be discharged, TCSD is fined under the Clean Water Act, which can result in fines of up to \$50,000 per day per parameter within the NPDES Permit that is violated. It would not matter if the Kellogg Plant is substantially below the required TSS loadings because they are distinct permits. However, if there was a single watershed permit, then there would only be a fine if the total discharged from both plants exceeds the total amount allowed to be discharged by both plants. So in this hypothetical, there is no violation because the Kellogg Plant's available loading can be combined with the Tri-City WRRF via a "trade" to result in compliance across the watershed.

This is not a radical innovation, but rather an existing local fact. Our neighboring Washington County wastewater provider, Clean Water Services, uses a watershed-based integrated permit covering four treatment plants via a county service district model. Oregon DEQ states that a single watershed-based, integrated municipal permit does not reduce the requirements that were previously contained in separate permits. Instead, it provides a number of advantages and efficiencies in allowing for use of multiple parameters across permits to meet requirements, or even from sources external to the allocations of treatment facilities (such as generating temperature credits for discharges by creating shade on upstream tributaries within the watershed).

The single watershed-based permit would result in various benefits to the permittee and the permitting authority and the environment. One permit is easier to administer and implement for both entities. The integrated permit also provides an economy of scale for both permittee and the permitting authority in terms of resource use. Both organizations will be better able



to focus their resources on the most critical problems, while the integrated permit provides a greater level of protection for the environment than what might have been realized under the current system of multiple permits.

Putting a watershed permit in place for the Partners is the best available strategy for meeting the existing and anticipated regulatory challenges facing the current and future ratepayers at the lowest cost. A single parameter, such as temperature, can drive investments into the tens of millions of dollars and pooling regulatory allocation resources to most efficiently meet those requirements makes the most sense from a professional management standpoint. This pooling of resources via a watershed permit can only be achieved if a single, regional entity holds and controls the NPDES permits for all involved facilities.

A regionalized, watershed permit approach would also create efficiencies in the solids disposal portion of the districts' business. Currently, solids that are generated in the treatment process are loaded onto trucks and applied to farm fields in either the Willamette Valley or eastern Oregon. Each field must be specifically authorized by DEQ for application of biosolids by a particular entity. Currently, solids generated at one district's plant cannot be applied at the fields approved for the other district. This leads to operational challenges and increased costs in disposal.

In summary, the ability for WES to obtain a single watershed-based permit as a single, regional entity would allow the Partners to achieve water quality goals in a more cost-effective and efficient manner. The Partners would experience enhanced environmental results for the watershed where ratepayers live, work and play, as well as target and maximize the available resources to achieve the greatest service level and environmental results. Additionally, a single watershed-based permit would create administrative efficiencies and provide opportunities for water quality trading programs that could support non-point source contributions to watershed health and regulatory compliance.

In light of the improved performance of WES under a combined regulatory approach which would result in substantial cost savings for all the Partners including CCSD#1, there is no question that the formation of WES does not have a material adverse effect on CCSD#1 or the owners of the Outstanding Bonds. Rather, the efficiencies and opportunities available from a regulatory perspective under the new corporate structure increases the likelihood of compliance with regulatory mandates at a lower cost, improving the financial performance upon which the bondowners are relying for repayment.



#### IV. ADDITIONAL INFORMATION

The above factors were weighed with respect to the rights of bondowners under the Master Declaration as required. Although not required as part of the determination, the Board has directed staff to review and propose findings with respect to additional information in this document that might otherwise be part of CCSD#1's notice to the market. This information was also shared with Standard and Poor's Corporation to confirm the rating on the Outstanding Bonds and Reserve Account Insurance. The additional information considered, and related findings made with respect to the same, are:

##### *Debt Capacity:*

ORS 451.545(3) establishes the debt capacity of county service districts. It provides that the total outstanding bonds of all kinds, including improvement bonds of the kind authorized by ORS 223.205 and 223.210 to 223.295, shall at no time exceed in the aggregate thirteen percent (13%) of the real market value of all property by law assessable for State and County purposes within a county service district, as reflected in the last roll certified under ORS 311.105.

It is not clear how this limitation applies to an intergovernmental entity such as WES, which consists of three county service districts. However, 13 percent is a very large debt limit, and WES does not contemplate issuing bonds in amounts that approach this debt limit. The outstanding bondowners of CCSD#1 are currently less than one percent of the real market value of property within CCSD#1 alone.

##### *Organization & Administration of the District*

CCSD#1 is a county service district that is governed by the Board, staffed by county employees, and formed to provide sewerage and surface water services. Each of the other Partners are also county service districts that are governed by the Board, staffed by county employees, and formed to provide sewerage services. American Federation of State, County and Municipal Employees Union ("AFSCME") has a local bargaining unit that represents Clackamas County employees who devote their effort to WES (and previously the three Partners). WES, as the operating entity for the Partners, does not have employees of its own. Management of WES, acting in coordination with Clackamas County, participates in collective bargaining with AFSCME. Prior to formation of WES and afterwards, the same employment relationships existed, and the same management structure (governance by the Board, management through the District Administrator).

Therefore the Board of CCSD#1 therefore reasonably judges that there will be no significant difference in organization and administration resulting from the adoption of the Amended Declaration.

#### *District Facilities*

Each of the Partners has different facilities. However, the facilities are all located near each other in Clackamas County, are similar in kind and are in roughly the same condition.

Any difference in condition or need for improvement of the facilities of TCSD and SWMACC is minor, and is more than outweighed by the additional revenues that TCSD and SWMACC will contribute. Further, CCSD#1 is reliant on assets of TCSD for location of the most cost-effective treatment works and full return on investment of prior capital expenditures. Any potential increased cost with respect to Partners assets is, as demonstrated by the theoretical "CCSD#1 go alone" case, is relatively better for the Partners as part of WES than seeking to address as individual districts.

#### *Regulatory Environment*

All three Partners provide sewage or surface water collection and treatment and are subject to similar regulations. No Partner is currently subject to any regulatory enforcement proceedings, or is out of material compliance with applicable regulations. As described above, the Partners are materially better off in a cooperative regulatory approach rather than an individualistic regulatory approach. So while the regulatory environment remains the same irrespective of the districts' efforts, their ability to effectively respond to said regulatory environment is enhanced through participation in the WES partnership. For CCSD#1 specifically, this is clearly demonstrated in the "go it alone" case.

#### *Capital improvement Plan*

Past efforts such as the Blue Ribbon Committee and White Paper has consistently shown that there are substantial regional savings by co-investing. Adoption of the Amended Declaration will allow WES to finance improvements that CCSD#1 or TCSD would have financed individually. The estimated total expenditure by the two districts is lower through a cooperative capital improvement plan than by seeking construction of such plans separately. CCSD#1 is projected to save over \$100 million in avoided capital expenditures by partnering through WES, with each other partner experiencing substantial savings as well. This primarily arises from the regulatory and operational efficiencies available only through a cooperative approach through WES.

### *Revenue Sources*

All three Partners derive substantially all of their revenues from similar sources: user fees, system development charges, and grants. The adoption of the Amended Declaration is not expected to change the character of the revenues that will be used to pay the Outstanding Bonds. Projected rates and charges will be the subject of policy consideration by the WES Advisory Committee and Budget Committee, and ultimately decided by the Board. Given the improved financial performance, operational efficiencies, and capital savings, the Board does not anticipate that the formation of WES or the participation of CCSD#1 in WES would result in rates higher than if CCSD#1 had remained a separate entity. Rather, the Board anticipates that rates for current CCSD#1 ratepayers will be relatively lower through participation in WES.

As identified in the financial impact analysis section above, adoption of the Amended Declaration will increase the revenues that are available to pay the Outstanding Bonds.

### *Intergovernmental Agreements*

WES will be obligated by the intergovernmental agreements of its Partners. Each Partner is party to similar types of intergovernmental agreements. Participation in WES will allow the Partners to achieve greater efficiencies in meeting obligations and realizing benefits with respect to such agreements. In addition, the Partners are party to intergovernmental agreements with each other, and adoption of the Amended Declaration will simplify those relationships by removing burdensome internal charge allocation and similar activities.

### *Financial & Auditing Policies*

WES will be subject to the same financial and auditing policies that applied to CCSD. The formation of WES, once full contribution and integration is complete, is anticipated to result in a simplification of the Partners' financial and accounting structure with the goal of creating greater transparency for customers.

### *Investment Restrictions and Policies*

WES will be subject to the same investment restrictions and investment policies that applied to CCSD#1. There will be no changes in this respect.

### *Pension System*

CCSD#1 has no employees and has no direct pension obligations. WES will have no employees and no direct pension obligations. Clackamas County staffed CCSD#1 and

charged CCSD#1 for its allocable share of pension costs. Clackamas County will staff WES, and will charge WES for its annual share of pension expenses relating to County employees assigned to work on behalf of WES. These pension costs arise from Clackamas County's participation in the Oregon Public Employee Benefit Retirement System. WES will pay the contracted rate relating to pensions expenses, and all other expenses, for that contracted labor.

The same relationship pertains with respect to TCSD and SWMACC. All Partners are currently generating sufficient revenue to support their annual allocated expenses as assigned by Clackamas County relating to pension obligations. After full contribution and integration into WES, the same revenues and support will be in place, resulting in no net increase in liabilities. Going forward, any increase in pension charges resulting from increased time by county employees working on WES matters will be outweighed by the increased revenues provided by the Partners.

In a similar fashion, any current or future other postemployment benefit ("OPEB") obligations are already supported by the Partners, and participation in WES will not result in a net increase in such liabilities. Going forward, any increase in other postemployment benefit charges relating to county employees working on WES matters will be outweighed by the increased revenues provided by the Partners.

WES, like the Partners before it, participates in the calculation of any pension or OPEB allocations to it as part of the budget adoption process. The substitution of WES for CCSD#1 with respect to the Outstanding Bonds, or the contribution of CCSD#1 assets and operations into WES, does not change the process in which this occurs.

WES does not expect to add significant staff as a result of the adoption of the Amended Declaration, so the County's UAL is not expected to increase as a result of the adoption of the Amended Declaration.

### *Demographic Information*

The Partners are all located contiguously in the County, and the three areas in which the Partners operate do not vary materially in demographic characteristics, with the exception that SWMACC has a more rural character and CCSD#1 and TCSD are more urban in character. The shared boundaries of the Partners and their ability to provide similar services in northern Clackamas County to similarly situated customer bases are one of the material factors underlying the operational gains anticipated by shifting from a separate district model to the WES partnership model.



### *Principal Employers*

The adoption of the Amended Declaration will modestly increase the number of employers that operate within the boundaries of the issuer, slightly reducing the impact of any change in an individual employer. As WES has a larger customer base than CCSD#1, the regionalization of services decreases reliance on any one employer. At the current time, no one employer, if to cease operations, would result in a material impairment of WES' revenues.

### *Litigation*

There is no litigation pending which would materially affect the finances of the Partners or WES or affect WES's ability to meet debt service requirements on the Outstanding Bonds. The Board is not aware of any claims against CCSD#1, TCSD or SWMACC which may reasonably be expected to be asserted, which, if they were asserted, would materially and adversely affect the revenues available to pay the Outstanding Bonds after the Amended Declaration is adopted.

### *Community Issues*

CCSD#1 provides sewage collection and treatment services in a rapidly urbanizing area. The cost of providing those services to businesses and residents in CCSD has been significant and increasing, and this has occasionally resulted in heightened community and political concern. This has been also true for TCSD, and, to a lesser extent, SWMACC.

The formation of WES was an effort to provide certainty and clarity about the continued provision of wastewater and surface water services on a regional basis to protect public health and the environment and support economic development. The Board cannot reasonably expect that the formation of WES and the adoption of the Amended Declaration will eliminate future community and political concern, but the Board does expect that formation of WES and the adoption of the Amended Declaration will improve the level and assurance of service for ratepayers.

## **V. CONCLUSION**

In communities across the country, there is a trend towards regionalization of wastewater treatment and conveyance, as many recognize the advantages of working together in an economy-of-scale business. The formation of WES provides an opportunity for the ratepayers of CCSD#1, TCSD and SWMACC to realize significant benefits in collectively meeting regulatory requirements for current services and allowing for the least-cost capital investment strategy to meet regulatory, asset replacement and growth needs. There are smaller, but tangible benefits that emerge in the areas of administration and governance, resulting in a

more streamlined organization that is more efficient and effective. And while the formation of WES results in a material change in the structure of the districts, the foregoing shows that the change is not adverse, and actually results in a single entity that is in a much stronger and stable position to tackle future regulatory and financial needs head on - and therefore better able to support any borrowings related to the provision of such services.

Therefore the Board reasonably finds that adoption of the Amended Declaration will not materially and adversely affect the rights of owners of any Outstanding Bonds or the Reserve Credit Facility Issuer.

**AN INTERGOVERNMENTAL PARTNERSHIP AGREEMENT**  
**FORMING THE**  
**WATER ENVIRONMENT SERVICES**  
**PARTNERSHIP**

THIS INTERGOVERNMENTAL PARTNERSHIP AGREEMENT (this "Agreement"), dated as of November 3, 2016, is entered into by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute ("ORS") Chapter 451 ("CCSD#1"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the creation of a new intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

**RECITALS**

**History.**

TCSD has partnered with CCSD#1 to share the costs of administrative and management services since formation by public vote in 1980. The Partners currently contract with Clackamas County ("County") for management of operation and administration, resulting in significantly lower costs to ratepayers. This cooperative approach expanded in 1999 through an agreement for the rental by CCSD#1 of wastewater treatment capacity at the Tri-City Water Pollution Control Facility ("Tri-City Facility") and construction of an intertie pipeline to allow flows to reach the treatment works. The Partners have also shared the costs of creating and staffing a certified laboratory in support of meeting Clean Water Act requirements at all facilities. The relationship was financially beneficial for both districts, and in 2003 agreement was reached to consolidate future wastewater treatment for both districts at the Tri-City Facility pursuant to a plan that was ultimately rescinded for non-technical reasons.

The economic incentives for cooperative investment and operation brought the Partners together when CCSD#1 was considering options to expand its treatment capacity. After reaching agreement, CCSD#1 opted to buy in to the Tri-City Facility infrastructure for a lump sum payment of \$4 million dollars. CCSD#1 leased space there and invested approximately \$93 million for a high-technology membrane bio-reactor wastewater liquids treatment facility (the "MBR Facilities"). In addition, another \$40 million was invested by CCSD#1 to construct pump stations and pipes to deliver the flows to the Tri-City Facility, enhancing the interconnected network between the TCSD and CCSD#1 systems.

This cooperative agreement allows for flow management and balancing between the two districts' systems to better ensure compliance with regulatory requirements and to allow equipment to go offline for routine maintenance. The MBR Facility now produces the highest

quality effluent of any treatment plant in the State of Oregon, and significantly assists the Tri-City Facility in meeting current regulatory requirements of the Clean Water Act.

Currently, CCSD#1 pays for a portion of the operating costs of the Tri-City Facility relative to its flow. The MBR Facilities are designed to allow ease of expansion on a smaller footprint to meet the needs of both Partners, allowing for continued high performance in meeting current and future regulatory requirements and environmental goals at a substantially lower cost now and into the future.

To confirm the willingness of the entities to work together as partners, a regionally-representative 2008 blue ribbon group was formed, consisting of members of the business community, environmental groups, ratepayers, and elected officials from all affected cities including Gladstone, Happy Valley, Oregon City, Milwaukie, and West Linn (the "Blue Ribbon Committee"). This Blue Ribbon Committee participated in a thorough examination of the potential costs and benefits of closer cooperation and partnership between the Partners. The Blue Ribbon Committee found that: (i) there were significant financial benefits to each of the Partners' ratepayers by making collective investment and management decisions, with millions in projected savings; (ii) there was an equitable fiscal and operational model that ensured fairness for all; and (iii) governance and ratepayer interests of all stakeholders could be addressed in a collective investment and operational approach.

One of the conditions of the Blue Ribbon Committee's findings was that each Partner's ratepayers would be responsible for their prior debt and actions. This Agreement follows that condition by requiring CCSD#1 ratepayers to be responsible for all of CCSD#1's currently outstanding debt going forward. Blue Ribbon Committee members, including the elected officials of component cities of the Partners, made a recommendation to the Board of Commissioners of Clackamas County ("BCC") to have the Partners operate more closely together as partners, with the ultimate goal of a regional consolidation forming a single county service district under the governance of the BCC with appropriate input from stakeholders, all as more fully described on Exhibit A attached hereto.

The concept of regionalization of wastewater efforts was further discussed by the Regional Wastewater Treatment Capacity Advisory Committee ("Regional Committee") over several years. In 2012, after a recommendation from the Regional Committee, the Partners agreed to mutually invest and acquire the Blue Heron lagoon site and associated Clean Water Act permit, with each Partner equally sharing in all related costs in an estimated \$35 million project, which would allow both Partners to avoid approximately \$80 million in infrastructure expenditures imposed by regulatory requirements.

Further investigations and conversations at the Regional Committee in 2015-16 have indicated substantial cost savings to ratepayers through a joint investment strategy for solids handling infrastructure. In short, when addressing three types of projects (liquids treatment, regulatory discharge permits, solids handling) over a decade, in each case there were



substantial cost savings and efficiencies gained by the Partners working together to address mutual challenges.

#### **Current Challenges.**

One of the most challenging aspects of management of the Partners has been a lack of certainty regarding long term investments and operations. The plans of each Partner are inextricably linked to the other given the investments made for construction of the MBR Facility and the Blue Heron lagoon project. Each capital project has been evaluated and discussed as a standalone question, when better management practices dictate that a more comprehensive look be taken to maximize efficiencies and opportunities for ratepayers. Gaining this certainty is a key requirement in the long range planning necessary in an industry such as wastewater treatment. The infrastructure is expensive and relatively permanent once constructed, and needs to be online prior to the imposition of new regulatory requirements, the failure of old equipment, or the arrival of additional flows.

In addition to the lack of certainty, there are barriers to efficiency that arise from the regulatory structure required when operating as separate districts, even with common management. The current legal structure of the Partners holding separate National Pollution Discharge Elimination System ("NPDES") permits at the Tri-City Facility and at the Kellogg Creek Wastewater Treatment Facility ("Kellogg Facility") creates regulatory inefficiencies that can lead to duplicative requirements and avoidable expenses.

For example, solids generated at the Tri-City Plant cannot be applied to fields authorized for CCSD#1, and vice versa. This results in the inefficiency of having to send two solids trucks to eastern Oregon to apply on fields that are fairly close to each other, due to a regulatory prohibition to mixing solids, even in the truck. Discharge limitations are unique to each facility and require duplicative investment to meet a discharge restriction even when the overall system is well below the regulatory threshold. These and other similar issues could be significantly improved if there were a single entity that held all NPDES and other regulatory permits.

#### **Benefits.**

Overall, evaluations from elected officials, community groups, and professional staff, as well as nationwide industry trends, all indicate that customers of both Partners would be best served by a regional approach to wastewater and surface water services. Current capital planning by the Partners anticipate that the majority of the investment costs required going forward will be driven by the need for asset replacement and regulatory requirements, which can be more effectively managed utilizing a regional approach.

In addition, urban Clackamas County is covered by a joint Municipal Separate Storm Sewer System ("MS4") permit. CCSD#1 provides the lead for surface water services for many

cities throughout the urban area. The inclusion of such services in this partnership may be of benefit to TCSD member cities if a city elects to use them.

A permanent partnership agreement to cooperate together in addressing regional needs is in the best interests of the customers of CCSD#1 and TCSD. This formal partnership will provide long term certainty to the Partners in working together to realize the many millions in savings recognized by each of the public processes used to examine the issue over the last two decades. That certainty allows for efficient and non-duplicative capital planning, improved operations, and redirects the focus and energy of staff and stakeholders to better address the existing challenges to the wastewater and surface water systems.

It is the intention of the Parties that the formation of a partnership entity to hold all the assets of the Partners and provide for singular management of the same would allow for a regional, consistent, and efficient way to plan for and provide north Clackamas County's future wastewater and surface water needs in a way that protects public health and the environment and supports economic development (the "Purpose"). Consistent with this Purpose, both Partners have a stated policy of having "growth pay for growth" by the charging of appropriate system development charges to ensure current ratepayers are not unduly burdened by new connections, which would continue under this Partnership.

The Partners remain committed to ensuring that an appropriate and stable form of governance and public input is sought from all affected stakeholders. The governing body of the Partners has publicly stated that they are willing to consider alternatives to this Agreement, including the possibility of a vote to change governance structures, or modifications to this Agreement to allow for a different governance structure, or financial principals different than stated in this Agreement, or operating arrangements between the Partners and affected jurisdictions. In addition, the Partners are open to considering additional partner entities to join into this Agreement, including but not limited to the Cities of Milwaukie and Johnson City. The Partners believe the formation of the partnership reflected in this Agreement is a crucial positive step forward in realizing the benefits of joint operation and investment between the Partners.

NOW, THEREFORE, in consideration of the statements made above and the mutual promises and covenants contained herein, the Partners hereby agree as follows:

**Article I. PURPOSE AND SCOPE.**

**Section 1.01 Purpose of Agreement.** The objective of this Agreement is to provide for a new structure to support the Purpose. The Partners hereby form, establish and organize a municipal partnership pursuant to ORS 190.010(5), to be known as "Water Environment Services," an ORS 190 municipal partnership ("WES"). This entity shall have the full set of powers and authority allowed under ORS 190, as more fully described below. The Partners intend that all current and future facilities, including the Tri-City Facility and the Kellogg Facility, other treatment and surface water assets previously held by the Partners, and all future assets shall be operated as a combined system for the benefit of all the Partners and their ratepayers in the manner set forth herein.

**Section 1.02 Governance.** WES shall be governed by the WES Board (defined below), and its primary function shall be to carry out the Purpose and this Agreement, as both may be amended or supplemented from time to time. The Partners intend for WES to function as a regional agency that provides wholesale and, where applicable, retail wastewater collection, conveyance, treatment and management services and surface water management services in the public interest to protect public health and the environment and comply with all applicable laws, regulations and permits.

**Section 1.03 Partnership Contribution.** The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES's sole management and control. This full "Contribution" can occur only after all outstanding CCSD#1 Bonds (defined below) have been paid or defeased, or when the applicable bond covenants are no longer valid, or when it is otherwise legally feasible. The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. Until such time as CCSD#1 is able to make the complete Contribution, it agrees that all of its WES Facilities shall under its ownership but under the management and direction of WES to the maximum extent allowable by law and the CCSD#1 Bond covenants.

**Section 1.04 Transition Period.** The Partners recognize that a transition period will be necessary to identify and accomplish all required and appropriate Contribution steps and to coordinate the assumption by WES of responsibilities and legal obligations related to the respective Partner's systems. It is further acknowledged that due to the complexity and cycles

required by Oregon Local Budget Law, that each of the Partners will operate consistent with their currently adopted budgets for the 2016-17 fiscal year. In addition to the Contribution referenced in Section 1.03 above, the Partners shall evaluate and proceed with a budgetary integration plan consistent with the Purpose, with the goal of having full budgetary integration with WES being the lead entity no later than July 1, 2018 (the "Transition Period").

Section 1.05 Extraordinary Cooperative Efforts. The Partners recognize that, during at least the Transition Period, extraordinary cooperative efforts will be required to coordinate the legal and service obligations of the WES System (defined below) and to complete all of the legal and administrative steps necessary to consolidate the Partners' wastewater and surface water operations. The Partners shall undertake all actions and cooperate as may be necessary to enable WES and the WES Board to operate as a legal and independent municipal entity.

Section 1.06 Termination of Prior Agreements. While acknowledging that the Contribution may take significant time to effectuate through the Transition Period, it is the intention of the Parties to move forward under this Agreement consistent with the Purpose. Therefore the Partners hereby terminate all prior intergovernmental agreements exclusively between them, including but not limited to the (i) agreement regarding the construction and operation of wastewater treatment facilities and the Tri-City Plant signed December 18, 2008 as subsequently amended on May 12, 2011; (ii) mutual investment agreement regarding the Blue Heron Lagoon site dated December 13, 2012; and (iii) alternative biosolids disposal agreement dated June 25, 2015. This termination shall be effective as of November 3, 2016; *provided, however,* that the operative terms of all such agreements shall continue as if incorporated by reference into this Agreement. This incorporation shall be conditional. The Administrator of the Partners or Director of WES may designate any provision or provisions of any or all such agreements as non-operative at any time and such provisions shall then have no force or effect. All such incorporated provisions, if not earlier designated non-operative, shall cease to be effective in all respects at the end of the Transition Period.

Section 1.07 Commitment & Access to Facilities. Consistent with prior agreements and the Blue Ribbon Committee recommendation, the Partners commit to deliver all sewage flows to WES for treatment and disposal or reuse. Each Partner foregoes the opportunity to treat and dispose or reuse its wastewater flows individually and decides to share control of access to and capacity in wastewater treatment facilities, as more fully set forth below. Because this Agreement contemplates that all Partners will be using WES Facilities and because most, if not all, Partners or their component communities will be transporting wastewater flows through the political jurisdictions of one or more other Partners, the Partners declare and confirm (i) that this Agreement is not intended as an instrument to permit one Partner to control the wastewater collection services furnished by another Partner, and (ii) that each Partner will cooperate to provide the others with access for wastewater flow to the WES Facilities either by sharing conveyance capacity, if reasonably available, or by facilitating the acquisition of



necessary rights-of-way, franchises, and permits through and under public streets, rights-of-way, and property under reasonable conditions and terms for such access.

Section 1.08 Ownership of Assets. The Partners recognize that they have developed and maintained their respective systems, and that several such systems are integrated between the Partners to serve the ratepayers of both districts. The Partners hereby reconfirm that they each have a quantified or unquantified interest in existing facilities based on past financial contributions to the development, operation and maintenance of the facilities and related systems. In this Agreement, the Partners commit to transfer all right, title and interest in and to existing facilities to WES. Each Partner further agrees to execute or approve any and all deeds, leases, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement. To the extent a bill of sale, agreement, or other written instrument is required to document such transfer, the Partners each do hereby convey such assets hereunder without need of any further action, subject to any restrictions on transfer such as the CCSD#1 Bonds covenant.

Section 1.09 Release of Claims. Each Partner hereby releases and agrees to hold each other Partner harmless from any and all claims, demands, and causes of action arising from or relating to the legal or equitable ownership of any part of the WES System prior to effective date of this Agreement. In consideration for the mutual promises and covenants and establishment of WES, each Partner waives all potential claims against the other as to ownership of existing facilities, rights for payments under prior agreements, and as to monetary reimbursement or compensation arising from the ownership of existing facilities or its transfer to WES, *provided, however*, that the ratepayers of TCSD shall not be required to pay for any of the CCSD#1 Bonds.

Section 1.10 Contract Documents. The following exhibits are incorporated by reference into this Agreement as though fully set forth herein:

Exhibit A — 2008 Blue Ribbon Committee Findings & Membership

Exhibit B — WES Service Area Description and Maps

Section 1.11 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) "CCSD#1 Bonds" means all outstanding debt of CCSD#1 as of the effective date of this Agreement, including but not limited to the Series 2002A Obligations, Series 2009A

Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, and any Oregon State Revolving Fund loans.

- (b) "CCSD#1 Debt Service" means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution or order authorizing the issuance of the CCSD#1 Bonds.
- (c) "Connection Charge" means the one-time connection charge collected at issuance of building permit for each new connection to a Local System or directly to the WES System, as required by WES Regulations. This is distinct from a System Development Charge, defined below.
- (d) "Equivalent Dwelling Unit" or "EDU" shall initially have the meaning set forth in the ordinances of the Tri-City Service District. The Partners agree that the WES Board may change such definition at a future date and nothing in this Agreement shall be construed to restrict such change.
- (e) "Equivalent Service Unit" or "ESU" shall initially have the meaning set forth in the ordinances of Clackamas County Service District No. 1. The Partners agree that the WES Board may change such definition at a future date and nothing in this Agreement shall be construed to restrict such change.
- (f) "General Pretreatment Regulations" shall mean the United States Environmental Protection Agency General Pretreatment Regulations for existing and new sources as set forth in 40 CFR Part 403.
- (g) "Local System" means sewer or surface water facilities that are owned or operated by a local government other than a Partner for the local collection, pretreatment, transmission, and delivery of wastewater or surface water flows to WES Facilities.
- (h) "Partners" means CCSD#1 and TCSD, and any subsequently admitted Partners added pursuant to an amendment to this Agreement.
- (i) "Stakeholder" means a group or entity with a material interest in the performance, goals and objectives of WES. This shall automatically include the Cities of Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, and West Linn, and may include other interested parties such as business chambers, environmental coalitions, ratepayer groups, and technical groups as designated by the WES Board.

- (j) "Surface Water Service Charge" means the WES monthly rate charged for each Equivalent Service Unit connected to Local Systems or directly to the WES System.
- (k) "System Development Charge" means charges authorized by ORS 223 and implemented by WES Regulations for the payment by new connections for the impact of such new connection on the existing WES System.
- (l) "WES" means the WES Partnership created by this Agreement pursuant to ORS 190.
- (m) "WES Board" means the board of directors who manage and oversee WES, who shall be the Board of Commissioners of Clackamas County. The composition of the WES Board may be changed by amendment to this Agreement.
- (n) "WES Debt" means any notes, bonds or other obligation of WES issued to finance or refinance improvements, betterments, or extensions to any facilities or any other costs related to the WES System but shall not include the CCSD#1 Bonds.
- (o) "WES Debt Service" means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution authorizing the issuance of WES Debt.
- (p) "WES Facilities" means all wastewater or surface water treatment or reclaimed water facilities or conveyance contributed to, acquired by, constructed, managed by, received, or developed after the effective date of this Agreement by WES, including but not limited to the Tri-City Facility, the Kellogg Facility, the Hoodland Sewage Treatment Facility, the Boring Sewage Treatment Facility, the Fisher's Forest Park Water Pollution Control Facility, the Blue Heron lagoon and outfall, trunk sewer lines, sewage pumping stations, sewage force mains, other sewage treatment facilities and outfall lines, resource management basins, reclamation and groundwater recharge facilities, flow reduction improvements, and other improvements, properties, rights, or interests used or useful in the conveyance, treatment, disposal, storage, or management of wastewater or surface water flows or reclaimed wastewater or water products, including any appurtenances thereto, and any improvements or replacements of facilities.

- (q) "WES Facilities Maintenance and Operation Expenses" means all costs and expenses relating to labor, fringe benefits, power, light, water, heat, chemicals, equipment including repair and replacement thereof, tools, materials, vehicles, supplies, insurance premiums, contract services, inspections and taxes and "in lieu of taxes" directly and properly chargeable to the operation and maintenance of the WES Facilities plus administrative overhead expenses, and any other similar costs chargeable to the WES Facilities.
- (r) "WES Regulations" shall mean the regulations, ordinances and rules adopted by the WES Board regarding the functions of the WES System, as may be amended from time to time by the WES Board.
- (s) "WES System" means the total wastewater and surface water regional service system owned, operated, or controlled by one or more of the Partners or by WES, including the WES Facilities, or anything that is used or useful in the performance of WES's functions, including all contracts, permits, rights, and interests that are necessary or useful for operation of said facilities.
- (t) "Wastewater Service Charge" means the WES monthly rate charged for each Equivalent Dwelling Unit (EDU) connected to Local Systems or directly to the WES System.

**Article II. WES POWERS AND DUTIES.**

Section 2.01 WES Powers. WES, an independent Oregon municipal legal entity, acting through the WES Board and duly authorized employees and agents, shall have all the powers of a county service district organized under ORS 451. Among its powers but without limiting the foregoing, WES shall have the full power and authority to:

- (a) Acquire, construct, receive, own, manage, lease, sell, and otherwise dispose of real property, personal property, intangible property, and WES Facilities;
- (b) Plan, develop, replace, operate and maintain WES Facilities;
- (c) Enter into contracts for goods, services, work, or other benefits to WES;



- (d) Borrow money and issue debt instruments, bonds, securities or provide for the borrowing of money and issuance of debt instruments in support of any lawful purpose of WES;
- (e) Receive gifts or grants for the planning, design, development, construction, or operation of WES Facilities, or assets or programs to further WES's purposes, or for other purposes necessary to carry out WES's purposes;
- (f) Lend money or provide services or facilities to any Partner or other governmental utility or governmental service provider in furtherance of WES's purposes;
- (g) Invest its funds consistent with applicable state law;
- (h) Sue and be sued;
- (i) Hire and fire employees, agents, and other service providers. The Partners acknowledge that services are currently being provided by the County and do not intend this Agreement to change that relationship.
- (j) Fix salaries, wages and other compensation of officers and employees, whether directly, by contract with the County, or otherwise;
- (k) Employ or retain engineering, legal, financial, architectural, or other specialized personnel and consultants as may be necessary to carry out the purposes of WES;
- (l) Impose, alter, regulate, control, and collect rates, charges, and assessments in one or more zones, including the ability to charge non-equal rates to customers as may be determined by the WES Board;
- (m) Purchase insurance and participate in pooled insurance and self-insurance programs;
- (n) Indemnify the Partners and their officers, elected officials, agents and employees in accordance with law;

- (o) Adopt ordinances, rules, policies, guidelines, or requirements to effectuate the Purpose and carry out its powers and responsibilities;
- (p) Regulate and be regulated as a single entity;
- (q) Exercise all other powers within the authority of and that may be exercised individually by any of the Partners which are necessary to efficiently effectuate the Purpose, including regarding wastewater or surface water conveyance, treatment, discharge, disposal, reclamation, reuse, conservation, or other WES purposes or functions as set forth herein, including but not limited to the power of eminent domain; and
- (r) Take any other actions as the WES Board deems necessary to implement the Purpose, to protect and advance the interests of the WES System, its Partners, and its ratepayers consistent with applicable law.

Section 2.02 Public Accountability. The Partners intend for WES to operate and function as a public agency. The WES Board shall conduct its deliberations and take action openly. Therefore, WES shall operate and conduct its business subject to the Oregon Public Meetings Law, Oregon Public Records Law, any local government accountancy statutes, and other applicable laws, regulations, and self-imposed policies.

Section 2.03 No Effect on Partner Powers. Nothing in this Agreement shall be deemed to limit the exercise of a Partner's powers as may be required or allowed by law. The WES Board may comment on proposed changes by Partners or component local government entities on land use plans and zoning codes where such changes could affect the WES System.

Section 2.04 WES Board. With respect to the WES Board, the Partners agree that:

- (a) *Procedures and Voting*. Each WES Board representative shall have one vote. The WES Board shall establish procedures for conducting its meetings consistent with Roberts Rules of Order and its decisions shall be by a majority vote except when otherwise provided herein.
- (b) *Unanimous votes*. For the actions that require unanimous votes identified below, proposed WES Board resolutions or motions must be distributed to the Clerk of each Partners' legislative body at least twenty-one (21) calendar days in advance of final

action by the WES Board. The following actions shall require unanimous votes by the WES Board:

- (i) The proposed dissolution of WES; or
  - (ii) Revisions or changes with respect to payments on the CCSD#1 Bonds.
- (c) *Local government representation.* To the extent that in the future the WES Board does not exactly overlap with the governing body of the Partners, the Partners hereby agree that legislative or administrative oversight by their respective local governments shall not be required for any WES Board decisions, except as expressly provided herein. WES Board members shall represent the interests of their respective local governments and constituent ratepayers in carrying out their responsibilities to act in the best interests of WES.
- (d) *Local Government Review and Comment.* The WES Board shall, in a timely manner, solicit the review and comment by affected local governments of proposed changes in WES comprehensive master plans and five year capital programs. The WES Board shall consult with an affected local government on any specific WES Facility capital project proposed within such entity's jurisdiction prior to approving the final design for such project. Nothing contained herein shall be deemed to require that such local entity consent to such an action before it may proceed, and equally that nothing in this Agreement is intended to limit, impair or otherwise modify a jurisdiction's independent land use authority.

Section 2.05 Committees. The WES Board may form and convene committees and advisory bodies as it deems appropriate for review and comment, public input, efficient staff and Board work, and other purposes.

Section 2.06 Books and Records. WES shall maintain appropriate books and records as would be required of a governmental utility of similar nature including but not limited to annuals budget and audits, and any document that would be deemed a public record under Oregon Public Records Law. Any member of the WES Board or a representative of such member may examine the books and records of WES. The WES Board may appoint an auditor or accountant to review any such books and records and the costs of such review shall be charged to WES which in turn may include such costs as a WES Facilities Maintenance and Operations Expense.

Section 2.07 Executive Officer. The WES Board may, by contract, ordinance, resolution, or otherwise, appoint a chief executive officer for WES. At the time of formation, the Partners agree that the County Administrator of Clackamas County shall serve as the executive officer of WES, and further that the County Administrator may appoint a Director to provide for the management of WES. There shall be no conflict of interest in having the County Administrator or a county employee serve as the Executive Officer, Director and/or any subordinate officers, employees or agents.

### **Article III. WES FINANCES.**

Section 3.01 WES Rates & Charges. WES shall establish rates and collect fees for wastewater and/or surface water services that will be at least sufficient to pay the expenses of maintenance and operation of the WES System and will meet the principal, interest and coverage requirements and other bond covenants of all obligations issued by WES or by a Partner on behalf of WES that are related to improvements and extensions to the WES System or refunding bonds issued for the WES System and that constitute a charge upon the revenue of such system. WES may establish billing and collection systems and rules as necessary to effectuate the appropriate funding of WES.

Section 3.02 Rate Zones and Differentials. The WES Board shall establish rates for each rate zone of WES. Upon formation, there shall be two rate zones. "Rate Zone One" shall be coterminous with the boundaries of TCSD as they may be adjusted from time to time, and "Rate Zone Two" shall be coterminous with the boundaries of CCSD#1 as they may be adjusted from time to time. For illustrative purposes, maps and a general description of Rate Zone One and Rate Zone Two are attached hereto as Exhibit B. The WES Board shall have full power and authority to levy different rates between and within the rate zones. Rate Zones shall generally each pay a wholesale charge for wastewater treatment service. At the time of formation of WES, Rate Zone Two shall also pay sufficient amounts to meet the CCSD#1 Debt Service, retail wastewater service, and surface water services. As levels of service change, the WES Board may add or subtract charges within the Rate Zones; *provided, however*, that the WES Board may not add any payment for the CCSD#1 Debt Service to Rate Zone One except as provided in Section 2.04. The WES Board may create sub-zones within each Rate Zone as it deems advisable for reasons consistent with the Purpose, including but not limited to the exclusion of retail charges if that service is provided by a local government whose boundaries are within one of the Partners or the inclusion of a rate surcharge to recover the cost of right of way fees levied by a local government entity.

Section 3.03 Partner Covenants to Make Payments. During the Transition Period and until the Contribution is complete, and in consideration for WES maintaining and operating the WES Facilities and as a condition for use thereof and service therefrom, each Partner



irrevocably covenants, obligates and binds itself to timely bill, collect and pay the Surface Water Service Charge, Wastewater Service Charge, and the Connection Charge. Each Partner shall pay its share of costs attributable to WES Debt Service on and other costs associated with WES Debt throughout the term of this Agreement whether or not the WES Facilities or the WES System is operating or operable and notwithstanding the performance or nonperformance of this Agreement by any Partner. Nothing in this Agreement shall be interpreted to cause WES not to charge the Partners for WES Debt Service or to relieve a Partner from paying its share of WES Debt Service. The Partners acknowledge and agree that it is their intention that WES will levy directly such rates, charges, and fees necessary for the operation of the WES System and payment of any WES Debt Service at the conclusion of the Transition Period, as allowed by existing obligations and laws.

Section 3.04 Reporting and Payment of EDU and ESU Counts. By the 25th day of each month each Partner shall deliver to WES a statement specifying the number of EDUs and ESUs served or billed by it as of the last day of the immediate preceding month. If any Partner fails to furnish such count in a timely manner, WES may estimate such EDU count and bill that Partner according to that estimate. No dispute over any such charges shall relieve a Partner from its duty to pay a monthly bill. In the event an adjustment or correction must be made, it shall be effective for a credit or additional charges in the next succeeding month. WES may adopt, as part of the WES Regulations, a program to support low income, elderly and/or handicapped persons, provided the program is consistent with applicable State law and regulations. WES may initiate, at its own expense, an audit of the EDU and/or ESU counts of a Partner or Stakeholder government entity that is served by the WES System.

Section 3.05 Connection Charge and System Development Charge. Until at least the end of the Transition Period, each Partner shall collect a Connection Charge and System Development Charge equal to the amount established by the WES Board for every additional structure connected to the WES System beginning with the effective date established by the WES Board. After the Transition Period, the WES Board may directly charge a Connection Charge or direct a Partner to continue charging the same until otherwise directed by the WES Board. Upon change in the character in use of any structure connected to the WES System resulting in increased wastewater or surface water discharge, an additional WES Connection Charge and System Development Charge shall be collected so as to account for actual use, giving appropriate credit for connection charges already paid. After the Transition Period concludes, all Connection Charges and/or System Development Charges shall be paid to WES with the Partner's next monthly payment following the month in which the charges are collected. At least annually and more frequently as necessary, the WES Board shall consider the Connection Charge and confirm or adjust the amount of the Connection Charge as needed to cover costs of additional conveyance, treatment and management capacity.

**Section 3.06 Local System Expenses.** The Wastewater Service Charge and System Development Charge shall be deemed a maintenance and operation expense to the maximum extent possible under existing bond resolutions and ordinances and shall expressly be made a part of the maintenance and operation expenses of the systems of each Partner in any future bond issue or other financing payable in whole or in part from the revenues of such systems and shall be payable and constitute a charge prior and superior to any charge or lien of any revenue bonds, or any obligation, issued by the Partners payable from the net revenues (gross revenues less operations and maintenance expenses) of their respective systems.

**Section 3.07 Existing Partner Debt.** The Partners acknowledge that CCSD#1 has currently outstanding debt, namely the CCSD#1 Bonds, relating to its existing system, and that TCSD does not have any outstanding debt. The Partners acknowledge and agree that the ratepayers of TCSD shall not be responsible in any case for the CCSD#1 Bonds and related CCSD#1 Debt Service. Nothing in this Agreement is intended or shall be construed to violate any covenant of these outstanding bonds, and such covenants, to the extent there is a conflict between them and this Agreement, shall control with respect to such outstanding bonds and any debt issued on a parity with such bonds and required to have the same covenants as the outstanding bonds.

**Section 3.08 Future WES Debt.** On and after the effective date of this Agreement, no Partner shall issue any debt secured by existing or future WES sewerage charges or connection revenue, WES Facilities, or any other WES revenues or assets; however, with the approval of the WES Board a Partner may issue such debt on behalf of or for the benefit of WES. It is the intention of the Partner that all future debt necessary to support the WES System shall be issued by WES if revenue-based, or by a Partner or Partners if a general obligation bond.

**Section 3.09 Transition Period Capital Project.** The Partners anticipate moving forward with a solids handling capital project to be located at the Tri-City Facility (the "Solids Handling Project") during the Transition Period. This may require borrowings by the Partners individually or by WES. To allow for the greatest efficiency in moving forward with said project, the Partners agree that Rate Zone One ratepayers shall be responsible for thirty-six percent (36%) of any and all costs or debt associated with the Solids Handling Project, and Rate Zone Two ratepayers shall be responsible for sixty-four percent (64%) of any and all costs or debt associated with the Solids Handling Project. This ratio shall only apply to the Solids Handling Project. As set forth in Section 3.07, Rate Zone Two shall remain solely obligated for the CCSD#1 Bonds, and Section 3.10 shall govern future WES projects.

**Section 3.10 Allocation of WES Debt Amongst Rate Zones.** Except as provided for in Section 3.09, whether WES Debt is issued as revenue bonds, revenue obligations, or general

obligation bonds through the Partners, or otherwise, each ratepayer within a Rate Zone shall share equally in the cost of such WES Debt, whether for capacity expansion, asset replacement, regulatory requirements, or system efficiency reasons. The WES Board shall not allocate expenses for WES Debt unevenly but shall treat all ratepayers within all Rate Zones the same with respect to such WES Debt.

Section 3.11 County Services. It is the intention of the Partners to initially contract with the County for the provision of various services. During the Transition Period, the Partners may continue to contract directly with the County for such services. No later than the end of the Transition Period, WES shall directly contract with the County for such services unless otherwise determined by the WES Board.

Section 3.12 Monetary Powers. The WES Board shall control and direct the disposition of all WES funds and monies. The County shall, consistent with Oregon law, establish appropriate accounting to ensure clear tracking of WES funds, and keep separate and adequate books and records of the same, all as required by law and regulations and as the WES Board may direct. At the end of the Transition Period, unless otherwise restricted by bond covenants or laws, the Partners shall contribute their funds to WES and the WES budget, as discussed below, shall be the primary means for the accomplishment of the Purpose and operation of the WES System.

Section 3.13 WES Budgeting. Beginning July 1, 2018, WES shall adopt and operate pursuant to an annual budget adopted consistent with Oregon Local Budget Law, including a duly composed budget committee and appropriate public hearings. The WES Board shall have full authority over such budget, including the ability to amend or adjust the same as allowed by applicable law. WES shall operate within its annual budget.

Section 3.14 Short-Term Financial Assistance for Emergency Sewer or Surface Water Repairs. Upon request from a Partner or Stakeholder local government, WES may consider providing short-term financial assistance to any Partner or Stakeholder component unit facing an emergent need to repair or replace failed sewer or surface water facilities when that emergency involves a threat to public health or public safety, poses a significant threat to the natural environment, or presents a threat to or operational difficulty for the WES System. In dealing with such emergencies, time is of the essence. The temporary financing is intended to provide financial assistance between the time of the emergency and the time when the requesting Partner has opportunity to secure other financing. It is understood the requesting Partner will make all reasonable efforts to effectively use its own financial resources and any other available funding to assure minimum use of assistance from WES.

WES resources available for use in providing emergency repair assistance to a requesting Partner shall be limited to WES funds in excess of that required by bond covenants and other debt and that which is not otherwise committed or programmed according to the adopted current WES budget and Capital Improvement Program during the term of the requested temporary financing. The amount of the requested temporary financing may not exceed the total cost of the engineering and construction of repairs necessary to restore sewer service, end the public health or safety emergency, end the threat to the natural environment, or end the threat to or operational difficulty for WES Facilities plus the cost of liquidation losses and interest as provided herein.

Temporary financing for emergency repairs may be extended for a term of up to eighteen months from the time of first withdrawal at which time it will be due and payable in full including the principal amount, the added cost of losses due to liquidation, and all interest. The Partners hereby recognize that, due to the emergency nature of the financial assistance covered by this Agreement, invested WES money may be subject to losses due to liquidation of investments as a result of providing for temporary financing assistance. Every reasonable effort will be made to avoid such losses; however, the amount of these losses will be added to the principal amount of the temporary financing and will be subject to interest charges as described herein.

#### **Article IV. WASTEWATER CONVEYANCE AND TREATMENT.**

Section 4.01 WES Service Obligation in Service Area. WES shall accept all Partner sewage flows delivered to WES Facilities within the WES System service area, except as may be allowed pursuant to Sections 4.03 and 5.03. The service area is defined as all areas within the boundaries of a Partner or areas who receive service contractually from a Partner or WES.

Section 4.02 Flow Control. A Partner shall not deliver sewage or wastewater flows generated in the WES System service area to an agency other than WES for treatment and disposal or treat such flows at its own sewage treatment facilities without the consent of the WES Board.

Section 4.03 WES System Capacity. The WES System shall be available to receive and treat wastewater flows delivered to WES Facilities by the Partners so long as the WES System has capacity to accept, treat, and manage such flows. WES shall use its best efforts to provide for increased capacity pursuant to the Purpose, in a manner designed to allow the WES System to accept, treat, and manage all flows proposed to be delivered to the WES Facilities by the Partners. The WES Board shall have the authority to limit flows from the Partners only to ensure preservation of public health and compliance with applicable laws, regulations, permits



and provisions of the Clean Water Act. Any such flow limitation shall not in any way excuse or reduce any Partner's obligation to make payments to WES under this Agreement. WES shall not be in default of its obligations under this Agreement or any other intergovernmental contract in the event that the WES Board determines that insufficient capacity exists to accept, treat, and manage sewerage flows, despite using best efforts to develop sufficient capacity. The existence of a capacity constraint or the unavailability of additional capacity shall not excuse or reduce any Partner's obligation to make payments to WES under this Agreement.

**Article V. COOPERATION IN MANAGEMENT & DEVELOPMENT OF WES FACILITIES.**

Section 5.01 WES Facilities. WES shall plan, construct, acquire, replace, operate, and maintain all WES Facilities such that the entire WES System and the WES Facilities are built, operated and maintained as an integrated wastewater system and surface water system in accordance with high engineering standards and in conformity with the standards of the American Public Works Association, the Water Environment Federation and requirements of the state, federal and local agencies having jurisdiction over the same. WES shall, at its sole discretion, determine the name, location, and time of construction of WES Facilities. WES shall maintain through responsible insurers, including insurance pools, public liability insurance for WES Facilities operations and responsibilities in accordance with industry standards.

Section 5.02 Local Systems. The Partners shall ensure, and WES may adopt regulations or contracts directly requiring, that the Stakeholders, customers by contract or other contributors to the WES System shall maintain and operate their respective Local Systems in accordance with high engineering standards and in conformity with the standards established by the state and federal agencies having jurisdiction over the same. Modifications and additions to Local Systems that contribute to the WES System shall be constructed and operated in accordance with the sewer standards of American Public Works Association, the Water Environment Federation and requirements of the state and federal agencies having jurisdiction over the same and made after due consultation with WES. The local units of government shall be required to secure and maintain with responsible insurers, including insurance pools, all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the Local Systems against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost.

Section 5.03 Liability. Any liability incurred by WES as a result of the operation of the WES System shall be the sole liability of WES, and any liability incurred by a wastewater wholesale service only customer as a result of the operation of its Local System shall be the sole liability of that entity. WES may, at its option, require any owner of a Local System become

either a named entity on the applicable permit, including but not limited to an NPDES permit, to obtain their own permit to operate the Local System, or to sign an agreement to pay all liabilities arising under the Local System as a condition of continued service, notwithstanding Section 4 above.

**Section 5.04 WES Facilities Operations.** WES shall operate the WES System consistent with the requirements of all applicable laws and regulations, including but not limited to the Clean Water Act. The Partners shall undertake all actions necessary to support this effort. The WES System shall be operated as an integrated whole for the benefit of all ratepayers within all Rate Zones.

**Section 5.05 WES as Lead Regulatory Agency.** Pursuant to this Agreement, WES will own and operate the WES System, and will hold permits required to operate the WES System, including all NPDES waste discharge permits for the various facilities, including the Blue Heron permit. The Partners will take all action reasonably necessary to support and aid WES in fully integrating the regulatory permits and requirements to achieve optimal efficiencies and operations for the WES System.

**Section 5.06 Partner Commitments to Assist WES.** To the extent legally feasible, each Partner agrees to give good faith consideration to WES requests for necessary zoning, land use, eminent domain proceedings and other permits and approvals to implement the Purpose. In the event that a Partner completes an eminent domain proceeding for the benefit of WES to secure property or property rights for WES Facilities, WES shall compensate the Partner for its expenses and for just compensation paid for such property and property rights.

**Section 5.07 Pretreatment Program.** Various facilities located within the Partners' respective jurisdictions currently contribute wastewater which includes commercial and industrial waste to the WES System. Such facilities are referred to in this Article as "Industrial Users." WES must implement and enforce a pretreatment program to control discharges from all Industrial Users of the WES System pursuant to requirements set out in 40 CFR Part 403 and the NPDES Permits. In this Article, the Partners agree to adopt and maintain sewer use ordinances that subject Industrial Users within their respective boundaries to the necessary pretreatment controls, and to implement and enforce such sewer use ordinances through the Transition Period, and thereafter support WES in the adoption and enforcement of direct regulations of the same pursuant to the WES Regulations. No Partner shall retain or adopt any ordinance provisions conflicting with or purporting to supersede the WES Regulations. WES may also implement a fats, oil and grease ("FOG") reduction program in the WES System and in Local Systems in conjunction with the affected Stakeholders or any other program related to the accomplishment of the Purpose and compliance with applicable laws and regulations.

**Section 5.08 WES Regulations.** WES shall promulgate and maintain the WES Regulations, and prepare any revisions necessary to provide adequate protection of the WES System and maintain compliance with the Clean Water Act, applicable federal regulations and applicable state regulations. Any proposed revisions shall be submitted to the WES Board for approval. During the Transition Period, the current rules and regulations of the Partners shall apply unless otherwise superseded by the WES Regulations. To the extent there is any conflict between Partner ordinances, rules and regulations and the WES Regulations, the Parties agree that the WES Regulations shall control.

**Section 5.09 Inspections.** The Partners agree that WES personnel, or WES's agents, shall coordinate with the appropriate Local System jurisdiction personnel to conduct activities to collect information on compliance with the WES Regulations, federal regulations, and state requirements. In order to accomplish these requirements the Partners agree that Agents of WES may, enter and inspect at any reasonable time, to the extent allowed by law, any part of the Local System. Further, the Partners shall support and enable, to the extent allowed by law, entry onto private property to inspect Industrial Users or hazardous conditions within the WES System or Local System. If the Partner has untransferable jurisdiction or authority to allow any of the above, the Partners shall promptly make all necessary legal and administrative arrangements for these inspections.

**Section 5.10 Imminent Danger.** Where a discharge to the wastewater treatment system or surface water system reasonably appears to present an imminent danger to the health and welfare of persons, or an imminent danger to the environment, or threatens to interfere with the operation of the WES system, WES may immediately take steps to identify the source of the discharge and take all reasonable actions necessary to halt or prevent the discharge.

**Section 5.11 Enforcement.** Whenever a discharger into the WES System or Local System has failed or has refused to fulfill any requirements of either the WES Regulations, an Industrial Discharge Permit, a Compliance Schedule, or any applicable law or regulation, WES may use any and all available legal authority that otherwise would be available to a Partner to enforce the applicable regulations, permits, conditions, or laws. Such enforcement may include collection of permit fees and industrial surcharges, application of fines and/or civil penalties, seeking injunctive relief, interruption of services, or requiring disconnection from the WES System.

**Section 5.12 Accountability.** A majority of the WES Board may penalize any single Partner for failure to apply and enforce the WES Regulations. This penalty may include requiring that the total of all fines, fees and other charges which are due and payable be paid by the offending Partner to WES for each day the Partner fails to apply and enforce the regulations. The offending Partner shall indemnify and hold harmless WES and its officers, elected officials, agents and employees against any damages, penalties or other losses incurred as a result of the Partner's failure to enforce the WES Regulations or applicable laws and/or regulations. Without limitation, WES may obtain the remedy of specific performance from a court of competent jurisdiction to require the offending Partner to enforce the WES Regulations or applicable laws and/or regulations.

**Section 5.13 Assignment of Agreements.** Any existing agreements between a Partner and any other entity that can be assigned to WES, will be assigned throughout the Transition Period. Any agreements that cannot be assigned, will continued to be operated by the Partner consistent with the terms of this Agreement and the Purpose under the direction of the WES Board until its expiration, after which a new agreement with WES as the party should be reached if feasible.

#### **Article VI. ADDITIONAL TERMS.**

**Section 6.01 Effective Date & Term of Agreement.** This Agreement shall become effective as of November 3, 2016, and shall have a perpetual duration until terminated as set forth in Section 6.13 below.

**Section 6.02 Withdrawal by a Partner.** Any Partner may individually withdraw from the obligations of this Agreement with the consent of all of the other Partners, provided that (i) all WES Debt is retired, or (ii) payment of such Partner's share, calculated by the number of EDUs and/or ESU's, as applicable, of such WES Debt thereof is fully provided for, secured and funded, by such withdrawing Partner, and the remaining Partner(s) shall continue to be bound by this Agreement as it may be amended. A withdrawing Partner shall not have any right to any assets of the WES System, including any assets contributed by such Partner into the WES System, unless specifically agreed to by the WES Board in its sole and absolute discretion.

**Section 6.03 Amendment of Agreement.** This Agreement may be amended with the approval of all the Partners.

**Section 6.04 Notice.** Notices required to be given to Partners shall be deemed given when served on the respective Clerk of the governing body of such Partner or three business days after mailed to the business address of such Partner.



Section 6.05 Governing law & Venue. This Agreement shall be governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. The exclusive jurisdiction and venue for any lawsuit between the Partners arising out of this Agreement shall be in Clackamas County Circuit Court.

Section 6.06 Assignment. This Agreement shall be binding on each Partner and the successors to them and may not be assigned in any respect without the consent of all Partners except by operation of law.

Section 6.07 No Third Party Beneficiaries. The Partners expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party, even if such party's jurisdictional boundaries are partially or wholly contained within one or more Partners. The Partners have not created any right for any third party to enforce this Agreement.

Section 6.08 Severability. It is the belief of the Partners that all provisions of this Agreement are lawful. If any covenant or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision, or part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement. In such event, the Partners shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such covenant or provision.

Section 6.09 Entire Agreement. This Agreement embodies the Partners' entire agreement on the issues covered by it, except as supplemented by subsequent written agreements that the Parties make. All prior negotiations, discussions, and draft written agreements are merged into and superseded by this Agreement.

Section 6.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered for all purposes as an original.

Section 6.11 Waiver. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 6.12 Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any Partner.

Section 6.13 Termination. This WES partnership Agreement may be terminated only upon the unanimous agreement of all of the Partners. The withdrawal of a Partner from the partnership shall not cause a dissolution or otherwise impair the continued operation of WES.

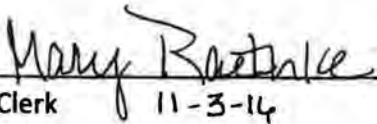
IN WITNESS WHEREOF, each party has caused this Agreement to be signed by its duly authorized officer or representative as of November 3, 2016.

Clackamas County Service District No. 1

  
Chair

Tri-City Service District

  
Chair

  
Clerk 11-3-14

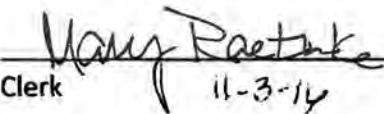
  
Clerk 11-3-14

EXHIBIT A

June 3, 2008

Board Clackamas County Commissioners  
Public Service Building  
2051 Kaen Road  
Oregon City, Oregon 97045

Dear Commissioners:

I am pleased to submit the recommendations of the Community Partners Task Force on wastewater management for your consideration.

The committee was composed of representatives from Clackamas County Service District #1, Oak Lodge Sanitary District, Milwaukie, Happy Valley, Damascus, Lake Oswego, and the three cities that make up the Tri-City Service District, Gladstone, Oregon City, and West Linn. Lake Oswego voluntarily withdrew from the committee when it became clear that its participation was premature.

The work of the task force and its recommendations offers Clackamas County a fresh start on an issue that has eluded community consensus for over 20 years. While we have not resolved all the challenges around wastewater management, we agreed on many core assumptions that will form the foundation of a future community partnership. We are confident that this partnership will protect our environment, save ratepayers millions of dollars of avoided costs, and ensure that the economy will continue to grow.

Our report to the Board is not unanimous. The representative from CCSD#1's Citizen Advisory Council and from Oak Lodge Sanitary District voted not to support the recommendations. Neither challenged the environmental, management or community economic benefit of the proposed regional wastewater partnership. They supported the vast majority of recommendations but did not agree with the majority of the Task Force on issues of representation and governance. The representative from the Oak Lodge Sanitary District wanted it recognized that the Oak Lodge did not receive a specific rate benefit based on the financial modeling.

We have further offered the Board a road map forward. The members of the task committee believe this will help you and the community to define the nature and scope of the regional wastewater partnership.

Respectfully yours,

Greg DeGrazia  
Chair, Community Partners Task Force

## Community Partners Task Force – Summary Report and Recommendations

On January 2, 2008 the Clackamas County Board of Commissioners (the "Board") created a Community Partners Task Force to facilitate discussions between all wastewater service providers in urbanized Clackamas County. The purpose of the Task Force was to explore the formation a collaborative partnership to capture the financial benefits of the economies of scale inherent in large capital investments.

The Task Force was made up of one elected representative from Damascus, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Oak Lodge Sanitary District, Oregon City, West Linn, a County Commissioner, two business leaders, two citizens at large and a CAC member from CCSD#1. The Task Force was asked to assess the benefits of regional collaboration and to make recommendations to the Board regarding equity, fairness, and governance of a potential partnership by June 2008.

The Board asked the Task Force to answer three key questions:

**Q1. Cost Benefits: Are there compelling financial benefits to ratepayers of each jurisdiction to make collective investment and management across current service district boundaries attractive? If so, what are the financial benefits for the region?**

**YES.**

It makes good financial sense to work together. The analysis indicates that together the community can realize up to a \$300 million savings over the next twenty years by working and investing together. There is broad public support and understanding of the advantages (as demonstrated by survey data) of working together.

**Q2. What is an equitable fiscal and operational model for future collective investments in wastewater treatment systems to recognize past and present investments made by participating jurisdictions and ratepayers? How do we ensure that those who benefit the most from development pay their fair share of new investments in public infrastructures? Can equity and fairness for each partner be achieved?**

**YES.**

Regional equity and fairness can be gained if based on clearly defined assumptions. These assumptions are:

- a. The recommendation is to adopt a common regional treatment rate after capacity parity is reached by the participating service providers.



Treatment capacity parity is defined as the point at which all partners have addressed historical deficiencies and face similar capacity needs in the future.

- b. Service partners will make collective decisions regarding all future investments in treatment facilities after capacity parity is achieved.
- c. Decisions about common ownership of assets and district(s) consolidation will be delayed until treatment capacity parity is achieved and a permanent partnership agreement is in place.
- d. Conveyance and collection will remain the responsibility of individual entities. Each entity will be responsible for financing their own conveyance and local collection system to assure equity and fairness while securing the benefits of a regional treatment rate. Local entities may enter into contract relationship with Clackamas County to assist in design, construction, and management of local collection and conveyance systems.
- f. There will be no capacity expansion investments in Kellogg Treatment Plant with a goal of reducing the plant footprint over time and as economically feasible.
- g. Treatment capacity for future community growth will likely be constructed at Tri-City or utilizing another cost effective option after a regional strategy is adopted.
- h. Equity payments, subsidies and/or host fees may not be necessary to achieve equity and fairness.
- i. The partners will make collective decisions about desirable environmental improvements and livability amenities as future investment in regional wastewater treatment facilities are planned.
- j. The Board will facilitate regional equity by implementing a wastewater service policy after capacity parity has been reached. The foundation of this policy will be that no new service will be provided to customers in unincorporated areas outside existing districts. Service districts will only extend new service to areas already within a city boundary.
- k. Unincorporated areas being served before capacity parity is achieved will not be compelled to annex to a city to continue to receive service.
- l. Growth pays for growth through system development charge and related processes and other financial tools.

**Q3. How can the financial and governance interests of all participants and their ratepayers be guaranteed into the future? What are the specific terms of these community covenants? Can the region agree to a governance model to guide a regional wastewater capacity management partnership?**

**YES.**

- a. The Task Force recommends the creation of a wastewater partnership to serve as the foundation of regional wholesale wastewater treatment collaboration.
- b. The Task Force recommends adoption of the Washington County Clean Water Services "advise and consent" governance model as the operational model of the proposed wastewater partnership.
- c. The partnership recommends forming an advisory body composed of representatives appointed by each partner entity.
- d. The wastewater partnership will make recommendations about capital improvements, planning, policy, and financial decisions regarding rates, financing, and annual budgets.
- e. The Board is recognized as the legally accountable governing board of the regional partnership. The Board will act on the recommendations of the wastewater partnership, which will serve in an advisory capacity to the Board.
- f. Day-to-day system management, operations, programs, and permitting of partner assets will be or remain the responsibility of the County through its designated agency.
- g. Partners will be bound by all collective recommendations and resulting decisions by the Board.

**Additional Task Force recommendations**

The Task Force asks the Board of County Commissioners commit to the above recommendations as the foundational assumptions of a regional wastewater management partnership.

The Task Force asks that its recommendations be made explicit County policy through a formal Board action. Once this action is taken, the Task Force recommends the following:

- a. The Board should ask each partner entity to formally ratify the Board policy action.
- b. All those who ratify the Board's policy will be invited by the Board to form a provisional partnership. The purpose of the provisional partnership is to develop the by-laws, agreements and protocols for a permanent regional wastewater management partnership for consideration by the BCC and each of the partners.
- c. Each partner jurisdiction will nominate one representative to serve on the provisional partnership committee including Damascus, Gladstone, Happy Valley, Milwaukie, Oregon City, West Linn, and Oak Lodge Sanitary District. In addition, the Board will appoint one representative from the CCSD#1 unincorporated area and one representative from the Board.
- d. The provisional partnership will complete its work and submit its recommendations to the Board no later than 10/1/08.
- e. All partners will be asked to ratify and bind themselves to the agreements adopted by the Board.
- f. All parties choosing to ratify the agreements will enter into a permanent regional wholesale wastewater management partnership.

**Additional items to be considered by the provisional committee:**

- g. The Tri-City equity issues around Kellogg's final disposition need to be addressed by the Interim committee.
- h. No regional rate setting will take place until the parties achieve capacity parity. Until then, partners will use their existing rate schedules.

## **EXHIBIT B**

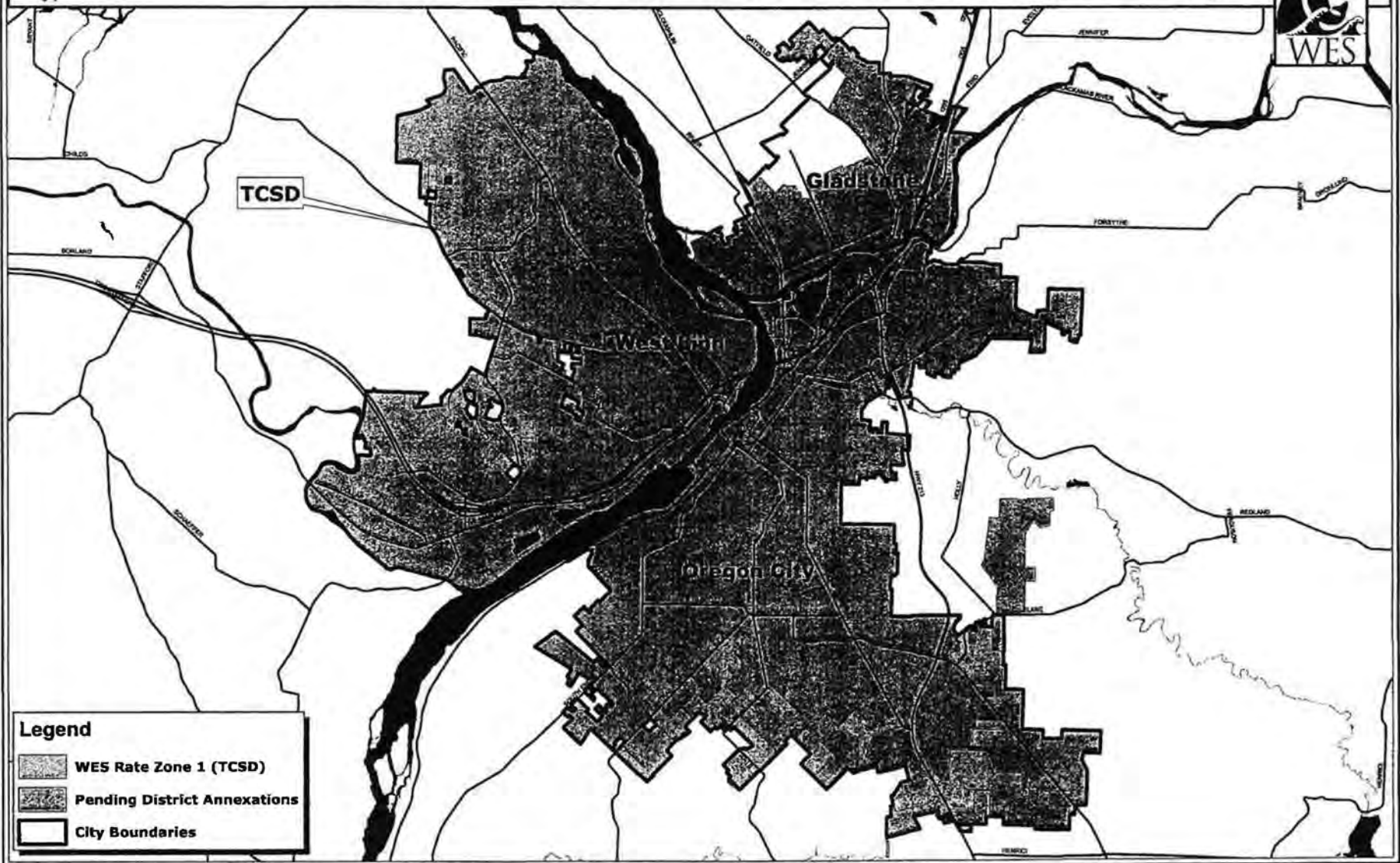
### **WES Service Area Description**

The service area of Water Environment Services ("WES") encompasses the geographic boundaries of (i) the Tri-City Service District ("TCSD"), which includes the City of West Linn, the City of Oregon City, the City of Gladstone, and certain unincorporated areas; and (ii) Clackamas County Service District No. 1 ("CCSD#1"), which includes unincorporated areas of Clackamas County, the City of Happy Valley and the communities of Hoodland, Boring and Fischer's Forest Park. CCSD#1 also contractually serves the cities of Milwaukie and Johnson City, and both contractual customers will be deemed ratepayers of WES Rate Zone 2. WES Rate Zone 1 is coterminous with the boundaries of TCSD, as they may be adjusted from time to time. WES Rate Zone 2 is coterminous with the boundaries of CCSD#1, as they may be adjusted from time to time.





# Exhibit B - WES Rate Zone 1 (TCSD)



**Legend**

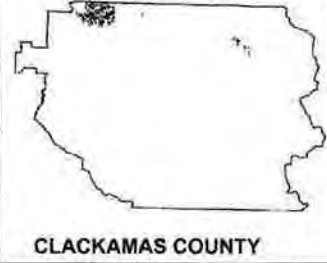
- WES Rate Zone 1 (TCSD)
- Pending District Annexations
- City Boundaries



# Exhibit B - WES Rate Zone 2 (CCSD#1)

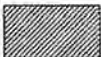


CCSD#1



CLACKAMAS COUNTY

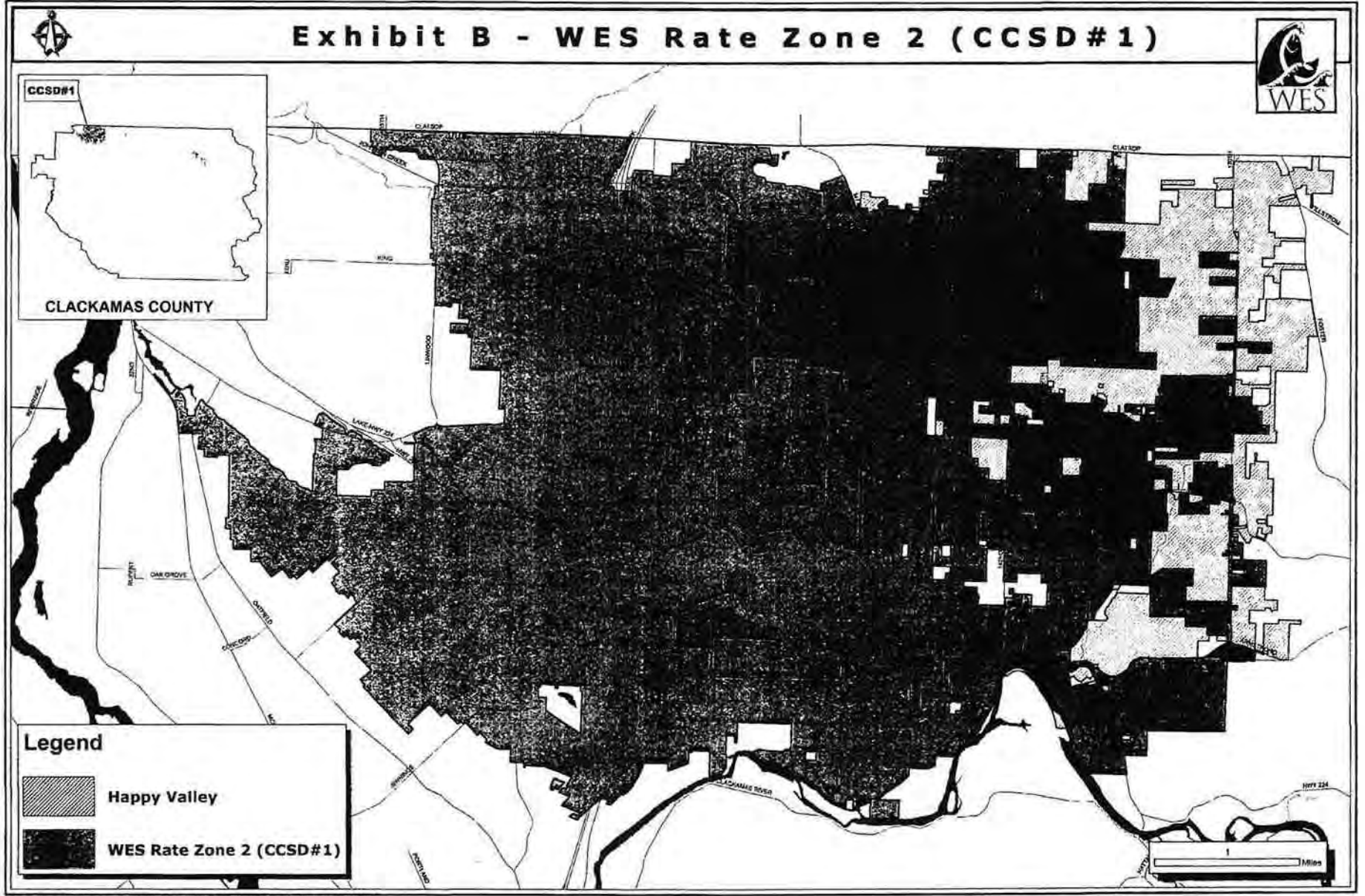
## Legend



Happy Valley



WES Rate Zone 2 (CCSD#1)



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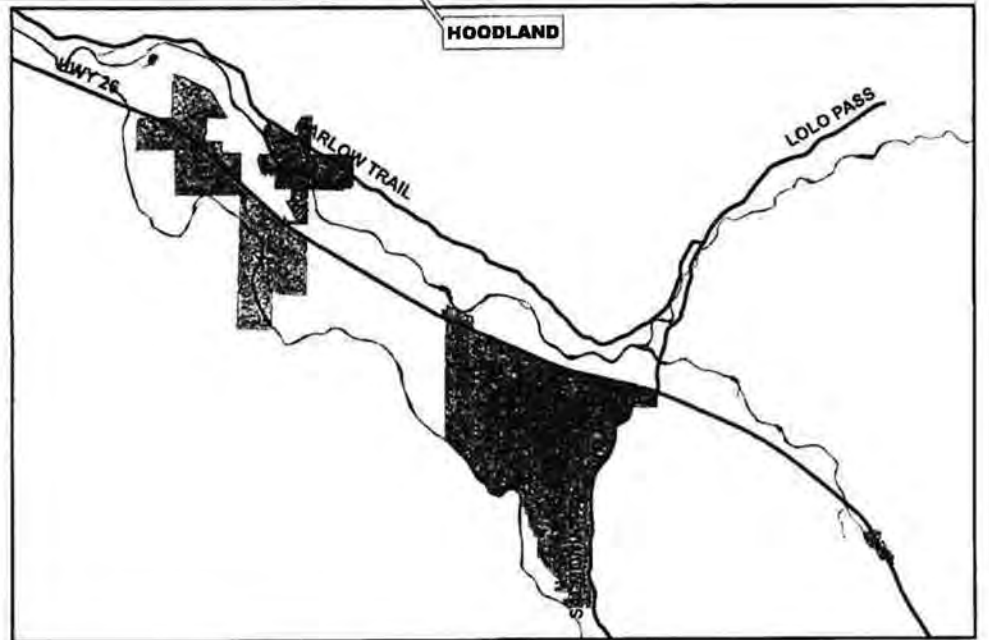
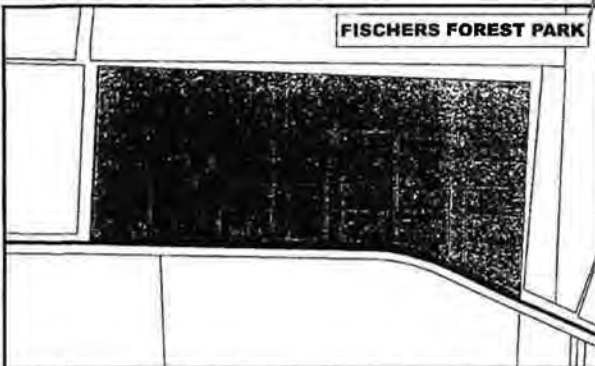
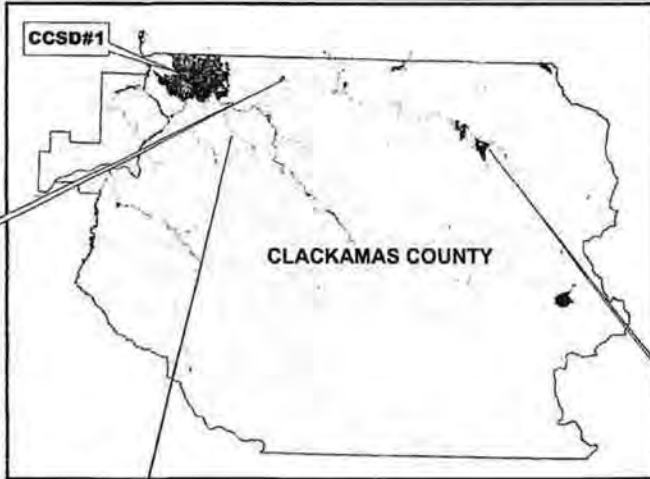


# Exhibit B - WES Rate Zone 2 (CCSD#1)



## Legend

 WES Rate Zone 2 (CCSD#1)



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**WHITE PAPER: ANALYSIS OF BENEFITS  
OF REGIONALIZATION TO  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1  
AND  
THE TRI-CITY SERVICE DISTRICT**

**July 2015**



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## Executive Summary

On May 27, 2015, the Regional Wastewater Treatment Capacity Advisory Committee (“Regional Committee”) voted to have a discussion regarding governance of both Clackamas County Service District No. 1 (“CCSD#1”) and the Tri-City Service District (“TCSD”) at the Regional Committee level. This discussion is being held in the context of the Regional Committee examining whether or not there are ratepayer benefits to the two districts co-investing in solids infrastructure (digesters). The Board of County Commissioners (“BCC”), as the governing body of each CCSD#1 and TCSD, voted to support having the governance conversation with the Regional Committee. Therefore, staff has developed this white paper to articulate some the factors that would be relevant to the Regional Committee in considering the issue.

It has been a common point of discussion within Water Environment Services (“WES”) that the current structure of two separate service districts, while saving ratepayers a certain amount of money, is somewhat inefficient and complicates long-range capital planning efforts. The concept of the two districts working together has shown up in several documents throughout the two districts’ history. One example is the intergovernmental agreement entered into between CCSD#1, the City of Gladstone, and TCSD in 1999 allowing for the portion of Gladstone that is served by CCSD#1 to be annexed into TCSD and pay only the TCSD wholesale rate. Section 13.1 of this agreement states that, “[t]he parties agree to consider use of ORS 190 to create new service entities or other methods to more cost-effectively provide services.” While WES staff internally recognized the value of a regionalized approach, they continue to diligently ensure that each district maintains separate funding, budgeting, expense tracking, and accounting.

While history of the districts began as one of separateness, the opportunity to take advantage of the savings that arise from a joint operation has led to several significant decisions along the path towards greater integration. These include sharing staff, laboratory services, facility maintenance equipment, and space on the operating side, to rental and ultimate capital investments. In 2008, a regional advisory body was formed to consider regional service issues and, supported by reports and estimates provided by a third party engineering firm, reached the conclusion that the ratepayers in each district would be substantially better off with full integration of the two districts. And now, as it has multiple times over the last three decades, the issue has again become a matter of policy deserving of the attention of decision makers.

Staff made certain assumptions in evaluating this position. The first is the scope of the discussion. The work of the prior 2008 blue ribbon group assumed an integrated regional wastewater service provider that could provide both wholesale and retail services, as desired by constituent members. Similarly, the purpose of the Regional Committee is to evaluate, on an ad hoc basis, the similar idea of whether there are benefits to cooperative investment across the two districts. Therefore staff’s framework for this evaluation is to provide the Regional Committee sufficient information to test the proposition of whether the ratepayers of the two districts would experience material benefits from regionalizing the provision of wastewater services. From a timing perspective, staff assumed a planning horizon of 30 years to match several of the existing studies or alternatives analyses. With respect to implementation, there are several possible mechanisms to achieve regionalization. In brief, they are:

- Merger of CCSD#1 and TCSD into a single, larger ORS 451 county service district with the Board of County Commissioners (“BCC”) remaining as the governing body. This would presumably include reforming the advisory committee to reflect the combined stakeholder group, and the subsequent annexation of Milwaukie into the merged 451 district.
- Formation of an ORS 450 sewer district that contains the boundaries of CCSD#1 and TCSD, as well as the City of Milwaukie. The governing body of the district would be directly elected by the residents of the newly-formed district.
- Creation of a partnership entity pursuant to ORS 190 in which the impacted entities would vest the new partnership with a range of authority and assets. For the purposes of this paper, staff assumed that the partnership would hold all the assets and regulatory permits required for current level wastewater service delivery. The governing body of the partnership would be constituted based upon the terms of the partnership agreement.

While each of those three options has benefits and challenges associated with them, they will not be explored herein. If desired by the Regional Committee, staff can subsequently provide a thorough written examination of the three main regionalization options. Rather, a baseline level of integration can be assumed from implementation of any of the three options (referred collectively to herein as “Regionalization”). Assuming this, staff analyzed what benefits arise through Regionalization that would not be available to the districts if they remained separate.

Staff evaluated four key areas of what information would be relevant to the Regional Committee in considering the Regionalization issue: Regulatory, Capital, Governance (decision-making), and Administrative. Staff also reviewed prior work done by the community, industry publications and commentary from relevant discussion of similar issues. Overall, the analysis shows that substantial savings would be achieved for all ratepayers concerned through a regional approach that results in a consistent, integrated, and streamlined organization. The greatest savings stem from combined efforts in dealing with regulatory and capital issues, with lesser monetary benefits emerging from governance and administrative efficiency gains. In total, the savings that could be available to ratepayers of each district through an integrated and collaborative approach amount to hundreds of millions of dollars over the next 30 years. Below is a summary of these findings:

*Regulatory:*

Under the current system, TCSD and CCSD#1 each hold separate Clean Water Act permits for their facilities. Despite the infrastructure integration between the districts by the membrane bioreactor treatment train and intertie pipelines, the regulatory schemes are wholly separate. Currently, the load allocations available under one permit are not transferrable or available under another. However, it is possible to link all the districts’ permits together under what is known as a watershed permit. This permit is what is used in Washington County, which has four treatment plants operating under one watershed-based Clean Water Act permit. Staff

have explored this opportunity with the Oregon Department of Environmental Quality ("DEQ"), and has been informed that in order to secure a watershed permit, a single entity to be the permit holder for facilities included in the watershed permit. Therefore, the option of a watershed permit would only become available when a single entity holds the permits for the Kellogg Plant, the Tri-City Plant, and the newly-acquired Blue Heron facility (collectively, the "Permits").

Combining the aforementioned Permits into a single watershed permit would create significant efficiencies in meeting discharge limitations. This new watershed permit would not be less restrictive, but it would allow compliance to be measured across the broader watershed. That is, if there is excess capacity for meeting a limitation, such as biological oxygen demand at the Kellogg Plant, that excess could be used to meet the requirements at the Tri-City Plant. This could result in substantial savings by allowing for the most cost-effective means of meeting permit limits to be constructed at the most appropriate facility, rather than having to separately construct treatment infrastructure at each facility to meet each discharge limitation.

Possession of a watershed-based permit can also help avoid unnecessary investment in required redundancy by allowing the collective system of investments to meet the required thresholds, rather than having to meet them at each individual treatment facility. The watershed permitting approach has been identified as an excellent way to meet anticipated regulatory challenges that will affect both districts, including temperature discharge limitations, ammonia discharge restrictions, metal removal requirements, etc.

Overall, a watershed-based permit would result in various benefits to the permittee, the permitting authority, and the environment. For both entities, one permit is easier to administer and implement, and provides the optimal economy of scale for meeting regulatory requirements. Both districts would be better able to focus their resources on the most critical problems, while the integrated permit would provide a greater level of protection for the environment than what might have been realized under the existing system of multiple permits.

*Capital:*

Wastewater treatment efficiencies can typically be realized by economies of scale. Historically, TCSD and CCSD#1 have each experienced relatively low rates due to federal grants subsidizing a large portion of costs associated with construction of treatment facilities. As those grants are no longer available, both districts are faced with paying the full cost of capital improvements for regulatory compliance, asset replacement and growth. Staff anticipates that each district's ratepayers would save hundreds of millions of dollars through a mutual investment strategy that leverages a larger scale operation in all three of those investment areas.

Regulatory Compliance. As noted above, each district is faced with the high likelihood of required investment to meet increasingly restrictive discharge limitations. The membrane bio-reactor facility ("MBR Facility"), constructed by CCSD#1 at the Tri-City Plant, produces the highest quality effluent of all the treatment processes, and in doing so, is helping the Tri-City Plant meet permit requirements. It is sized for easy expansion and, therefore, remains the most cost-effective way for increasing the levels of treatment being achieved for existing or future wastewater streams. Similarly, the mutual investments made by both CCSD#1 and TCSD in the



Blue Heron permit and outfall, as a strategy to meet temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant, have the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately \$40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately \$120 million and have a significantly higher annual operating cost.

Asset Replacement. Asset replacement costs are anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments dating from the 1970s and 1980s wear out. Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Currently, the districts benefit from shared maintenance crews, as well as a staff of engineers and inspectors, who ensure projects are completed properly and at the lowest possible cost that meets operational needs. Regionalizing asset replacement efforts would enhance that existing productivity and provide for the lowest cost provision of this required investment.

Growth. The Regional Committee has already received presentations on savings that are anticipated to result from joint investment in meeting the needs of growth. Regarding the solids handling project alone, the districts are anticipated to save nearly \$120 million by working together in a co-investment strategy to solve the digester capacity issue. Staff notes that the districts have reached "capacity parity" at this time, meaning they are faced with similar needs on similar timelines going forward from a service level standpoint. Further, each district is uniquely positioned to address a particular need of the region - TCSD is better situated to address solids handling, and CCSD#1 is better situated to address liquids handling. Through Regionalization, each district would save hundreds of millions of dollars.

Another benefit of Regionalization would be the addition of new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise; they share equally in the responsibility for paying for regulatory-driven investment or asset replacement of assets whose useful life was exhausted prior to their connection to the system. These additional connections spread the cost of regulatory investment and asset replacement across a broader base, reducing the per-household charges for the existing ratepayers. Operating together with an expanded ratepayer base allows for a lower overall cost for the provision of wastewater services and helps to control rate increases for existing and future ratepayers.

*Governance:*

Currently, the Board of County Commissioners serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. Ensuring that the interests of ratepayers are being heard and reflected in decisions, WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight. Of those, six relate to the Districts. This leads to a multitude of sometimes inconsistent voices coming to the governing body. Through Regionalization, the decision-making process could reduce that number down to two, all while improving both transparency and collaboration.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together on some projects from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. It is undecided which, if any, may be included in a co-investment approach. The question of whether or not the districts will work together has been an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to substantial difficulty in making long term plans for the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement, and meeting the needs of growth; plans that are being reviewed and revised from a comprehensive perspective at this time. Often, the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow certainty in realizing the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders to have a voice in all material decisions on a consistent basis, and ensure transparency and collaboration in that decision-making process. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. This approach would provide clear direction regarding these major policy issues, allowing staff to better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and realize the hundreds of millions of dollars in projected savings.

*Administrative:*

WES staff currently provides administrative support to three districts. As part of that effort, they carefully track expenses across each district and allocate shared employees based on a real time level-of-effort measure. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district. To legally have the authority to do the currently agreed upon work, WES manages a number of intergovernmental agreements between the districts and also with the County. Each effort at tracking, budgeting, auditing, and ensuring legal compliance add to the administrative overhead of the districts. While this current arrangement is still a lower cost option than each district going it alone, it does have room for improved efficiencies.

A significant challenge that will face the districts, especially TCSD, is the manner of financing combined capital projects. Currently, CCSD#1 is rated AA for municipal debt issuance; however, TCSD is not rated at all since it does not have any outstanding tradable debt. Under the current independent structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for any agreed-upon portion of a project. Even then, funding from both must be ready at the time a project starts. This is a challenge that would be greatly mitigated if done by a single regional entity that would likely be able to achieve a higher bond rating, reduce borrowing costs, as well as eliminate other risks.

## History of the Districts

This section summarizes the history and structure of the districts to ensure that all participants in the conversation are operating from the same set of common facts.

### History of CCSD#1:

CCSD#1 was organized in March of 1967 pursuant to Oregon Revised Statutes ("ORS") Chapter 451 to service the urban unincorporated areas of northern Clackamas County and the City of Milwaukie. CCSD#1 and Milwaukie jointly applied for and received Clean Water Act grants in 1970 for the construction of the Kellogg Creek Wastewater Treatment Plant ("Kellogg Plant") that was completed in 1975, and expanded in 1988 to include digester capacity for solids handling. Its original design rating was for 10 million gallons per day average dry weather flow. The Kellogg Plant discharges into the Willamette River under the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") Permit Number 100983 (the "Kellogg Permit"). The cities of Milwaukie and Johnson City contract with CCSD#1 for wholesale wastewater treatment services. The served urban unincorporated areas and the subsequently-annexed City of Happy Valley receive retail services, including maintenance and management of sewer and storm water infrastructure, from the initial line in the street to the treatment plant. Several investments were made to maintain the Kellogg facility and comply with regulatory issues from 1975 to 1999. More are anticipated to occur in the next few years.

CCSD#1 was originally managed by the County through an agreement with its Road Department. Upon formation of TCSD in 1986, the Department of Utilities, later renamed as Water Environment Services, provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years. Under it, CCSD#1 is billed for the cost of employees that support only CCSD#1 activities, such as line maintenance crew or Kellogg Plant operators, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with TCSD and the Surface Water Management Agency of Clackamas County ("SWMACC"). Since CCSD#1 also provides surface water services for the areas within its boundaries, those staff are managed as part of WES as well. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on CCSD#1 work versus TCSD work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 ("CCSD#1-County IGA", attached hereto as Attachment A), that allows the district access to support services in an a-la-carte, marginal cost approach that has consistently resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

In the 1980s, small areas that were struggling to operate effective or efficient sewer service were subsequently annexed into CCSD#1, including Hoodland, Boring, and the Fisher's Forest Park mobile home site. Each of those areas has their own water quality permit. The Hoodland area is served by the Hoodland Plant, which has a permitted hydraulic capacity of 0.9

million gallons per day, and currently treats approximately 300,000 gallons per day. The Boring facility and Fisher's Forest Park are substantially smaller. During the same time period, failing septic systems serving two mobile home parks in the Carver area were also annexed into CCSD#1, which upon incorporation meant that CCSD#1 was serving a portion of the City of Damascus.

In 1997, the Kellogg Plant was reaching its maximum treatment capacity and experiencing Clean Water Act violations. The district needed to either increase the plant's capacity or offload some of its flow to come back into compliance and avoid a moratorium. In 1998-99, instead of increasing Kellogg's capacity (consistent with Milwaukie's stated long-term desire to have CCSD#1 decommission the plant), the district built a diversion pipeline for the area of the district east of I-205 and rented treatment capacity at the Tri-City Wastewater Treatment Plant ("Tri-City Plant"), diverting approximately 15 percent of CCSD#1's flow away from Kellogg. In 1999, CCSD#1 entered into an agreement with TCSD to rent that capacity at the Tri-City Plant, paying all associated costs plus a premium to TCSD (the "1999 Rental Agreement").

In 2006, the Kellogg Plant again began experiencing Clean Water Act and NPDES permit violations due to its aging condition and the fact that the plant had reached its maximum liquid capacity, even with the 15 percent diversion to the Tri-City Plant. To further complicate matters, TCSD indicated that it needed to use the 15 percent diversion capacity it was renting to CCSD#1 due to its own growth. CCSD#1 had to finalize a plan for capacity expansion or Kellogg's permit violations would only increase, leading to significant fines and a possible moratorium order from DEQ.

In late 2007, the BCC developed the Capacity Management Program ("CMP"), a multi-phase plan intended to address the urgent capacity problems. Under Phase 1 of the CMP, the District built the a high-technology MBR Facility, intertie pipelines between the MBR Facility and District customers, and conducted maintenance improvements at Kellogg. Engineering studies demonstrated that constructing the MBR Facility at the Tri-City Plant would be the lowest cost option for CCSD#1. The same studies demonstrated that the facility would significantly improve the Clean Water Act permit performance for the Tri-City Plant, have a lower cost for future liquid treatment expansion needs of either district, and result in the lowest overall cost to the region. In total, CCSD#1 expended approximately \$136 million between the MBR Facility (\$89 million), Interties 1 and 2, and a pump station to support the pipelines. The MBR Facility was overbuilt in Phase I to reduce the overall cost of expansion, including construction of full foundations and treatment bays for the next increment of needed liquids treatment capacity. CCSD#1 rates increased over a period of five years from \$22 per equivalent dwelling unit ("EDU") retail to approximately \$37 per EDU retail to pay for the debt associated with the Phase 1 program.

Representatives from CCSD#1's advisory board negotiated an agreement with TCSD regarding the permanent location of the MBR Facility at the Tri-City Plant (the "2008 Agreement", attached hereto as Attachment B), which superseded and terminated the 1999 Rental Agreement. In the 2008 Agreement, CCSD#1 leased the land the MBR Facility was to be located on through December 31, 2030, and paid \$4,000,000 as rent for the land; use of the



existing infrastructure of the Tri-City Plant including but not limited to head works, pumps, connection lines, digesters, the outfall; the right to include wastewater treated by the MBR Facility under the Tri-City Permit (defined below); and a premium for the opportunity to lease the land and utilize the existing infrastructure. The MBR Facility, commonly referred to as Phase I of the CMP, came online in 2011.

#### History of Tri-City Service District:

Prior to formation of the Tri-City Service District, the City of Oregon City operated a sewage treatment plant, of which Gladstone was a partner, located along Highway 99E next to Clackamette Park, at the present location of the McDonalds. West Linn operated its own sewage treatment plants at two different sites that currently house TCSD pump stations. In 1977, the Oregon Department of Environmental Quality ("DEQ") issued a building moratorium for Oregon City and Gladstone for failing to appropriately maintain, operate and/or expand their existing treatment facility, and warned West Linn that it would face a similar restriction in two years if sewer treatment improvements were not made at its facilities.

The leadership of the cities at that time met and found that mutual investment in an economy-of-scale business such as wastewater treatment was the most economically viable response to the moratoriums. Rather than trying to coordinate each city proposing a general obligation bond to a vote as the source of funds for mutual investment, the idea of a service district was explored. Clackamas County signaled a willingness to facilitate a district, so an initial plan to form a service district including a substantial unincorporated area was proposed through the County and put to a vote, which failed. After additional consideration, the three cities proposed that the district cover only their incorporated areas and the County put the matter to a vote. Upon passage in 1980, TCSD was formed with the BCC to act as the governing body.

TCSD was then able to leverage that vote of support to obtain Clean Water Act grants that paid approximately seventy-five percent of the construction costs of the Tri-City Plant. The remainder of the construction costs, approximately \$25 million, needed to be a local contribution. In lieu of direct rates, city bonding, or rate bonds, TCSD was able to issue a general obligation bonds that crossed the three cities' jurisdictional boundaries. This construction bond was fully paid off in 2003 and no replacement bond was sought. Since TCSD's inception in 1980, direct user rates have paid only for operational expenses and minor asset replacement. Therefore, TCSD boasts by far the lowest wholesale sewer rate in the Metro region. The bond and grant money was also used to decommission the existing city sewer plants and construct interceptor sewers.

The Tri-City Plant construction was completed in 1986 and has been operating continuously since that time, discharging to the Willamette River pursuant to NPDES permit number 101168 (the "Tri-City Permit"). The Tri-City Plant has held sufficient capacity to support the steady growth of its member cities. Over the past 30 years, Gladstone has experienced relatively little growth, West Linn moderate growth, and Oregon City high growth. The Tri-City Plant is now beyond its maximum original design capacity for solids handling based on flows solely originating from TCSD ratepayers. Please see Attachment C for supporting information regarding capacity issues as already provided to the Regional Committee.

Upon formation of TCSD in 1986, the Department of Utilities (later renamed Water Environment Services) provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years, and under it, TCSD is billed for the full cost of employees that support only TCSD activities, such as Tri-City Plant operators or mechanics, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with CCSD#1 and SWMACC. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on TCSD work versus CCSD#1 work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 ("TCSD-County IGA," attached hereto as Attachment D) that allows the district access to support services in an a-la-carte, marginal cost approach that consistently has resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

The initial investment in the Tri-City Plant gave TCSD an underutilized asset. Beginning in 1999, TCSD rented out its unused capacity to CCSD#1 for a profit under the 1999 Rental Agreement. By relying on that profit, TCSD was able to completely avoid rate increases in some years and maintain an overall a rate growth profile that was below inflation. However, in doing so, TCSD's revenue generated from ratepayers soon was insufficient to pay current operating costs. The revenue from the 1999 Rental Agreement ended in 2011 once the MBR Facility came online. Since 2011, TCSD rates have been climbing steadily in an effort to get the district back on sound financial footing. The district is now able to generate sufficient revenue to pay for its own operating costs without spending from reserves. At this time, TCSD has a very limited ability to issue minor amounts of rate-supported debt for capital projects. TCSD has never issued rate bonds and is not rated by the bond rating agencies.

Continued growth in all three cities, with Oregon City experiencing the highest rate of growth over the history of TCSD, has now consumed the original design capacity of the Tri-City Plant. As reported to the Regional Committee, even without any flows coming from CCSD#1 or the existence of the MBR Facility, TCSD would require investments in solids handling. Solids handling needs have matured earlier than liquids needs in part because of adoption of low-flow toilets and other water saving devices. The volume of wastewater has decreased per household, but there has been a concomitant increase in the concentration of the wastewater stream; systems originally designed to be in sync from a treatment perspective are now on a different capacity timeline. Construction of solids handling would have triggered heightened regulatory requirements that would have been very difficult for TCSD to meet, but for the existence of CCSD#1's MBR Facility. Under the current structure, when TCSD requires additional liquid treatment facilities, it will need to buy into CCSD#1's MBR Facility to allow for the lowest cost expansion.

### Common History:

Since 1986, both districts have been jointly managed by WES. This arrangement has been utilized to minimize the expenses to ratepayers. In doing so, each district only has to pay a share of 107 full time employees that are available and would be necessary to support district operations. The result is a long history of the districts saving on operating and administrative expenses. However, at the time of formation, each had a separate pool of grants and rate-supported investments for capital infrastructure.

Beginning with the 1999 Rental Agreement and the construction of Intertie 1, the capital infrastructure of CCSD#1 was linked with that of TCSD. This resulted in a significantly increased return on investment for TCSD as more of the Tri-City Plant was utilized, and CCSD#1 avoided some capital costs for a period of time. However, this move meant that CCSD#1 fell behind in having the treatment infrastructure necessary to meet its ratepayer needs.

Recognizing the need for a long term solution and because TCSD required the use of the rented liquid treatment capacity, the CMP was developed to provide the lowest cost service to the ratepayers. With the 2008 Agreement and construction of the MBR Facility, CCSD#1 reached "capacity parity" with TCSD and the two districts were in equivalent places in terms of current and future infrastructure needs. Since 2011, when the MBR Facility came online, the two districts have shared proportionally in the operational costs of the Tri-City Plant. Each district has realized cost savings and efficiencies through this arrangement. This arrangement, however, deals only with operational cost sharing and does not address capital needs. Under the current structure, those issues are brought before the Regional Committee for consideration.

While operationally integrated, the capital components of the districts are only integrated on an ad hoc basis based on single-issue agreements, such as the Blue Heron investment. Each district is distinct financially and legally. This leads to an odd quasi-partnership that provides some cost savings, but creates uncertainty and challenges for long term strategic planning and project efforts. The below analysis examines whether there are greater benefits that could be realized by closer integration between CCSD#1 and TCSD. The analysis concludes that each district would save its ratepayers hundreds of millions of dollars by more closely working together.

### 2008 Committee Findings:

After discussions around the CMP and Phase I construction program, there was a recognition that, much like the current discussion, there could be substantial savings by the districts working together. The Board of County Commissioners chose to seek the input from the full range of stakeholders that could be affected by a decision regarding some kind of regionalization. A blue ribbon group, called the Community Partners Task Force, was formed, consisting of elected representatives from the Board of County Commissioners, Damascus, Gladstone, Happy Valley, Milwaukie, Oak Lodge Sanitary District, Oregon City, and West Linn, and appointed representatives for the business community and direct ratepayers from the

unincorporated area (collectively, the "Task Force").<sup>1</sup> Lake Oswego initially participated, but subsequently withdrew after realizing that its participation was premature given its relationship with the City of Portland's Tryon Creek plant. The Task Force began meeting in February 2008 and submitted a final recommendation in November 2008.

The Task Force discussions began by identifying common jurisdictional interests and examining potential regional savings that could result from a common capital investment approach. It explored several issues regarding wastewater treatment with an independent engineer-consultant. In its findings, the Task Force concluded (i) that there were compelling financial benefits to ratepayers by making collective investments across service district boundaries, (ii) that there was a model for regional equity and fairness that could be implemented, and (iii) a governance structure could be implemented to reasonably achieve the first two findings.

After excluding retail services to ensure an "apples to apples" comparison, the Task Force found that by working together the collective ratepayers would save between \$314 million and \$384 million over a 30 year period. Those figures do not include savings that would result from a shared regulatory strategy, but arise only from shared investment in infrastructure required for meeting asset replacement and growth needs. Staff considers these numbers to be the minimum savings that would result through Regionalization. The key factual supports for reaching those conclusions were both the overall cost savings projected and the rate profiles, based on engineering estimates that projected substantially lower rates for every district beginning no later than the 2014-15 fiscal year.

### Regulatory Benefits

Each of the four facilities managed by CCSD#1 and the Tri-City Plant has a Clean Water Act-authorized National Pollution Discharge Elimination System ("NPDES") permit that establishes limits and parameters for discharges into the waters of the United States. Within this paper, staff will focus on the Kellogg NPDES permit, the Tri-City NPDES permit, and the Blue Heron NPDES permit recently acquired jointly by the districts (together, the "Permits").

Regulators such as the Oregon Department of Environmental Quality ("DEQ") and the Environmental Protection Agency ("EPA") continue to promulgate rules that increase restrictions and/or requirements on dischargers. The Permits are covered by what is known colloquially as the "anti-backsliding rule," which means that regulations only get tighter. DEQ uses water quality standards to assess whether the quality of Oregon's rivers and lakes are adequate for fish and other aquatic life, human recreation, a source for safe drinking water, agriculture, industry

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<sup>1</sup> The Committee Members were: Chair Greg DeGrazia, business representative; Deborah Barnes, Milwaukie City Counselor; Scott Burgess, West Linn City Counselor; Wade Byers, Gladstone Mayor; Charmaine Coleman, CCSD#1 ratepayer; Markley Drake, Happy Valley Counselor; Julie Harvey, CCSD#1 ratepayer; John Hickey, JD, PE, business representative; Kristin Johnson, Lake Oswego Counselor; Jim Knapp, CCSD#1 Advisory Committee Chair; David Marks, business representative; Alice Norris, Oregon City Mayor; Ernie Platt, Homebuilders' Association representative; Paul Savas, Oak Lodge Sanitary Director; and Randy Shannon, Damascus Counselor.



and other beneficial uses. DEQ also uses the standards as regulatory tools to prevent pollution of the state's waterways. The Clean Water Act requires all states to adopt water quality standards designating beneficial uses of the state's waters and sets criteria designed to protect those uses. The Clean Water Act requires wastewater treatment facilities, and any other dischargers into the waters of the United States, to operate under NPDES permits, which set limits on what can be discharged, based on water quality standards promulgated for that specific discharge area. In addition, each plant has separate biosolids programs and industrial pretreatment programs, which also result in separate requirements for each district based upon the receiving stream capacity.

It is important to emphasize the significant regulatory drivers for the business of the districts. The Clean Water Act has a complex process for establishing and imposing regulatory requirements on "point sources," such as treatment plants, and substantial fines for violations. The regulatory process, in summary form, is that a water quality standard is developed by identifying the beneficial uses sensitive to the particular pollutant and then establishing a parameter. Specific criteria are then established based on the levels needed to protect the sensitive beneficial uses. For example, the uses typically most sensitive to dissolved oxygen are fish and aquatic life. Fish and other aquatic organisms need an adequate supply of oxygen in the water to be healthy and productive. In this case, the criteria identify the minimum amounts of dissolved oxygen that need to be in the water to protect the fish or other aquatic life. In other cases, as with many of the toxic pollutants, the criteria may identify the maximum amount that may be in the water without risk to human health or the aquatic biota. For other parameters, such as bacteria or some toxic compounds, human health is almost exclusively the most sensitive beneficial use. An analysis of each potential pollutant that could be discharged into the Willamette River and its watershed, in the case of the Permits, is made to determine the maximum that can be discharged to the river as a whole and by each permitted discharger. DEQ then builds those limits into its NPDES permitting regime, ensuring that at both an individual facility level and watershed-wide the beneficial uses are protected.

The State of Oregon has a requirement to continually update their water quality standards, which are becoming amongst the most challenging in the country, to provide for beneficial use of the State's water ways. The Districts continues to face increasingly stringent regulations, which likely will impact the technology needed to remove such pollutants if current treatment will not treat to the appropriate levels.

One of the difficulties in meeting current water quality standards is that the existing treatment infrastructure was designed to the lower standards that existed at the time of their construction. Several improvements have had to be made to both the Kellogg Plant and the Tri-City Plant to meet current water quality standards. This is exacerbated by the current rule structure that imposes even more stringent standards every time a treatment facility undertakes major improvements. For example, the Tri-City Plant's NPDES permit shifted from a "20/20" permit to a "10/10" NPDES permit, reducing in half certain allocations and pollutant discharge limits. Fortunately, the MBR Facility generated a high enough quality effluent that, when mixed with the lower-quality conventional treatment system used for the remainder of the plant flows, was more than sufficient to meet the enhanced compliance point requirements. There is a high likelihood that continued and even greater reliance on the MBR Facility will be necessary for effluent at the Tri-City Plant to meet the requirements of the Clean Water Act.

New standards can be imposed without the triggering requirement of additional construction that can necessitate additional investment or operational changes at the treatment plants. New technology, testing, analysis, and environmental studies can define new pollutants of concern. For example, Senate Bill 737, which passed in the 2007 session, required DEQ to develop a list of all priority persistent bioaccumulative toxics (the "Priority Persistent Pollutant List") that have a documented effect on human health, wildlife and aquatic life. The bill also required fifty-two of the largest municipal wastewater plants (including the Kellogg Plant and Tri-City Plant) to pay a fee between \$10-\$20,000 over two years to fund the research behind the Priority Persistent Pollutant List, and draw samples of each major treatment facility's effluent to identify whether they had any of the toxics of concern. If any were identified, the facility had to come up with a strategy to deal with them by 2011. Fortunately, the studies found that the only toxics found in the two major treatment plants' waste streams during sampling were primarily byproducts of human digestion, and DEQ deferred the requirement for the strategy to be submitted pending additional discussion and review. Similarly, the EPA's Office of Science is continually researching the environmental impacts of existing or new products or issues in an effort to provide the scientific support for any additional regulations that may be required.

In the near term, staff anticipated that both the Tri-City Plant and Kellogg Plant will be dealing with compliance challenges arising from several existing discharge limitations, including: (i) temperature, (ii) ammonia, (iii) biological oxygen demand ("BOD") loading, (iv) total suspended solids ("TSS") loading, and (v) copper. Some arise from additional connections to the systems, while others are likely to become issues because of decreased allowances for existing discharges. In addition to anticipated problems in existing discharge limitations, staff also anticipates that some or all of the following "pollutants" may be added as new limitations within the NPDES Permits in the next several years: mercury, cadmium, silver, zinc, nickel, lead, and chromium.

In complying with the NPDES permits and associated regulatory structure, the districts currently achieve some cost savings by sharing staff to perform tasks. However, they are separate districts, and accordingly WES must maintain a degree of separation to follow the individual permits and legal requirements. Additionally, technical analyses are required for each district as well. The districts must also have separate rules and regulations, which govern activities that may impact the collection system and treatment works. Hence, the department has separate accounting, reporting and administrative needs to meet permit requirements of each district.

The current system of administration and compliance meets the demands of the regulatory system, but is not the most efficient. However, the primary gains that could be experienced by the Districts through a cooperative partnership are not on the staff side, but on regulatory permit compliance efforts themselves through the utilization of a watershed-based permit.

### Watershed Based Permitting

Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis. Watershed-based permitting can encompass a variety of activities ranging from synchronizing permits within a basin to developing water quality-based effluent limits using a multiple discharger modeling analysis. The type of permitting activity will vary depending on the unique characteristics of the watershed and the sources of pollution impacting it. The ultimate goal of this effort is to develop and issue NPDES permits that better protect entire watersheds.

Having a watershed based permit would greatly benefit the districts in meeting their Clean Water Act obligations, potentially allowing the two Districts to combine their respective allocations so that trading of NPDES permit discharge allocations could occur, as long as the collective discharge would be below the combined allocation. For example, under the current permitting situation if there is a high flow event at the Tri-City Plant that leads to an exceedance on TSS allowed to be discharged, TCSD is fined under the Clean Water Act, which can result in fines of up to \$50,000 per day per parameter within the NPDES Permit that is violated. It would not matter if the Kellogg Plant is substantially below the required TSS loadings because they are distinct permits. However, if there was a single watershed permit, then there would only be a fine if the total discharged from both plants exceeds the total amount allowed to be discharged by both plants. So in this hypothetical, there is no violation because the Kellogg Plant's available loading can be combined with the Tri-City Plant via a "trade" to result in compliance.

This is not a radical innovation, but rather an existing local fact. Our neighboring Washington County wastewater provider, Clean Water Services, uses a watershed-based integrated permit covering four treatment plants via a county service district model. Oregon DEQ states that a single watershed-based, integrated municipal permit does not reduce the requirements that were previously contained in separate permits. Instead, it provides a number of advantages and efficiencies in allowing for use of multiple parameters across permits to meet requirements, or even from sources external to the allocations of treatment facilities (such as generating temperature credits for discharges by creating shade on upstream tributaries within the watershed).

The single watershed –based permit would result in various benefits to the permittee and the permitting authority and the environment. One permit is easier to administer and implement for both entities. The integrated permit also provides an economy of scale for both permittee and the permitting authority in terms of resource use. Both organizations will be better able to focus their resources on the most critical problems, while the integrated permit provides a greater level of protection for the environment than what might have been realized under the current system of multiple permits.

Putting a watershed permit in place for the districts is the best available strategy for meeting the existing and anticipated regulatory challenges facing the current and future ratepayers at the lowest cost. A single parameter, such as temperature, can drive investments into the tens of millions of dollars and pooling regulatory allocation resources to most efficiently

meet those requirements makes the most sense from a professional management standpoint. This pooling of resources via a watershed permit can only be achieved if a single, regional entity holds and controls the NPDES permits for all involved facilities.

A regionalized, watershed permit approach would also create efficiencies in the solids disposal portion of the districts' business. Currently, solids that are generated in the treatment process are loaded onto trucks and applied to farm fields in either the Willamette Valley or eastern Oregon. Each field must be specifically authorized by DEQ for application of biosolids by a particular entity. Currently, solids generated at one district's plant cannot be applied at the fields approved for the other district. This leads to operational challenges and increased costs in disposal.

In summary, a single watershed-based permit obtained through Regionalization would allow the districts to achieve water quality goals in a more cost-effective and efficient manner. The districts would experience enhanced environmental results for the watershed where ratepayers live, work and play, as well as target and maximize the available resources to achieve the greatest service level and environmental results. Additionally, a single watershed-based permit would create administrative efficiencies and provide opportunities for water quality trading programs that could support non-point source contributions to watershed health and regulatory compliance.

#### **Capital Benefits:**

The Regional Committee was originally formed to consider the possibility of shared investment in capital projects for growth, given the strong likelihood that each district would substantially benefit from a shared investment strategy. It is an industry truism that wastewater treatment efficiencies can typically be realized by scale, which is why it was more cost effective to decommission the three treatment plants serving Gladstone, Oregon City and West Linn and combine them into the Tri-City Plant. Washington County's Clean Water Services decommissioned twenty-six treatment plants and consolidated them into four facilities. Growth is only one component of the overall capital program each district must implement. Staff has evaluated each type of major capital project for the districts to determine whether or not a permanent partnership would have material benefits: regulatory investments, asset replacement, and growth infrastructure. In all three areas of investment, we anticipate that each district's ratepayers would realize hundreds of millions of dollars of savings through a regionalized capital investment strategy.

Regulatory Compliance. With respect to regulatory compliance, as noted in the Regulatory Benefit section above, each district is faced with the high likelihood of required investment to meet heightened discharge limitations. The plethora of new and enhanced regulatory requirements that may be imposed on the treatment plants are projected to require tens to hundreds of millions of dollars of additional investment. Regionalization, as an approach to capital investment, is the operative theory behind several programs currently being implemented by WES staff. TCSO is able to rely on and utilize the high quality effluent treatment of the MBR Facility to meet permit requirements, and CCSD#1 will be able to rely on and utilize the superior



Blue Heron outfall, of which it is co-owner, that is scheduled to be connected to the Tri-City Plant.

An example of how shared investment in assets can improve regulatory compliance can be found during the negotiations over the Tri-City Plant's currently-issued NPDES permit. DEQ's initial draft of the permit included a discharge limit for ammonia, a notoriously difficult parameter to treat for – the typical strategy is called nitrification, and requires the treatment plant's conventional treatment systems for liquids to be reduced to approximately 60% of its design capacity. This would have triggered a requirement that TCSD construct a new conventional treatment train for liquids at the costs of tens of millions, including early remediation of the Rossman landfill space. However, the improved performance from the MBR Facility was sufficient to give rise to an argument that with a minor investment in the outfall and assurances that future expansions in liquid treatment at the Tri-City Plant would be via CCSD#1's MBR Facility, no ammonia limit needed to be included. Staff was able to negotiate an order with DEQ that kept the term out of the NPDES permit (thus avoiding the anti-backsliding rule) and make an investment of only \$300,000 in improved outfall configuration to make regulatory compliance under the appropriate analysis. TCSD would have faced a large capital cost to serve only existing customers if not for the MBR Facility and shared investment in outfall improvements.

Mutual investment made by each CCSD#1 and TCSD in the Blue Heron NPDES permit and outfall (previously held by the now-liquidated Blue Heron Paper Company) were a strategic approach to meeting temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant and also has the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately \$40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately \$120 million and have a significantly higher annual operating cost.

Therefore, Regionalization not only would allow realization of cost avoidance in the operation and performance of the treatment plants, but also in any required investments needed to meet regulatory requirements. This would greatly reduce costs to serve current customers, let alone future connections. A co-investment strategy for regulatory compliance has already been implemented by the districts on an ad-hoc basis, and all available evidence suggests that savings in the hundreds of millions of dollars would result in a combined investment strategy.

Asset Replacement. Asset replacement is anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments from the 1970s and 1980s wear out. This is of significant concern, as both districts' major assets are nearing the projected end of their useful life; both the Kellogg Plant and Tri-City Plant's original assets are fully depreciated. Staff is developing an asset management program to implement the necessary tools, processes and procedures necessary to make the best decisions about the repair and replacement of existing assets. This program will assist in predicting and best managing the anticipated high cost of asset replacement.

Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Through WES, the districts currently benefit through shared maintenance crews, as well as a staff of engineers and inspectors, who ensure that projects are done per spec and at the lowest possible cost that meets operational needs. Regionalizing asset replacements efforts would enhance this productivity while providing the lowest cost provision of this crucial investment.

**Growth.** The Regional Committee has already received presentations on the savings that are anticipated through joint investment to meet the needs of growth. The districts are anticipated to save nearly \$120 million by working together to solve the solids handling capacity issue, as an example. Staff notes that the districts have reached “capacity parity” at this time, in that they are faced with similar needs in similar timelines going forward from a service level standpoint. Each district is uniquely positioned to address a particular regional need - TCSD is better situated to address solids handling and CCSD#1 is better situated to address liquids handling. Together, each district would save at least of millions by working collaboratively on this area of capital investment with one another than they would alone.

Another benefit of a partnership would be to share in the combined benefit of adding new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise, with equal responsibility for paying for regulatory-driven investment or asset replacement for assets whose useful life was exhausted prior to their connection to the system. This spreads the cost of regulatory and asset replacement costs across a broader base, reducing the per-household charges for the existing ratepayers. Both CCSD#1 and TCSD broaden their individual ratepayer base by operating together, which allows for a lower overall cost for the provision of wastewater services.

Overall, multiple studies and examination from an engineering and service level perspective undertaken by the districts consistently show that the ratepayers of each district would save tens to hundreds of millions of dollars through Regionalization. That idea has driven investments since the 1990s and remains even truer today as the regulatory environment becomes ever more restrictive and the needs of asset replacement become the dominant capital requirements for both districts. Regionalizing infrastructure investment to provide for the projected capital needs of both districts would save hundreds of millions of dollars over the next few decades.

#### **Governance Benefits:**

Currently, the Board of County Commissioners (“BCC”) serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight, to ensure that the interests of ratepayers are being heard and reflected in decisions. Of those, six relate to the Districts. This leads to a multitude of sometimes

inconsistent voices coming to the governing body. A more unified decision-making process could reduce that number to two.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together to a limited extent from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. The question of whether or not the districts will work together is an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to difficulty in making long term plans to meet the needs of the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement and meeting the needs of growth, plans which are being reviewed and revised from a comprehensive perspective at this time. Often the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow for the realization of the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders have a voice in all material decisions on a consistent basis. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. In having all the decision-makers together and obtaining certainty regarding co-investment, staff can better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and more assuredly realize the tens of millions of dollars in savings projected by the two districts working together on a permanent basis.

Overall, the substantial intangible value of certainty would be a great aid in allowing staff to conceive, propose and ultimately implement the optimal lowest-cost management strategy for the infrastructure and services entrusted to them.

#### **Administrative Benefits:**

Currently, WES staff provides accounting and administrative services to the three independent districts of CCSD#1, SWMACC, and TCSD. Each of these districts are "municipal corporations" as defined by statute, requiring separate accounting and reporting. County service districts provide a way to localize the financing of services that benefit only specific areas, while retaining responsibility within county government rather than an independently elected board. The Board of Directors for each district is comprised by statute of the individuals who are elected as Clackamas County Commissioners.

The administration of the Districts is done by Clackamas County employees that are organizationally housed in WES. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district.

The principal driver for these discussions about Regionalizing the districts is efficiency and the potential advantage to ratepayers resulting from some form of combined services. The

purpose of this discussion is to look at whether the potential advantages of Regionalization translate into efficiencies and cost savings to ratepayers. The approach has been to develop a list of administrative costs the districts incur to deliver utility services and align them with future costs that could be avoided by merging the three Districts into one comprehensive utility service provider. This discussion should not be construed as a rate study. Itemized below are some of the administrative areas that would result in either lower-cost or more efficient provision of services under Regionalization:

- Accounting – Extensive resources are required to provide accurate and reliable cost accounting to all three districts. Investments and expenses may be the responsibility of one, two, or all three districts. In the cases of more than one district, allocations vary from agreed on amounts to percentage splits to those based on actual direct labor charges of the districts. This adds in turn to the number of journal entries and complicated tracking arrangements. Vehicle and equipment usage becomes complicated when they are shared between districts. Significant reductions in cost accounting related to all of the issues noted could be achieved under a combined entity with a combined monthly service rate.
- Agreements – Agreements are required whenever assets are shared between districts. This in turn requires briefings to advisory committees reflecting their separate interests, the creation of detailed IGAs by County Counsel, possible study sessions and ultimate adoption by the Board. One larger entity will not produce these issues whenever assets are used or co-located. This is important, as WES will continue to look for efficiencies through asset sharing.
- Borrowing Costs/Logistics – For the first time, a costly capital project (solids handling) needs to be undertaken by two of the districts simultaneously, requiring significant external funding. Under the current independent financing structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for their agreed upon portion of the project. The financial condition of TCSD is very different than that of CCSD#1, which may require very different approaches to that financing for each district. Even then, funding from both must be ready at the time the project starts. This will be a challenge that would be greatly reduced if done by a combined, financially stronger entity. One larger entity should be able to achieve a higher bond rating, reducing borrowing costs, as well as eliminate many of the risks noted here.
- Facilities planning and Asset Management – In most cases, facilities planning is currently done at the individual district level. This approach does not take advantage of the economies of scale that could be achieved by planning on a basin-wide, regional basis. Clean Water Services in Washington County has adopted this basin-wide planning strategy, resulting in the consolidation of twenty-six wastewater treatment plants in 1970 down to four treatment plants today. Asset management will be an even greater financial challenge than growth over the longer term. Even small efficiencies in this area will result in significant savings over time.
- Risk – Separate insurances are required for each district, with variations between each of them resulting in greater complexity in the management of risk. One larger entity should not only reduce overall insurance costs, but would reduce the complexity in its management.

Overall, the districts are experiencing some administrative savings already, therefore, the impact of Regionalization would be a limited improvement in terms of dollars. However, the unknowns around TCSD's ability to effectively enter into the municipal markets and the almost-certain reduced borrowing costs and interest rate savings from a Regionalized borrowing strategy



provide sufficient reason to find that there would be material administrative savings to the ratepayers of the districts.

### **Industry Trends:**

Cities' roles are to oversee the care of basic services that the taxpayers require, such as education, parks and recreation, safety, and utilities. In reality, most cities do not handle all governmental services alone, or at least not easily. In order to deliver a service in a way that is most fiscally responsible, cities commonly work together with their neighbors to provide the same service for all parties involved, at a reduced cost for each contributor. Over time, these mutually beneficial relationships result in deep ties of co-invested programs, projects, and infrastructure. Specifically, in the realm of wastewater conveyance and treatment, the ties can become crucial to the overall economic and public health of an entire region. In Clackamas County, the collaboration of TCSD and CCSD#1 has resulted in substantial savings to date, with more possible with greater integration. In order to understand the relationship between the two districts, the fundamentals of public investment in infrastructure must first be examined. Below are some common questions that were reflected in industry literature that may be helpful to the Regional Committee:

*What is the relationship between public investment in infrastructure and private investment?*

In his 1990 report entitled "Why is infrastructure important?", David Alan Aschauer sought to determine the magnitude of impact that investment in infrastructure has on economic output and found that government investment in infrastructure has a far greater impact on private investment decisions than any other type of government expenditure. "Given that public capital complements private capital, an increase in the public capital stock can be expected to stimulate private capital through its effect on the profitability of private capital."<sup>2</sup>

*What is the return on investment in public infrastructure?*

In 2012, Isabelle Cohen, Thomas Freiling, and Eric Robinson at the College of William and Mary published a paper that attempted to understand the short- and long-term financial return generated by infrastructure investment. They found that, "In the short-run, spending on infrastructure produces twice as much economic activity as the level of initial spending. These effects are most heavily concentrated in the manufacturing and professional and business services sectors, but also accrue to smaller sectors like agriculture. In the long-run, spending on all types of infrastructure generates substantial permanent positive effects across the economy as

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<sup>2</sup> Aschauer, David Alan, 1990. "Why is infrastructure important?" Conference Series; Federal Reserve Bank of Boston, p 21-68.

a whole. Money spent now will produce significant tax revenue returns to the government's budget over twenty years."<sup>3</sup>

Over the long term, they found that the results of public investment are amplified. In particular, the group determined that every \$1 invested at the beginning of a 20 year period would yield \$3.21 in GDP growth at the conclusion of the period. In addition, in the aggregate, \$1 invested in infrastructure would generate almost \$0.96 in new taxes over 20 years.

*What impact does investment in water and sewer infrastructure have?*

In 1995, researchers from the University of Oklahoma, Clarkson University, and Northern Illinois University analyzed the effects of investment in different infrastructure components individually and found a greater impact resulting from investment in water and sewer infrastructure than other types of infrastructure. Their report concluded that "aggregate public capital and two of its components (highways, water and sewer) make a positive contribution to state output. Water and sewer systems have a much larger effect on state output than highways and 'other' public capital stock."<sup>4</sup>

They further found that, "The implication is that additional investment in waste disposal and water systems offers a greater stimulant to the regional economy than increased public funding for highways. Also, willingness to facilitate the building of water and sewer infrastructure may allow states to maintain or enhance their competitive advantage in attracting new facilities and jobs." Businesses looking to establish themselves further in the area would be discouraged by a lack of treatment capacity, and may consider options in other parts of the region. Additionally, residents of the region do not specifically limit their day-to-day business within the political boundaries of each city or district; rather, they work, shop, and recreate freely across all of boundaries in each of the cities served by the districts.

A study by the U.S. Department of Agriculture looked at the impact of specific infrastructure investments made by the U.S. Department of Commerce, Economic Development Administration ("EDA") in 1989 and 1990 and found positive benefits from investment in water and sewer infrastructure where it helped businesses expand or locate in a community. "Water/sewer projects can save and/or create jobs, spur private sector investment, attract government funds, and enlarge the property tax base. The 87 water/sewer projects studied, on average, created 16 full-time-equivalent construction jobs. Direct beneficiaries (businesses) saved, on average, 212 permanent jobs, created 402 new permanent jobs, made private investments of \$17.8 million, leveraged \$2.1 million of public funds, and added \$17.0 million to the local property tax base. Indirect beneficiaries saved, on average, 31 permanent jobs, created 172 new permanent jobs, attracted \$3.34 million in private-sector investment, leveraged \$905,000 of public funds, and added \$3.0 million to the local property tax base. This enlarged

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<sup>3</sup> Cohen, Isabelle, Freiling, Thomas, and Robinson, Eric, 2012, "The Economic Impact and Financing of Infrastructure Spending," Thomas Jefferson Program in Public Policy, College of William & Mary, for Associated Equipment Dealers.

<sup>4</sup> Moomaw, Ronald L. Mullen, John K. and Williams, Martin, 1995, "The Interregional Impact of Infrastructure Capital," *Southern Economic Journal*, Vol. 61, No. 3 (January), pp 830-845.

property tax base, at a mere 1-percent tax rate, would yield \$200,000 in annual property tax to the community.” In their work attempting to quantify the effects of financial investment in infrastructure, Cohen, Freiling, and Robinson at the College of William and Mary found that a \$1 investment in a water and sewer project would yield \$6.77 in GDP growth over a 20 year period. The same \$1 would also generate \$2.03 in new taxes over the same period, on average, of which \$0.68 is new state and local tax revenue.

*Would these same regional benefits to shared wastewater capacity infrastructure development apply in Clackamas County?*

Yes. District-specific studies undertaken in the 1990s, 2000s, and 2010s all demonstrate the substantial savings that emerge from a more integrated, economy-of-scale system apply in the case of both districts. There is little doubt that the ratepayers of the districts would be best served by a long term, consistent cooperative approach between the districts.

#### **Conclusion:**

Overall, a staff review of the issues, opportunities and challenges facing each of CCSD#1 and TCSD found that ratepayers stand to save hundreds of millions of dollars through Regionalization. The greatest benefits are realized in collectively meeting regulatory requirements for current services, and allowing for the least-cost capital investment strategy to meet regulatory, asset replacement, and growth needs. There are smaller, but tangible benefits that emerge in the arenas of administration and governance, resulting in a more streamlined organization that is efficient and effective. In particular, the introduction of certainty for a long term investment strategy, and improved transparency and collaborative opportunities are significant positives. In totality, Regionalization is consistent with the trajectory of the two districts’ relationship over the past two decades and results in savings by all ratepayers on the order of hundreds of millions of dollars.

**AMENDMENT #1 TO THE WATER ENVIRONMENT SERVICES  
PARTNERSHIP AGREEMENT**

This Amendment #1 to the Water Environment Services Partnership Agreement (this "Amendment") is by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute ("ORS") Chapter 451 ("CCSD#1"), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 ("SWMACC"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the "Agreement"); and

WHEREAS, CCSD#1 and TCSD desire to amend the Agreement to clarify certain provisions and add SWMACC as a party to the Agreement pursuant to this Amendment; and

WHEREAS, SWMACC desires to join the Water Environment Services partnership and is willing to adhere to the terms and conditions of the same as set forth in the Agreement as modified by this Amendment; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. The Surface Water Management Agency of Clackamas County ("SWMACC") is added to the Agreement and considered a "Partner" and part of the collective "Partners" for all purposes therein.
2. The following definitions in Section 1.11 is hereby amended to read:
  - (g) "Gross Revenues" means all revenues, fees and charges, capital charge revenues and capital charge proceeds, and other revenues resulting from the operation of the wastewater and surface water systems, including System Development Charges, revenues from product sales and interest earnings on Gross Revenues in the wastewater and surface water enterprise fund(s). However, the term "Gross Revenues" does not include:
    - i. The interest income or other earnings derived from the investment of rebate funds or any escrow fund established for the defeasance or refunding of outstanding indebtedness of the Members prior to the establishment of this Agreement.
    - ii. Committed capital charges which means all assessments for local improvements to the wastewater and surface water systems and related cash and installment loan contract payments.



- iii. Any gifts, grants, donations or other moneys received by WES from any State or Federal government entity or other person.
  - iv. The proceeds of any borrowing.
  - v. The proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues).
  - vi. The proceeds of any casualty insurance that WES intends to utilize for repair or replacement of the wastewater and/or surface water systems.
  - vii. The proceeds derived from the sale of assets.
  - viii. Any ad valorem or other taxes imposed by WES, its successors or assigns.
  - ix. Any income, fees, charges, receipts, profits or other moneys derived by WES from its ownership or operation of any separate utility system; where a separate utility system means any utility property which is declared by the Board to constitute a system which is distinct from the wastewater and surface water systems.
- (h) "Partners" means CCSD#1, SWMACC, and TCSD, and any subsequently admitted Partners added pursuant to an amendment to this Agreement.

3. Section 3.02 shall be amended in its entirety to state:

3.02 Rate Zones and Differentials. The WES Board shall establish rates for each rate zone of WES. There shall be three rate zones. "Rate Zone One" shall be coterminous with the boundaries of TCSD, as they may be adjusted from time to time. "Rate Zone Two" shall be coterminous with the boundaries of CCSD#1, as they may be adjusted from time to time. "Rate Zone Three" shall be coterminous with the boundaries of SWMACC, as they may be adjusted from time to time. For illustrative purposes, maps and a general description of Rate Zone One, Rate Zone Two and Rate Zone Three are attached hereto as Exhibit B. The WES Board shall have full power and authority to levy different rates between and within the rate zones. Rate Zones One and Two shall generally each pay a wholesale charge for wastewater treatment service. At the time of formation of WES, Rate Zone Two shall also pay sufficient amounts to meet the CCSD#1 Debt Service, retail wastewater service, and surface water services. At the time of integration of SWMACC, Rate Zone Three shall pay charges for surface water management only. As levels of service change within any zone, the WES Board may add or subtract charges within the Rate Zones; *provided, however*, that the WES Board may not add any payment for the CCSD#1 Debt Service to Rate Zone One or Rate Zone Three, except as provided in Section 2.04. The WES Board may create sub-zones within each Rate Zone as it deems advisable for reasons consistent with the Purpose, including but not limited to the exclusion of retail charges if that service is provided by a local government whose boundaries are within one of the Partners or the inclusion of a rate surcharge to recover the cost of right of way fees levied by a local government entity.

4. In order to reflect the addition of SWMACC into WES, Exhibit B is hereby supplemented with "Exhibit B – Rate Zone 3 (SWMACC)" attached to this Amendment.

5. Section 3.06 shall be amended in its entirety to state:

Section 3.06 Local System Expenses. The Wastewater Service Charge, Surface Water Service Charge, and system Development Charge shall be deemed Gross Revenues to the maximum extent possible under existing bond resolutions and ordinances, and shall be expressly deemed as resources available to fund the maintenance and operations expenses of the wastewater and surface water systems of each Partner in any future bond issue or other financing payable in whole or in part from the Gross Revenues of such systems. Local System Expenses shall be payable and constitute a charge prior and superior to any charge or lien of any revenue bonds, or any obligations, issued by the Partners payable from the net revenues (Gross Revenues less Local System Expenses) of their respective wastewater or surface water systems.

6. Section 3.07 shall be amended in its entirety to state:

Section 3.07 Existing Partner Debt. The Partners acknowledge that CCSD#1 has currently outstanding debt, namely the CCSD#1 Bonds, relating to its existing system, and that neither TCSD nor SWMACC have any outstanding debt. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be responsible in any case for the CCSD#1 Bonds and related CCSD#1 Debt Service. Nothing in this Agreement is intended or shall be construed to violate any covenant of these outstanding bonds, and such covenants, to the extent there is a conflict between them and this Agreement, shall control with respect to such outstanding bonds and any debt issued on a parity with such bonds and required to have the same covenants as the outstanding bonds.

7. Section 3.09 shall be amended in its entirety to state:

Section 3.09 Transition Period Capital Project. The Partners anticipate moving forward with a solids handling capital project to be located at the Tri-City Facility (the "Solids Handling Project") during the Transition Period. This may require borrowings by the Partners individually or by WES. To allow for the greatest efficiency in moving forward with said project, the Partners agree that Rate Zone One ratepayers shall be responsible for thirty-six percent (36%) of any and all costs or debt associated with the Solids Handling Project, and Rate Zone Two ratepayers shall be responsible for sixty-four percent (64%) of any and all costs or debt associated with the Solids Handling Project. Rate Zone Three shall not be required to contribute any revenue in support of the Solids Handling Project. This ratio shall only apply to the Solids Handling Project. As set forth in Section 3.07, Rate Zone Two shall remain solely obligated for the CCSD#1 Bonds, and Section 3.10 shall govern future WES projects.

8. Section 3.10 shall be amended in its entirety to state:

Section 3.10 Allocation of WES Debt Amongst Rate Zones. Except as provided for in Section 3.09, whether WES Debt is issued as revenue bonds, revenue obligations, or general obligation bonds through the Partners, or otherwise, each ratepayer within a Rate Zone shall share equally in the cost of such WES Debt, whether for capacity expansion, asset replacement, regulatory requirements, or system efficiency reasons, that are related to the services received by such ratepayer. The WES Board shall not allocate expenses for WES Debt unevenly, but shall treat all ratepayers within all Rate Zones receiving similar services

the same with respect to such WES Debt. It is the intention and policy of the WES Board to have ratepayers within the three zones to pay only for the portion of WES Debt associated with the type of services received by such ratepayer. Therefore, WES Debt associated with surface water will only be allocated to ratepayers that receive surface water services from WES, WES Debt associated with retail wastewater will only be allocated to ratepayers that receive retail wastewater services, and WES Debt associated with wholesale wastewater will only be allocated to ratepayers that receive wholesale wastewater services. A ratepayer may receive more than one kind of service and may contribute to multiple elements of WES Debt based on such services. The WES Board authorizes the WES Director, or the Director's designee, as defined in Section 2.07 to make a determination as to which service or services are related to some or all of WES Debt.

9. Section 3.13 shall be amended in its entirety to state:


Section 3.13 WES Budgeting. Beginning July 1, 2017, WES may adopt and operate pursuant to an annual budget, consistent with Oregon Local Budget Law, including a duly composed budget committee and appropriate public hearings. The WES Board shall have full authority over such budget, including the ability to amend or adjust the same as allowed by applicable law. WES shall operate within its annual budget.

10. Notwithstanding Section 4.01 of the Agreement, nothing in the Agreement nor this Amendment shall be construed to require WES to accept wastewater flows from within the SWMACC boundary without the specific authorization of the WES Board, or to require Rate Zone Three to apply wastewater-related provisions to its customers without specific authorization by the WES Board.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

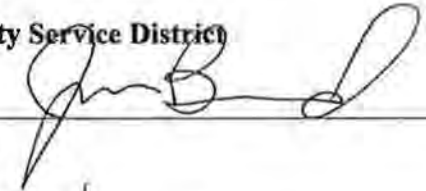
**Clackamas County Service District No. 1**

Chair

  
Clerk Mary Raetnke 5-18-17

**Tri-City Service District**

Chair

  
Clerk Mary Raetnke 5-18-17

**Surface Water Management Agency of Clackamas County**

Chair

  
Clerk Mary Raetnke 5-18-17

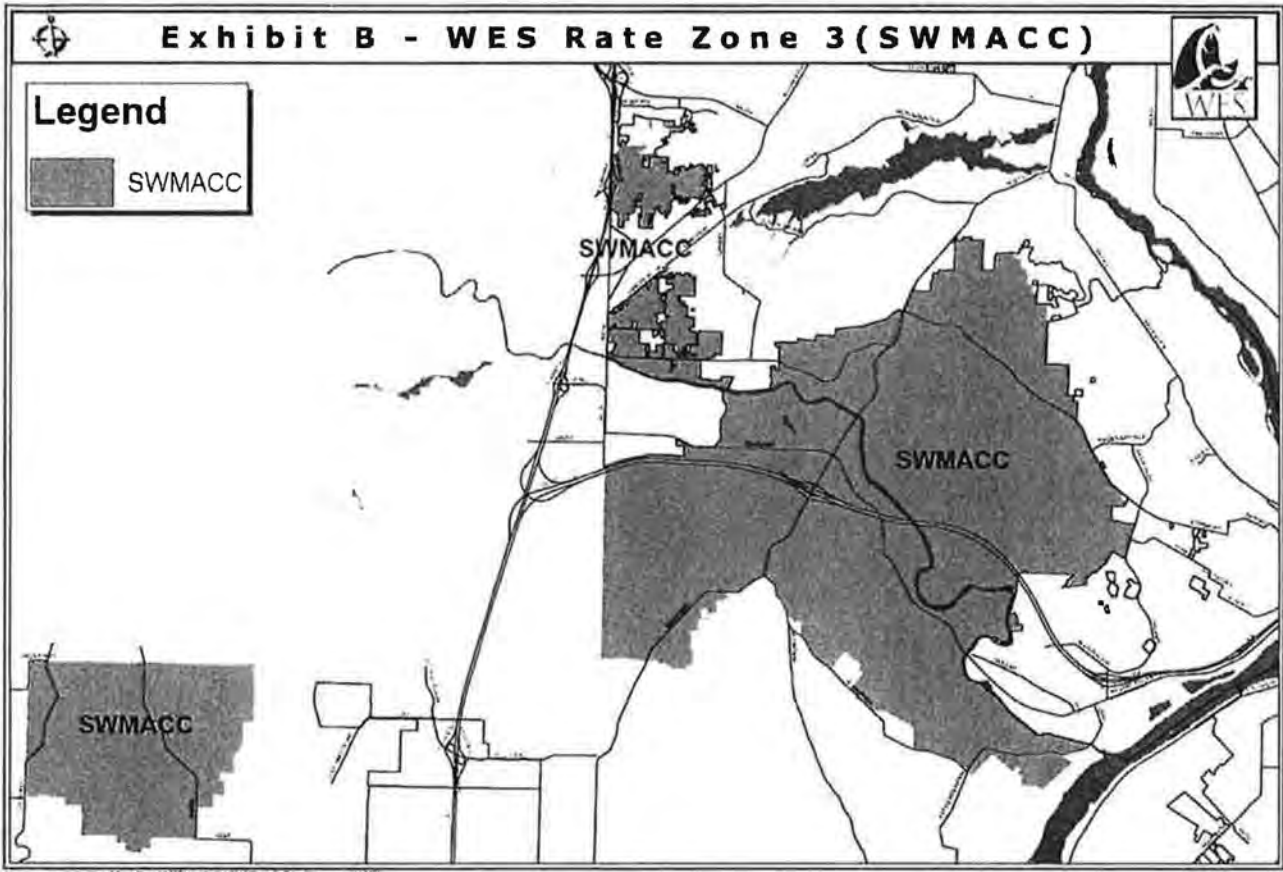


# Exhibit B - WES Rate Zone 3 (SWMACC)



## Legend

 SWMACC





WHITE PAPER: ANALYSIS OF BENEFITS  
OF REGIONALIZATION TO  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1  
AND  
THE TRI-CITY SERVICE DISTRICT

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## Executive Summary

On May 27, 2015, the Regional Wastewater Treatment Capacity Advisory Committee (“Regional Committee”) voted to have a discussion regarding governance of both Clackamas County Service District No. 1 (“CCSD#1”) and the Tri-City Service District (“TCSD”) at the Regional Committee level. This discussion is being held in the context of the Regional Committee examining whether or not there are ratepayer benefits to the two districts co-investing in solids infrastructure (digesters). The Board of County Commissioners (“BCC”), as the governing body of each CCSD#1 and TCSD, voted to support having the governance conversation with the Regional Committee. Therefore, staff has developed this white paper to articulate some the factors that would be relevant to the Regional Committee in considering the issue.

It has been a common point of discussion within Water Environment Services (“WES”) that the current structure of two separate service districts, while saving ratepayers a certain amount of money, is somewhat inefficient and complicates long-range capital planning efforts. The concept of the two districts working together has shown up in several documents throughout the two districts' history. One example is the intergovernmental agreement entered into between CCSD#1, the City of Gladstone, and TCSD in 1999 allowing for the portion of Gladstone that is served by CCSD#1 to be annexed into TCSD and pay only the TCSD wholesale rate. Section 13.1 of this agreement states that, “[t]he parties agree to consider use of ORS 190 to create new service entities or other methods to more cost-effectively provide services.” While WES staff internally recognized the value of a regionalized approach, they continue to diligently ensure that each district maintains separate funding, budgeting, expense tracking, and accounting.

While history of the districts began as one of separateness, the opportunity to take advantage of the savings that arise from a joint operation has led to several significant decisions along the path towards greater integration. These include sharing staff, laboratory services, facility maintenance equipment, and space on the operating side, to rental and ultimate capital investments. In 2008, a regional advisory body was formed to consider regional service issues and, supported by reports and estimates provided by a third party engineering firm, reached the conclusion that the ratepayers in each district would be substantially better off with full integration of the two districts. And now, as it has multiple times over the last three decades, the issue has again become a matter of policy deserving of the attention of decision makers.

In evaluating this proposition, staff had to make certain assumptions. The first is the scope of the discussion. The work of the prior 2008 blue ribbon group assumed an integrated regional wastewater service provider that could provide both wholesale and retail services, as desired by constituent members. Similarly, the purpose of the Regional Committee is to evaluate, on an ad hoc basis, the similar idea of whether there are benefits to cooperative investment across the two districts. Therefore staff’s framework for this evaluation is to provide the Regional Committee sufficient information to test the proposition of whether the ratepayers of the two districts would experience material benefits from regionalizing the provision of wastewater services. From a timing perspective staff assumed a planning horizon of 30 years, to match several of the existing studies or alternatives analyses. With respect to implementation, there are several possible mechanisms to achieve regionalization. In brief, they are:

- Merger of CCSD#1 and TCSD into a single, larger ORS 451 county service district with the Board of County Commissioners (“BCC”) remaining as the governing body. This would presumably include reforming the advisory committee to reflect the combined stakeholder group, and the subsequent annexation of Milwaukie into the merged 451 district.
- Formation of an ORS 450 sewer district that contains the boundaries of CCSD#1 and TCSD, as well as the City of Milwaukie. The governing body of the district would be directly elected by the residents of the newly-formed district.
- Creation of a partnership entity pursuant to ORS 190 in which the impacted entities would vest the new partnership with a range of authority and assets. For the purposes of this paper, staff assumed that the partnership would hold all the assets and regulatory permits required for current level wastewater service delivery. The governing body of the partnership would be constituted based upon the terms of the partnership agreement.

While each of those three options has benefits and challenges associated with them, they will not be explored herein. If desired by the Regional Committee, staff can subsequently provide a thorough written examination of the three main regionalization options. Rather, a baseline level of integration can be assumed from implementation of any of the three options (referred collectively to herein as “Regionalization”). With that assumption, staff analyzed what benefits arise through Regionalization that would not be available to the districts if they remained separate.

In evaluating what information would be relevant to the Regional Committee in considering the Regionalization issue, staff examined four key areas: Regulatory, Capital, Governance (decision-making), and Administrative. Staff also reviewed prior work done by the community, industry publications and commentary from relevant discussion of similar issues. Overall, the analysis shows that substantial savings would be achieved for all ratepayers concerned through a regional approach that results in a consistent, integrated, and streamlined organization. The greatest savings stem from combined efforts in dealing with regulatory and capital issues, with lesser monetary benefits emerging from governance and administrative efficiency gains. In total, the savings that could be available to ratepayers of each district through an integrated and collaborative approach amount to hundreds of millions of dollars over the next 30 years. Below is a summary of these findings:

*Regulatory:*

Under the current system, TCSD and CCSD#1 each hold separate Clean Water Act permits for their facilities. Despite the infrastructure integration between the districts by the membrane bioreactor treatment train and intertie pipelines, the regulatory schemes are wholly separate. Currently, the load allocations available under one permit are not transferrable or available under another. However, it is possible to link all the districts' permits together under what is known as a watershed permit. This permit is what is used in Washington County, which has four treatment plants operating under one watershed-based Clean Water Act permit. Staff



have explored this opportunity with the Oregon Department of Environmental Quality (“DEQ”), and has been informed that in order to secure a watershed permit, a single entity to be the permit holder for facilities included in the watershed permit. Therefore, the option of a watershed permit would only become available when a single entity holds the permits for the Kellogg Plant, the Tri-City Plant, and the newly-acquired Blue Heron facility (collectively, the “Permits”).

Combining the aforementioned Permits into a single watershed permit would create significant efficiencies in meeting discharge limitations. This new watershed permit would not be less restrictive, but it would allow compliance to be measured across the broader watershed. That is, if there is excess capacity for meeting a limitation, such as biological oxygen demand at the Kellogg Plant, that excess could be used to meet the requirements at the Tri-City Plant. This could result in substantial savings by allowing for the most cost-effective means of meeting permit limits to be constructed at the most appropriate facility, rather than having to separately construct treatment infrastructure at each facility to meet each discharge limitation.

Having a watershed-based permit also can help avoid unnecessary investment in required redundancy by allowing the collective system of investments to meet the required thresholds, rather than having to meet them at each individual treatment facility. The watershed permitting approach has been identified as an excellent way to meet anticipated regulatory challenges that will affect both districts, including temperature discharge limitations, ammonia discharge restrictions, metal removal requirements, etc.

Overall, a watershed-based permit would result in various benefits to the permittee, the permitting authority, and the environment. For both entities, one permit is easier to administer and implement, and provides the optimal economy of scale for meeting regulatory requirements. Both districts would be better able to focus their resources on the most critical problems, while the integrated permit would provide a greater level of protection for the environment than what might have been realized under the existing system of multiple permits.

#### *Capital:*

Wastewater treatment efficiencies can typically be realized by economies of scale. Historically, TCSD and CCSD#1 have each experienced relatively low rates due to federal grants subsidizing a large portion of costs associated with construction of treatment facilities. With those grants no longer available, both districts are faced with paying the full cost of capital improvements for regulatory compliance, asset replacement and growth. In all three of those investment areas, staff anticipates that each district's ratepayers would save hundreds of millions of dollars through a mutual investment strategy that leverages a larger scale operation.

Regulatory Compliance. With respect to regulatory compliance, as noted above, each district is faced with the high likelihood of required investment to meet increasingly restrictive discharge limitations. The membrane bio-reactor facility (“MBR Facility”), constructed by CCSD#1 at the Tri-City Plant, produces the highest quality effluent of all the treatment processes, and in doing so, is helping the Tri-City Plant meet permit requirements. It is sized for easy expansion and, therefore, remains the most cost-effective way for increasing the levels of treatment being achieved for existing or future wastewater streams. Similarly, the mutual

investments made by both CCSD#1 and TCSD in the Blue Heron permit and outfall, as a strategy to meet temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant, have the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately \$40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately \$120 million and have a significantly higher annual operating cost.

Asset Replacement. Asset replacement costs are anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments dating from the 1970s and 1980s wear out. Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Currently, the districts benefit from shared maintenance crews, as well as a staff of engineers and inspectors, who ensure projects are completed properly and at the lowest possible cost that meets operational needs. Regionalizing asset replacement efforts would enhance that existing productivity and provide for the lowest cost provision of this required investment.

Growth. The Regional Committee has already received presentations on savings that are anticipated to result from joint investment in meeting the needs of growth. Regarding the solids handling project alone, the districts are anticipated to save nearly \$120 million by working together in a co-investment strategy to solve the digester capacity issue. Staff notes that the districts have reached “capacity parity” at this time, meaning they are faced with similar needs on similar timelines going forward from a service level standpoint. Further, each district is uniquely positioned to address a particular need of the region - TCSD is better situated to address solids handling, and CCSD#1 is better situated to address liquids handling. Through Regionalization, each district would save hundreds of millions of dollars.

Another benefit of Regionalization would be the addition of new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise; they share equally in the responsibility for paying for regulatory-driven investment or asset replacement of assets whose useful life was exhausted prior to their connection to the system. These additional connections spread the cost of regulatory investment and asset replacement across a broader base, reducing the per-household charges for the existing ratepayers. Operating together with an expanded ratepayer base allows for a lower overall cost for the provision of wastewater services and helps to control rate increases for existing and future ratepayers.

*Governance:*

Currently, the Board of County Commissioners serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. Ensuring that the interests of ratepayers are being heard and reflected in decisions, WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight. Of those, six relate to the Districts. This leads to a multitude of sometimes inconsistent voices coming to the governing body. Through Regionalization, the decision-making process could reduce that number down to two, all while improving both transparency and collaboration.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together on some projects from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. It is undecided which, if any, may be included in a co-investment approach. The question of whether or not the districts will work together has been an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to substantial difficulty in making long term plans for the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement, and meeting the needs of growth; plans that are being reviewed and revised from a comprehensive perspective at this time. Often, the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow certainty in realizing the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders to have a voice in all material decisions on a consistent basis, and ensure transparency and collaboration in that decision-making process. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. This approach would provide clear direction regarding these major policy issues, allowing staff to better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and realize the hundreds of millions of dollars in projected savings.

*Administrative:*

WES staff currently provides administrative support to three districts. As part of that effort, they carefully track expenses across each district and allocate shared employees based on a real time level-of-effort measure. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district. To legally have the authority to do the currently agreed upon work, WES manages a number of intergovernmental agreements between the districts and also with the County. Each effort at tracking, budgeting, auditing, and ensuring legal compliance add to the administrative overhead of the districts. While this current arrangement is still a lower cost option than each district going it alone, it does have room for improved efficiencies.

A significant challenge that will face the districts, especially TCSD, is the manner of financing combined capital projects. Currently, CCSD#1 is rated AA for municipal debt issuance; however, TCSD is not rated at all since it does not have any outstanding tradable debt. Under the current independent structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for any agreed-upon portion of a project. Even then, funding from both must be ready at the time a project starts. This is a challenge that would be greatly mitigated if done by a single regional entity that would likely be able to achieve a higher bond rating, reduce borrowing costs, as well as eliminate other risks.



## History of the Districts

This section summarizes the history and structure of the districts to ensure that all participants in the conversation are operating from the same set of common facts.

### History of CCSD#1:

CCSD#1 was organized in March of 1967 pursuant to Oregon Revised Statutes (“ORS”) Chapter 451 to service the urban unincorporated areas of northern Clackamas County and the City of Milwaukie. CCSD#1 and Milwaukie jointly applied for and received Clean Water Act grants in 1970 for the construction of the Kellogg Creek Wastewater Treatment Plant (“Kellogg Plant”) that was completed in 1975, and expanded in 1988 to include digester capacity for solids handling. Its original design rating was for 10 million gallons per day average dry weather flow. The Kellogg Plant discharges into the Willamette River under the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) Permit Number 100983 (the “Kellogg Permit”). The cities of Milwaukie and Johnson City contract with CCSD#1 for wholesale wastewater treatment services. The served urban unincorporated areas and the subsequently-annexed City of Happy Valley receive retail services, including maintenance and management of sewer and storm water infrastructure, from the initial line in the street to the treatment plant. Several investments were made to maintain the Kellogg facility and comply with regulatory issues from 1975 to 1999. More are anticipated to occur in the next few years.

CCSD#1 was originally managed by the County through an agreement with its Road Department. Upon formation of TCSD in 1986, the Department of Utilities, later renamed as Water Environment Services, provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years. Under it, CCSD#1 is billed for the cost of employees that support only CCSD#1 activities, such as line maintenance crew or Kellogg Plant operators, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with TCSD and the Surface Water Management Agency of Clackamas County (“SWMACC”). Since CCSD#1 also provides surface water services for the areas within its boundaries, those staff are managed as part of WES as well. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on CCSD#1 work versus TCSD work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 (“CCSD#1-County IGA”, attached hereto at [Attachment A](#)), that allows the district access to support services in an a-la-carte, marginal cost approach that has consistently resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

In the 1980s, small areas that were struggling to operate effective or efficient sewer service were subsequently annexed into CCSD#1, including Hoodland, Boring, and the Fisher’s Forest Park mobile home site. Each of those areas has their own water quality permit. The Hoodland area is served by the Hoodland Plant, which has a permitted hydraulic capacity of 0.9



million gallons per day, and currently treats approximately 300,000 gallons per day. The Boring facility and Fisher's Forest Park are substantially smaller. During the same time period, failing septic systems serving two mobile home parks in the Carver area were also annexed into CCSD#1, which upon incorporation meant that CCSD#1 was serving a portion of the City of Damascus.

In 1997, the Kellogg Plant was reaching its maximum treatment capacity and experiencing Clean Water Act violations. The district needed to either increase the plant's capacity or offload some of its flow to come back into compliance and avoid a moratorium. In 1998-99, instead of increasing Kellogg's capacity (consistent with Milwaukie's stated long-term desire to have CCSD#1 decommission the plant), the district built a diversion pipeline for the area of the district east of I-205 and rented treatment capacity at the Tri-City Wastewater Treatment Plant ("Tri-City Plant"), diverting approximately 15 percent of CCSD#1's flow away from Kellogg. In 1999, CCSD#1 entered into an agreement with TCSD to rent that capacity at the Tri-City Plant, paying all associated costs plus a premium to TCSD (the "1999 Rental Agreement").

In 2006, the Kellogg Plant again began experiencing Clean Water Act and NPDES permit violations due to its aging condition and the fact that the plant had reached its maximum liquid capacity, even with the 15 percent diversion to the Tri-City Plant. To further complicate matters, TCSD indicated that it needed to use the 15 percent diversion capacity it was renting to CCSD#1 due to its own growth. CCSD#1 had to finalize a plan for capacity expansion or Kellogg's permit violations would only increase, leading to significant fines and a possible moratorium order from DEQ.

In late 2007, the BCC developed the Capacity Management Program ("CMP"), a multi-phase plan intended to address the urgent capacity problems. Under Phase 1 of the CMP, the District built the a high-technology MBR Facility, intertie pipelines between the MBR Facility and District customers, and conducted maintenance improvements at Kellogg. Engineering studies demonstrated that constructing the MBR Facility at the Tri-City Plant would be the lowest cost option for CCSD#1. The same studies demonstrated that the facility would significantly improve the Clean Water Act permit performance for the Tri-City Plant, have a lower cost for future liquid treatment expansion needs of either district, and result in the lowest overall cost to the region. In total, CCSD#1 expended approximately \$136 million between the MBR Facility (\$89 million), Interties 1 and 2, and a pump station to support the pipelines. The MBR Facility was overbuilt in Phase I to reduce the overall cost of expansion, including construction of full foundations and treatment bays for the next increment of needed liquids treatment capacity. CCSD#1 rates increased over a period of five years from \$22 per equivalent dwelling unit ("EDU") retail to approximately \$37 per EDU retail to pay for the debt associated with the Phase 1 program.

Representatives from CCSD#1's advisory board negotiated an agreement with TCSD regarding the permanent location of the MBR Facility at the Tri-City Plant (the "2008 Agreement", attached hereto as Attachment B), which superseded and terminated the 1999 Rental Agreement. In the 2008 Agreement, CCSD#1 leased the land the MBR Facility was to be located on through December 31, 2030, and paid \$4,000,000 as rent for the land; use of the

existing infrastructure of the Tri-City Plant including but not limited to head works, pumps, connection lines, digesters, the outfall; the right to include wastewater treated by the MBR Facility under the Tri-City Permit (defined below); and a premium for the opportunity to lease the land and utilize the existing infrastructure. The MBR Facility, commonly referred to as Phase I of the CMP, came online in 2011.

#### History of Tri-City Service District:

Prior to formation of the Tri-City Service District, the City of Oregon City operated a sewage treatment plant, of which Gladstone was a partner, located along Highway 99E next to Clackamette Park, at the present location of the McDonalds. West Linn operated its own sewage treatment plants at two different sites that currently house TCSD pump stations. In 1977, the Oregon Department of Environmental Quality (“DEQ”) issued a building moratorium for Oregon City and Gladstone for failing to appropriately maintain, operate and/or expand their existing treatment facility, and warned West Linn that it would face a similar restriction in two years if sewer treatment improvements were not made at its facilities.

The leadership of the cities at that time met and found that mutual investment in an economy-of-scale business such as wastewater treatment was the most economically viable response to the moratoriums. Rather than trying to coordinate each city proposing a general obligation bond to a vote as the source of funds for mutual investment, the idea of a service district was explored. Clackamas County signaled a willingness to facilitate a district, so an initial plan to form a service district including a substantial unincorporated area was proposed through the County and put to a vote, which failed. After additional consideration, the three cities proposed that the district cover only their incorporated areas and the County put the matter to a vote. Upon passage in 1980, TCSD was formed with the BCC to act as the governing body.

TCSD was then able to leverage that vote of support to obtain Clean Water Act grants that paid approximately seventy-five percent of the construction costs of the Tri-City Plant. The remainder of the construction costs, approximately \$25 million, needed to be a local contribution. In lieu of direct rates, city bonding, or rate bonds, TCSD was able to issue a general obligation bonds that crossed the three cities’ jurisdictional boundaries. This construction bond was fully paid off in 2003 and no replacement bond was sought. Since TCSD’s inception in 1980, direct user rates have paid only for operational expenses and minor asset replacement. Therefore, TCSD boasts by far the lowest wholesale sewer rate in the Metro region. The bond and grant money was also used to decommission the existing city sewer plants and construct interceptor sewers.

The Tri-City Plant construction was completed in 1986 and has been operating continuously since that time, discharging to the Willamette River pursuant to NPDES permit number 101168 (the “Tri-City Permit”). The Tri-City Plant has held sufficient capacity to support the steady growth of its member cities. Over the past 30 years, Gladstone has experienced relatively little growth, West Linn moderate growth, and Oregon City high growth. The Tri-City Plant is now beyond its maximum original design capacity for solids handling based on flows solely originating from TCSD ratepayers. Please see [Attachment C](#) for supporting information regarding capacity issues as already provided to the Regional Committee.

Upon formation of TCSD in 1986, the Department of Utilities (later renamed Water Environment Services) provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years, and under it, TCSD is billed for the full cost of employees that support only TCSD activities, such as Tri-City Plant operators or mechanics, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with CCSD#1 and SWMACC. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on TCSD work versus CCSD#1 work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 (“TCSD-County IGA,” attached hereto as Attachment D) that allows the district access to support services in an a-la-carte, marginal cost approach that consistently has resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

The initial investment in the Tri-City Plant gave TCSD an underutilized asset. Beginning in 1999, TCSD rented out its unused capacity to CCSD#1 for a profit under the 1999 Rental Agreement. By relying on that profit, TCSD was able to completely avoid rate increases in some years and maintain an overall a rate growth profile that was below inflation. However, in doing so, TCSD’s revenue generated from ratepayers soon was insufficient to pay current operating costs. The revenue from the 1999 Rental Agreement ended in 2011 once the MBR Facility came online. Since 2011, TCSD rates have been climbing steadily in an effort to get the district back on sound financial footing. The district is now able to generate sufficient revenue to pay for its own operating costs without spending from reserves. At this time, TCSD has a very limited ability to issue minor amounts of rate-supported debt for capital projects. TCSD has never issued rate bonds and is not rated by the bond rating agencies.

Continued growth in all three cities, with Oregon City experiencing the highest rate of growth over the history of TCSD, has now consumed the original design capacity of the Tri-City Plant. As reported to the Regional Committee, even without any flows coming from CCSD#1 or the existence of the MBR Facility, TCSD would require investments in solids handling. Solids handling needs have matured earlier than liquids needs in part because of adoption of low-flow toilets and other water saving devices. The volume of wastewater has decreased per household, but there has been a concomitant increase in the concentration of the wastewater stream; systems originally designed to be in sync from a treatment perspective are now on a different capacity timeline. Construction of solids handling would have triggered heightened regulatory requirements that would have been very difficult for TCSD to meet, but for the existence of CCSD#1’s MBR Facility. Under the current structure, when TCSD requires additional liquid treatment facilities, it will need to buy into CCSD#1’s MBR Facility to allow for the lowest cost expansion.



### Common History:

Since 1986, both districts have been jointly managed by WES. This arrangement has been utilized to minimize the expenses to ratepayers. In doing so, each district only has to pay a share of 107 full time employees that are available and would be necessary to support district operations. The result is a long history of the districts saving on operating and administrative expenses. However, at the time of formation, each had a separate pool of grants and rate-supported investments for capital infrastructure.

Beginning with the 1999 Rental Agreement and the construction of Intertie 1, the capital infrastructure of CCSD#1 was linked with that of TCSD. This resulted in a significantly increased return on investment for TCSD as more of the Tri-City Plant was utilized, and CCSD#1 avoided some capital costs for a period of time. However, this move meant that CCSD#1 fell behind in having the treatment infrastructure necessary to meet its ratepayer needs.

Recognizing the need for a long term solution and because TCSD required the use of the rented liquid treatment capacity, the CMP was developed to provide the lowest cost service to the ratepayers. With the 2008 Agreement and construction of the MBR Facility, CCSD#1 reached “capacity parity” with TCSD and the two districts were in equivalent places in terms of current and future infrastructure needs. Since 2011, when the MBR Facility came online, the two districts have shared proportionally in the operational costs of the Tri-City Plant. Each district has realized cost savings and efficiencies through this arrangement. This arrangement, however, deals only with operational cost sharing and does not address capital needs. Under the current structure, those issues are brought before the Regional Committee for consideration.

While operationally integrated, the capital components of the districts are only integrated on an ad hoc basis based on single-issue agreements, such as the Blue Heron investment. Each district is distinct financially and legally. This leads to an odd quasi-partnership that provides some cost savings, but creates uncertainty and challenges for long term strategic planning and project efforts. The below analysis examines whether there are greater benefits that could be realized by closer integration between CCSD#1 and TCSD. The analysis concludes that each district would save its ratepayers hundreds of millions of dollars by more closely working together.

### 2008 Committee Findings:

After discussions around the CMP and Phase I construction program, there was a recognition that, much like the current discussion, there could be substantial savings by the districts working together. The Board of County Commissioners chose to seek the input from the full range of stakeholders that could be affected by a decision regarding some kind of regionalization. A blue ribbon group, called the Community Partners Task Force, was formed, consisting of elected representatives from the Board of County Commissioners, Damascus, Gladstone, Happy Valley, Milwaukie, Oak Lodge Sanitary District, Oregon City, and West Linn, and appointed representatives for the business community and direct ratepayers from the



unincorporated area (collectively, the “Task Force”).<sup>1</sup> Lake Oswego initially participated, but subsequently withdrew after realizing that its participation was premature given its relationship with the City of Portland’s Tryon Creek plant. The Task Force began meeting in February 2008 and submitted a final recommendation in November 2008.

The Task Force discussions began by identifying common jurisdictional interests and examining potential regional savings that could result from a common capital investment approach. It explored several issues regarding wastewater treatment with an independent engineer-consultant. In its findings, the Task Force concluded (i) that there were compelling financial benefits to ratepayers by making collective investments across service district boundaries, (ii) that there was a model for regional equity and fairness that could be implemented, and (iii) a governance structure could be implemented to reasonably achieve the first two findings.

After excluding retail services to ensure an “apples to apples” comparison, the Task Force found that by working together the collective ratepayers would save between \$314 million and \$384 million over a 30 year period. Those figures do not include savings that would result from a shared regulatory strategy, but arise only from shared investment in infrastructure required for meeting asset replacement and growth needs. Staff considers these numbers to be the minimum savings that would result through Regionalization. The key factual supports for reaching those conclusions were both the overall cost savings projected and the rate profiles, based on engineering estimates, which projected substantially lower rates for every district beginning no later than the 2014-15 fiscal year.

### **Regulatory Benefits**

Each of the four facilities managed by CCSD#1 and the Tri-City Plant has a Clean Water Act-authorized National Pollution Discharge Elimination System (“NPDES”) permit that establishes limits and parameters for discharges into the waters of the United States. Within this paper, staff will focus on the Kellogg NPDES permit, the Tri-City NPDES permit, and the Blue Heron NPDES permit recently acquired jointly by the districts (together, the “Permits”).

Regulators such as the Oregon Department of Environmental Quality (“DEQ”) and the Environmental Protection Agency (“EPA”) continue to promulgate rules that increase restrictions and/or requirements on dischargers. The Permits are covered by what is known colloquially as the “anti-backsliding rule,” which means that regulations only get tighter. DEQ uses water quality standards to assess whether the quality of Oregon’s rivers and lakes are adequate for fish and other aquatic life, human recreation, a source for safe drinking water, agriculture, industry

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<sup>1</sup> The Committee Members were: Chair Greg DeGrazia, business representative; Deborah Barnes, Milwaukie City Counselor; Scott Burgess, West Linn City Counselor; Wade Byers, Gladstone Mayor; Charmaine Coleman, CCSD#1 ratepayer; Markley Drake, Happy Valley Counselor; Julie Harvey, CCSD#1 ratepayer; John Hickey, JD, PE, business representative; Kristin Johnson, Lake Oswego Counselor; Jim Knapp, CCSD#1 Advisory Committee Chair; David Marks, business representative; Alice Norris, Oregon City Mayor; Ernie Platt, Homebuilders’ Association representative; Paul Savas, Oak Lodge Sanitary Director; and Randy Shannon, Damascus Counselor.

and other beneficial uses. DEQ also uses the standards as regulatory tools to prevent pollution of the state's waterways. The Clean Water Act requires all states to adopt water quality standards designating beneficial uses of the state's waters and sets criteria designed to protect those uses. The Clean Water Act requires wastewater treatment facilities, and any other dischargers into the waters of the United States, to operate under NPDES permits, which set limits on what can be discharged, based on water quality standards promulgated for that specific discharge area. In addition, each plant has separate biosolids programs and industrial pretreatment programs, which also result in separate requirements for each district based upon the receiving stream capacity.

It is important to emphasize the significant regulatory drivers for the business of the districts. The Clean Water Act has a complex process for establishing and imposing regulatory requirements on "point sources," such as treatment plants, and substantial fines for violations. The regulatory process, in summary form, is that a water quality standard is developed by identifying the beneficial uses sensitive to the particular pollutant and then establishing a parameter. Specific criteria are then established based on the levels needed to protect the sensitive beneficial uses. For example, the uses typically most sensitive to dissolved oxygen are fish and aquatic life. Fish and other aquatic organisms need an adequate supply of oxygen in the water to be healthy and productive. In this case, the criteria identify the minimum amounts of dissolved oxygen that need to be in the water to protect the fish or other aquatic life. In other cases, as with many of the toxic pollutants, the criteria may identify the maximum amount that may be in the water without risk to human health or the aquatic biota. For other parameters, such as bacteria or some toxic compounds, human health is almost exclusively the most sensitive beneficial use. An analysis of each potential pollutant that could be discharged into the Willamette River and its watershed, in the case of the Permits, is made to determine the maximum that can be discharged to the river as a whole and by each permitted dischargee. DEQ then builds those limits into its NPDES permitting regime, ensuring that at both an individual facility level and watershed-wide the beneficial uses are protected.

The State of Oregon has a requirement to continually update their water quality standards, which are becoming amongst the most challenging in the country, to provide for beneficial use of the State's water ways. The Districts continues to face increasingly stringent regulations, which likely will impact the technology needed to remove such pollutants if current treatment will not treat to the appropriate levels.

One of the difficulties in meeting current water quality standards is that the existing treatment infrastructure was designed to the lower standards that existed at the time of their construction. Several improvements have had to be made to both the Kellogg Plant and the Tri-City Plant to meet current water quality standards. This is exacerbated by the current rule structure that imposes even more stringent standards every time a treatment facility undertakes major improvements. For example, the Tri-City Plant's NPDES permit shifted from a "20/20" permit to a "10/10" NPDES permit, reducing in half certain allocations and pollutant discharge limits. Fortunately, the MBR Facility generated a high enough quality effluent that, when mixed with the lower-quality conventional treatment system used for the remainder of the plant flows, was more than sufficient to meet the enhanced compliance point requirements. There is a high likelihood that continued and even greater reliance on the MBR Facility will be necessary for effluent at the Tri-City Plant to meet the requirements of the Clean Water Act.

New standards can be imposed without the triggering requirement of additional construction that can necessitate additional investment or operational changes at the treatment plants. New technology, testing, analysis, and environmental studies can define new pollutants of concern. For example, Senate Bill 737, which passed in the 2007 session, required DEQ to develop a list of all priority persistent bioaccumulative toxics (the "Priority Persistent Pollutant List") that have a documented effect on human health, wildlife and aquatic life. The bill also required fifty-two of the largest municipal wastewater plants (including the Kellogg Plant and Tri-City Plant) to pay a fee between \$10-\$20,000 over two years to fund the research behind the Prior Persistent Pollutant List, and draw samples of each major treatment facility's effluent to identify whether they had any of the toxics of concern. If any were identified, the facility had some come up with a strategy to deal with them by 2011. Fortunately, the studies found that the only toxics found in the two major treatment plants' waste streams during sampling were primarily byproducts of human digestion, and DEQ deferred the requirement for the strategy to be submitted pending additional discussion and review. Similarly, the EPA's Office of Science is continually researching the environmental impacts of existing or new products or issues in an effort to provide the scientific support for any additional regulations that may be required.

In the near term, staff anticipated that both the Tri-City Plant and Kellogg Plant will be dealing with compliance challenges arising from several existing discharge limitations, including: (i) temperature, (ii) ammonia, (iii) biological oxygen demand ("BOD") loading, (iv) total suspended solids ("TSS") loading, and (v) copper. Some arise from additional connections to the systems, while others are likely to become issues because of decreased allowances for existing discharges. In addition to anticipated problems in existing discharge limitations, staff also anticipates that some or all of the following "pollutants" may be added as new limitations within the NPDES Permits in the next several years: mercury, cadmium, silver, zinc, nickel, lead, and chromium.

In complying with the NPDES permits and associated regulatory structure, the districts currently achieve some costs savings by sharing staff to perform tasks. However, they are separate districts, and accordingly WES must maintain a degree of separation to follow the individual permits and legal requirements. Additionally, technical analyses are required for each district as well. The districts must also have separate rules and regulations, which govern activities that may impact the collection system and treatment works. Hence, the department has separate accounting, reporting and administrative needs to meet permit requirements of each district.

The current system of administration and compliance meets the demands of the regulatory system, but is not the most efficient. However, the primary gains that could be experienced by the Districts through a cooperative partnership are not on the staff side, but on regulatory permit compliance efforts themselves through the utilization of a watershed-based permit.



## Watershed Based Permitting

Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis. Watershed-based permitting can encompass a variety of activities ranging from synchronizing permits within a basin to developing water quality-based effluent limits using a multiple discharger modeling analysis. The type of permitting activity will vary depending on the unique characteristics of the watershed and the sources of pollution impacting it. The ultimate goal of this effort is to develop and issue NPDES permits that better protect entire watersheds.

Having a watershed based permit would greatly benefit the districts in meeting their Clean Water Act obligations, potentially allowing the two Districts to combine their respective allocations so that trading of NPDES permit discharge allocations could occur, as long as the collective discharge would be below the combined allocation. For example, under the current permitting situation if there is a high flow event at the Tri-City Plant that leads to an exceedance on TSS allowed to be discharged, TCSD is fined under the Clean Water Act, which can result in fines of up to \$50,000 per day per parameter within the NPDES Permit that is violated. It would not matter if the Kellogg Plant is substantially below the required TSS loadings because they are distinct permits. However, if there was a single watershed permit, then there would only be a fine if the total discharged from both plants exceeds the total amount allowed to be discharged by both plants. So in this hypothetical, there is no violation because the Kellogg Plant's available loading can be combined with the Tri-City Plant via a "trade" to result in compliance.

This is not a radical innovation, but rather an existing local fact. Our neighboring Washington County wastewater provider, Clean Water Services, uses a watershed-based integrated permit covering four treatment plants via a county service district model. Oregon DEQ states that a single watershed-based, integrated municipal permit does not reduce the requirements that were previously contained in separate permits. Instead, it provides a number of advantages and efficiencies in allowing for use of multiple parameters across permits to meet requirements, or even from sources external to the allocations of treatment facilities (such as generating temperature credits for discharges by creating shade on upstream tributaries within the watershed).

The single watershed –based permit would result in various benefits to the permittee and the permitting authority and the environment. One permit is easier to administer and implement for both entities. The integrated permit also provides an economy of scale for both permittee and the permitting authority in terms of resource use. Both organizations will be better able to focus their resources on the most critical problems, while the integrated permit provides a greater level of protection for the environment than what might have been realized under the current system of multiple permits.

Putting a watershed permit in place for the districts is the best available strategy for meeting the existing and anticipated regulatory challenges facing the current and future ratepayers at the lowest cost. A single parameter, such as temperature, can drive investments into the tens of millions of dollars and pooling regulatory allocation resources to most efficiently



meet those requirements makes the most sense from a professional management standpoint. This pooling of resources via a watershed permit can only be achieved if a single, regional entity holds and controls the NPDES permits for all involved facilities.

A regionalized, watershed permit approach would also create efficiencies in the solids disposal portion of the districts' business. Currently, solids that are generated in the treatment process are loaded onto trucks and applied to farm fields in either the Willamette Valley or eastern Oregon. Each field must be specifically authorized by DEQ for application of biosolids by a particular entity. Currently, solids generated at one district's plant cannot be applied at the fields approved for the other district. This leads to operational challenges and increased costs in disposal.

In summary, a single watershed-based permit obtained through Regionalization would allow the districts to achieve water quality goals in a more cost-effective and efficient manner. The districts would experience enhanced environmental results for the watershed where ratepayers live, work and play, as well as target and maximize the available resources to achieve the greatest service level and environmental results. Additionally, a single watershed-based permit would create administrative efficiencies and provide opportunities for water quality trading programs that could support non-point source contributions to watershed health and regulatory compliance.

### **Capital Benefits:**

The Regional Committee was originally formed to consider the possibility of shared investment in capital projects for growth, given the strong likelihood that each district would substantially benefit from a shared investment strategy. It is an industry truism that wastewater treatment efficiencies can typically be realized by scale, which is why it was more cost effective to decommission the three treatment plants serving Gladstone, Oregon City and West Linn and combine them into the Tri-City Plant. Washington County's Clean Water Services decommissioned twenty-six treatment plants and consolidated them into four facilities. Growth is only one component of the overall capital program each district must implement. Staff has evaluated each type of major capital project for the districts to determine whether or not a permanent partnership would have material benefits: regulatory investments, asset replacement, and growth infrastructure. In all three areas of investment, we anticipate that each district's ratepayers would realize hundreds of millions of dollars of savings through a regionalized capital investment strategy.

Regulatory Compliance. With respect to regulatory compliance, as noted in the Regulatory Benefit section above, each district is faced with the high likelihood of required investment to meet heightened discharge limitations. The plethora of new and enhanced regulatory requirements that may be imposed on the treatment plants are projected to require tens to hundreds of millions of dollars of additional investment. Regionalization, as an approach to capital investment, is the operative theory behind several programs currently being implemented by WES staff. TCSD is able to rely on and utilize the high quality effluent treatment of the MBR Facility to meet permit requirements, and CCSD#1 will be able to rely on and utilize the superior

Blue Heron outfall, of which it is co-owner, that is scheduled to be connected to the Tri-City Plant.

An example of how shared investment in assets can improve regulatory compliance can be found during the negotiations over the Tri-City Plant's currently-issued NPDES permit. DEQ's initial draft of the permit included a discharge limit for ammonia, a notoriously difficult parameter to treat for – the typical strategy is called nitrification, and requires the treatment plant's conventional treatment systems for liquids to be reduced to approximately 60% of its design capacity. This would have triggered a requirement that TCSD construct a new conventional treatment train for liquids at the costs of tens of millions, including early remediation of the Rossman landfill space. However, the improved performance from the MBR Facility was sufficient to give rise to an argument that with a minor investment in the outfall and assurances that future expansions in liquid treatment at the Tri-City Plant would be via CCSD#1's MBR Facility, no ammonia limit needed to be included. Staff was able to negotiate an order with DEQ that kept the term out of the NPDES permit (thus avoiding the anti-backsliding rule) and make an investment of only \$300,000 in improved outfall configuration to make regulatory compliance under the appropriate analysis. But for the MBR Facility and shared investment in outfall improvements, TCSD would have faced a large capital cost to serve only existing customers.

The mutual investments by each of CCSD#1 and TCSD in the Blue Heron NPDES permit and outfall, previously held by the now-liquidated Blue Heron Paper Company, as a strategic approach to meeting temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant, also have the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately \$40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately \$120 million and have a significantly higher annual operating cost.

Therefore, Regionalization not only would allow realization of cost avoidance in the operation and performance of the treatment plants, but also in any required investments needed to meet regulatory requirements. This would greatly reduce costs to serve current customers, let alone future connections. A co-investment strategy for regulatory compliance has already been implemented by the districts on an ad-hoc basis and all available evidence suggests that savings in the hundreds of millions of dollars would result in a combined investment strategy.

Asset Replacement. Asset replacement is anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments from the 1970s and 1980s wear out. This is of significant concern, as both districts' major assets are nearing the projected end of their useful life, with both the Kellogg Plant and Tri-City Plant's original assets being fully depreciated. To assist in predicting and best managing the anticipated high cost of asset replacement, staff is developing an asset management program to implement the necessary tools, processes and procedures necessary to make the best decisions about the repair and replacement of existing assets.

Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Through WES, the districts currently benefit through shared maintenance crews, as well as a staff of engineers and inspectors, who ensure that projects are done per spec and at the lowest possible cost that meets operational needs. Regionalizing asset replacements efforts would enhance this productivity, while providing the lowest cost provision of this crucial investment.

Growth. The Regional Committee has already received presentations on the savings that are anticipated through joint investment to meet the needs of growth. For the solids handling project alone, the districts are anticipated to save nearly \$120 million by working together to solve the solids handling capacity issue. Staff notes that the districts have reached “capacity parity” at this time, in that they are faced with similar needs in similar timelines going forward from a service level standpoint. Each district is uniquely positioned to address a particular regional need - TCSD is better situated to address solids handling and CCSD#1 is better situated to address liquids handling. Together, each district would save at least of millions by working collaboratively on this area of capital investment with one another than they would alone.

Another benefit of a partnership would be to share in the combined benefit of adding new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise, with equal responsibility for paying for regulatory-driven investment or asset replacement for assets whose useful life was exhausted prior to their connection to the system. This spreads the cost of regulatory and asset replacement costs across a broader base, reducing the per-household charges for the existing ratepayers. By operating together, both CCSD#1 and TCSD broaden their individual ratepayer base, which allows for a lower overall cost for the provision of wastewater services.

Overall, multiple studies and examination from an engineering and service level perspective undertaken by the districts consistently show that the ratepayers of each district would save tens to hundreds of millions of dollars through Regionalization. That idea has driven investments since the 1990s and remains even truer today as the regulatory environment becomes ever more restrictive and the needs of asset replacement become the dominant capital requirements for both districts. Regionalizing infrastructure investment to provide for the projected capital needs of both districts would save hundreds of millions of dollars over the next few decades.

### **Governance Benefits:**

Currently, the Board of County Commissioners (“BCC”) serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. To ensure that the interests of ratepayers are being heard and reflected in decisions, WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight. Of those, six relate to the Districts. This leads to a multitude of sometimes



inconsistent voices coming to the governing body. A more unified decision-making process could reduce that number to two.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together to a limited extent from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. The question of whether or not the districts will work together is an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to difficulty in making long term plans to meet the needs of the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement and meeting the needs of growth, plans which are being reviewed and revised from a comprehensive perspective at this time. Often the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow for the realization of the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders have a voice in all material decisions on a consistent basis. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. In having all the decision-makers together and obtaining certainty regarding co-investment, staff can better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and more assuredly realize the tens of millions of dollars in savings projected by the two districts working together on a permanent basis.

Overall, the substantial intangible value of certainty would be a great aid in allowing staff to conceive, propose and ultimately implement the optimal lowest-cost management strategy for the infrastructure and services entrusted to them.

#### **Administrative Benefits:**

Currently, WES staff provides accounting and administrative services to the three independent districts of CCSD#1, SWMACC, and TCSD. Each of these districts are “municipal corporations” as defined by statute, requiring separate accounting and reporting. County service districts provide a way to localize the financing of services that benefit only specific areas, while retaining responsibility within county government rather than an independently elected board. The Board of Directors for each district is comprised by statute of the individuals who are elected as Clackamas County Commissioners.

The administration of the Districts is done by Clackamas County employees that are organizationally housed in WES. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district.

The principal driver for these discussions about regionalizing the districts is efficiency and the potential advantage to ratepayers resulting from some form of combined services. The



purpose of this discussion is to look at whether the potential advantages of Regionalization translate into efficiencies and cost savings to ratepayers. The approach has been to develop a list of administrative costs the districts incur to deliver utility services and align them with future costs that could be avoided by merging the three Districts into one comprehensive utility service provider. This discussion should not be construed as a rate study. Itemized below are some of the administrative areas that would result in either lower-cost or more efficient provision of services under Regionalization:

- Accounting – Extensive resources are required to provide accurate and reliable cost accounting to all three districts. Investments and expenses may be the responsibility of one, two, or all three districts. In the cases of more than one district, allocations vary from agreed on amounts to percentage splits to those based on actual direct labor charges of the districts. This adds in turn to the number of journal entries and complicated tracking arrangements. Vehicle and equipment usage becomes complicated when they are shared between districts. Significant reductions in cost accounting related to all of the issues noted could be achieved under a combined entity with a combined monthly service rate.
- Agreements – Agreements are required whenever assets are shared between districts. This in turn requires briefings to advisory committees reflecting their separate interests, the creation of detailed IGAs by County Counsel, possible study sessions and ultimate adoption by the Board. One larger entity will not produce these issues whenever assets are used or co-located. This is important, as WES will continue to look for efficiencies through asset sharing.
- Borrowing Costs/Logistics – For the first time, a costly capital project (solids handling) needs to be undertaken by two of the districts simultaneously, requiring significant external funding. Under the current independent financing structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for their agreed upon portion of the project. The financial condition of TCSD is very different than that of CCSD#1, which may require very different approaches to that financing for each district. Even then, funding from both must be ready at the time the project starts. This will be a challenge that would be greatly reduced if done by a combined, financially stronger entity. One larger entity should be able to achieve a higher bond rating, reducing borrowing costs, as well as eliminate many of the risks noted here.
- Facilities planning and Asset Management – In most cases, facilities planning is currently done at the individual district level. This approach does not take advantage of the economies of scale that could be achieved by planning on a basin-wide, regional basis. Clean Water Services in Washington County has adopted this basin-wide planning strategy, resulting in the consolidation of twenty-six wastewater treatment plants in 1970 down to four treatment plants today. Asset management will be an even greater financial challenge than growth over the longer term. Even small efficiencies in this area will result in significant savings over time.
- Risk – Separate insurances are required for each district, with variations between each of them resulting in greater complexity in the management of risk. One larger entity should not only reduce overall insurance costs, but would reduce the complexity in its management.

Overall, the districts are experiencing some administrative savings already and, therefore, the impact of Regionalization would be a limited improvement in terms of dollars. However, the unknowns around TCSD's ability to effectively enter into the municipal markets and the almost-certain reduced borrowing costs and interest rate savings from a Regionalized borrowing strategy

provide sufficient reason to find that there would be material administrative savings to the ratepayers of the districts.

### **Industry Trends:**

Cities' roles are to oversee the care of basic services that the taxpayers require, such as education, parks and recreation, safety, and utilities. In reality, most cities do not handle all governmental services alone, or at least not easily. In order to deliver a service in a way that is most fiscally responsible, cities commonly work together with their neighbors to provide the same service for all parties involved, at a reduced cost for each contributor. Over time, these mutually beneficial relationships result in deep ties of co-invested programs, projects, and infrastructure. Specifically, in the realm of wastewater conveyance and treatment, the ties can become crucial to the overall economic and public health of an entire region. In Clackamas County, the collaboration of TCSD and CCSD#1 has resulted in substantial savings to date, with more possible with greater integration. In order to understand the relationship between the two districts, the fundamentals of public investment in infrastructure must first be examined. Below are some common questions that were reflected in industry literature that may be helpful to the Regional Committee.

#### *What is the relationship between public investment in infrastructure and private investment?*

In his 1990 report entitled "Why is infrastructure important?", David Alan Aschauer sought to determine the magnitude of impact that investment in infrastructure has on economic output and found that government investment in infrastructure has a far greater impact on private investment decisions than any other type of government expenditure. "Given that public capital complements private capital, an increase in the public capital stock can be expected to stimulate private capital through its effect on the profitability of private capital."<sup>2</sup>

#### *What is the return on investment in public infrastructure?*

In 2012, Isabelle Cohen, Thomas Freiling, and Eric Robinson at the College of William and Mary published a paper that attempted to understand the short- and long-term financial return generated by infrastructure investment. They found that, "In the short-run, spending on infrastructure produces twice as much economic activity as the level of initial spending. These effects are most heavily concentrated in the manufacturing and professional and business services sectors, but also accrue to smaller sectors like agriculture. In the long-run, spending on all types of infrastructure generates substantial permanent positive effects across the economy as

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<sup>2</sup> Aschauer, David Alan, 1990. "Why is infrastructure important?" Conference Series; Federal Reserve Bank of Boston, p 21-68.

a whole. Money spent now will produce significant tax revenue returns to the government's budget over twenty years."<sup>3</sup>

Over the long term, they found that the results of public investment are amplified. In particular, the group determined that every \$1 invested at the beginning of a 20 year period would yield \$3.21 in GDP growth at the conclusion of the period. In addition, in the aggregate, \$1 invested in infrastructure would generate almost \$0.96 in new taxes over 20 years.

*What impact does investment in water and sewer infrastructure have?*

In 1995, researchers from the University of Oklahoma, Clarkson University, and Northern Illinois University analyzed the effects of investment in different infrastructure components individually and found a greater impact resulting from investment in water and sewer infrastructure than other types of infrastructure. Their report concluded that "aggregate public capital and two of its components (highways, water and sewer) make a positive contribution to state output. Water and sewer systems have a much larger effect on state output than highways and 'other' public capital stock."<sup>4</sup>

They further found that, "The implication is that additional investment in waste disposal and water systems offers a greater stimulant to the regional economy than increased public funding for highways. Also, willingness to facilitate the building of water and sewer infrastructure may allow states to maintain or enhance their competitive advantage in attracting new facilities and jobs." Businesses looking to establish themselves further in the area would be discouraged by a lack of treatment capacity, and may consider options in other parts of the region. Additionally, residents of the region do not specifically limit their day-to-day business within the political boundaries of each city or district; rather, they work, shop, and recreate freely across all of boundaries in each of the cities served by the districts.

A study by the U.S. Department of Agriculture looked at the impact of specific infrastructure investments made by the U.S. Department of Commerce, Economic Development Administration ("EDA") in 1989 and 1990 and found positive benefits from investment in water and sewer infrastructure where it helped businesses expand or locate in a community. "Water/sewer projects can save and/or create jobs, spur private sector investment, attract government funds, and enlarge the property tax base. The 87 water/sewer projects studied, on average, created 16 full-time-equivalent construction jobs. Direct beneficiaries (businesses) saved, on average, 212 permanent jobs, created 402 new permanent jobs, made private investments of \$17.8 million, leveraged \$2.1 million of public funds, and added \$17.0 million to the local property tax base. Indirect beneficiaries saved, on average, 31 permanent jobs, created 172 new permanent jobs, attracted \$3.34 million in private-sector investment, leveraged \$905,000 of public funds, and added \$3.0 million to the local property tax base. This enlarged

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<sup>3</sup> Cohen, Isabelle, Freiling, Thomas, and Robinson, Eric, 2012, "The Economic Impact and Financing of Infrastructure Spending," Thomas Jefferson Program in Public Policy, College of William & Mary, for Associated Equipment Dealers.

<sup>4</sup> Moomaw, Ronald L. Mullen, John K. and Williams, Martin, 1995, "The Interregional Impact of Infrastructure Capital," *Southern Economic Journal*, Vol. 61, No. 3 (January), pp 830-845.

property tax base, at a mere 1-percent tax rate, would yield \$200,000 in annual property tax to the community.” In their work attempting to quantify the effects of financial investment in infrastructure, Cohen, Freiling, and Robinson at the College of William and Mary found that a \$1 investment in a water and sewer project would yield \$6.77 in GDP growth over a 20 year period. The same \$1 would also generate \$2.03 in new taxes over the same period, on average, of which \$0.68 is new state and local tax revenue.

*Would these same regional benefits to shared wastewater capacity infrastructure development apply in Clackamas County?*

Yes. District-specific studies undertaken in the 1990s, 2000s, and 2010s all demonstrate the substantial savings that emerge from a more integrated, economy-of-scale system apply in the case of both districts. There is little doubt that the ratepayers of the districts would be best served by a long term, consistent cooperative approach between the districts.

### **Conclusion:**

Overall, a staff review of the issues, opportunities and challenges facing each of CCSD#1 and TCSD found that ratepayers stand to save hundreds of millions of dollars through Regionalization. The greatest benefits are realized in collectively meeting regulatory requirements for current services, and allowing for the least-cost capital investment strategy to meet regulatory, asset replacement, and growth needs. There are smaller, but tangible benefits that emerge in the arenas of administration and governance, resulting in a more streamlined organization that is efficient and effective. In particular, the introduction of certainty for a long term investment strategy, and improved transparency and collaborative opportunities are significant positives. In totality, Regionalization is consistent with the trajectory of the two districts’ relationship over the past two decades and results in savings by all ratepayers on the order of hundreds of millions of dollars.



# RatingsDirect®

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**Summary:**

**Clackamas County Service District  
No.1, Oregon  
Water Environment Services (WES);  
Water/Sewer**

**Primary Credit Analyst:**

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## Table Of Contents

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Rationale

## Summary:

# Clackamas County Service District No.1, Oregon Water Environment Services (WES); Water/Sewer

### Credit Profile

Wtr Envir Svcs (WES)

*Long Term Rating*

AA+/Watch Pos

On CreditWatch Positive

**Clackamas Cnty Svc Dist #1 swr sys rev bnds ser 2002A dtd 06/01/2002 due 12/01/2003-2022**

*Unenhanced Rating*

AA+(SPUR)/Watch Pos

On CreditWatch Positive

Many issues are enhanced by bond insurance.

## Rationale

S&P Global Ratings placed its 'AA+' long-term rating on Clackamas County Service District No.1 (CCSD#1), Ore.'s existing sewer revenue bonds on CreditWatch with positive implications.

This action reflects the recently formed Water Environment Services, which is contemplating further consolidation options between the CCSD#1 and Tri-City Service District, that may have positive implications for CCSD#1's outstanding debt.

In November 2016, the Clackamas County Board of Commissioners unanimously approved a proposal to formalize the long-running partnership of the Tri-City Service District and Clackamas County Service District No. 1 to provide long-term certainty and stability for the more than 165,000 customers in both districts.

The board will serve as the governing body of the new Water Environment Services partnership. The two districts will not dissolve, but rather shift into supportive roles.

The partnership was created under Oregon Revised Statute Chapter 190. Prior to its creation, TCSD comprised the cities of Gladstone, Oregon City and West Linn. CCSD#1 served Happy Valley, Johnson City, Milwaukie, and unincorporated Clackamas County, in addition to Boring, Fischer's Forest Park, and Hoodland.

Further rating action will be predicated on the board's actions, which could have positive implications for holders of CCSD#1's outstanding bonds.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of RatingsDirect at [www.capitaliq.com](http://www.capitaliq.com). All ratings affected by this rating action can be found on S&P Global Ratings' public website at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

*Summary: Clackamas County Service District No.1, Oregon Water Environment Services (WES); Water/Sewer*

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**AMENDED MASTER SEWER REVENUE BOND  
DECLARATION**

**WATER ENVIRONMENT SERVICES**

**CLACKAMAS COUNTY, OREGON**

[\_\_\_\_\_, 2018]

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## AMENDED MASTER SEWER REVENUE BOND DECLARATION

### Section 1. Master Declaration

THIS AMENDED MASTER SEWER REVENUE BOND DECLARATION is executed as of [\_\_\_\_\_, 2018], by authorized representatives of both Clackamas County Service District No. 1 (“CCSD#1”) and Water Environment Services.

### Section 2. Recitals

**2.1.** On September 15, 1994, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of CCSD#1, adopted Order No. 94-1085 establishing the terms under which the CCSD#1 could issue obligations secured by the Net Revenues of its Sewer System.

**2.2.** On July 7, 2016, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of CCSD#1, adopted Order No. 2016-71 authorizing a Master Sewer Revenue Bond Declaration to amend and replace the provisions of Order No. 94-1085 and to authorize CCSD#1’s \$83,250,000 Sewer Revenue Refunding Bonds, Series 2016. The Master Declaration was executed as of August 30, 2016 (the “2016 Declaration”).

**2.3.** Section 13.1.7 of the 2016 Declaration and the comparable provision of Order No. 94-1085 allow CCSD#1 to amend the 2016 Declaration and the 1994 Order without the consent of any bondowners to make any change which, in the reasonable judgment of CCSD#1, does not materially and adversely affect the rights of the owners of any outstanding CCSD#1 bonds.

**2.4.** On November 3, 2016, an intergovernmental Partnership Agreement (the “Partnership Agreement”) was entered into by CCSD#1 and the Tri-City Service District (“TCSD”) creating a new municipal entity known as Water Environment Services (“WES”).

**2.5.** On May 18, 2017, the Surface Water Management Agency of Clackamas County (“SWMACC”) joined WES with the consent of CCSD#1 and TCSD.

**2.6.** As described in and supported by the documents attached to Order No. [\_\_\_], entitled “In the Matter of a Board Order Adopting Findings and Amending the Master Sewer Revenue Bond Declaration of Clackamas County Service District No. 1,” the governing body of CCSD#1 authorized the amendments to the 2016 Declaration that are in this Amended Master Declaration pursuant to Section 13.1.17 of the 2016 Declaration.

**2.7.** WES has been authorized to accept the obligations imposed on it by the Amended Master Declaration by Order No. [\_\_\_] of WES, adopted by the governing body of WES on [this date], and WES has evidenced its acceptance of those obligations by executing this Amended Master Declaration.

**2.8.** This Amended Master Declaration Water Environment Services amends the 2016 Declaration to substitute WES for CCSD#1 as the “District,” to define the “Sewer System” as the sanitary and storm sewer system of WES, to include the covenant in Section [10.8] regarding

termination of WES and amendments to the IGA, and to include the transition compliance language in Section [13.5.]

2.9. This Amended Master Declaration describes the covenants of WES that apply to the Bonds that were governed by the 2016 Declaration, and to any future borrowings of WES that are secured on a parity with those Bonds.

### Section 3. Definitions

Capitalized terms used in this Master Declaration shall have the following meanings unless the context clearly requires use of a different meaning:

3.1. “**Annual Debt Service**” means the amount of principal and interest on Outstanding Bonds which is required to be paid in a Fiscal Year, calculated as follows:

(A) interest which is to be paid from Bond Proceeds shall be subtracted;

(B) District Payments to be made in the Fiscal Year under a Parity Derivative Product shall increase Annual Debt Service, and Reciprocal Payments to be received in the Fiscal Year under a Parity Derivative Product shall reduce Annual Debt Service;

(C) Bonds which are subject to scheduled, noncontingent redemption or tender shall be deemed to mature on the dates and in the amounts which are subject to mandatory redemption or tender, and only the amount scheduled to be outstanding on the final maturity date shall be treated as maturing on that date;

(D) Bonds which are subject to contingent redemption or tender shall be treated as maturing on their stated maturity dates;

(E) Interest subsidies shall be subtracted from the interest due on Interest Subsidy Bonds as provided in Section 6.4; and,

(F) Variable Rate Obligations shall be deemed to bear interest from each respective date of computation until their scheduled maturity date at their Estimated Average Interest Rate, calculated as of the date of computation.

3.2. “**Audit**” means the audit, if any, required by ORS 297.425, as it may be amended from time to time.

3.3. “**Auditor**” means a person authorized by the State Board of Accountancy to conduct municipal audits pursuant to ORS 297.670.

3.4. “**Base Period**” means any twelve consecutive months selected by the District out of the most recent twenty-four months preceding the delivery of a Series of Parity Obligations.

3.5. “**Board**” means the Board of WES, acting as the governing body of the District, or its successors.

3.6. “**Bond Counsel**” means Hawkins Delafield & Wood LLP or another law firm having knowledge and expertise in the field of municipal law and which offers opinions on municipal bonds which are generally accepted by purchasers of municipal bonds.

3.7. “**Bondowner**” or “**Owner**” means a registered owner of a Bond.



**3.8. “Bondowners Committee”** means that committee described in Section 13.

**3.9. “Bonds”** means the outstanding Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Bonds and any Parity Obligations.

**3.10. “BEO” or “Book-Entry-Only System”** means a system for clearance and settlement of securities transactions through electronic book-entry changes, which eliminates the need for physical movement of securities.

**3.11. “Business Day”** means any day except a Saturday, a Sunday, a legal holiday a day on which the offices of banks in Oregon or New York are authorized or required by law or executive order to remain closed, or a day on which the New York Stock Exchange is closed.

**3.12. “Code”** means the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated thereunder.

**3.13. “Construction Account”** means the Sewer Construction Account in the Sewer Enterprise Fund, which the District has created to hold proceeds of Bonds and other revenues related to capital improvements.

**3.14. “Credit Facility”** means a letter of credit, a municipal bond insurance policy, standby bond purchase agreement, or other credit enhancement device which is obtained by the District, which provides for payment in full of Bonds, and which is issued or provided by a Credit Provider.

**3.15. “Credit Provider”** means the person or entity that is: (i) obligated to make or guarantee payments under a Credit Facility; and (ii) whose long-term debt obligations or claims-paying ability (as appropriate) are rated, at the time the Credit Facility is issued, in one of the two highest rating categories, determined without regard to pluses, minuses or other degrees, by a Rating Agency which has issued a rating on Outstanding Bonds. Under rating systems in effect on the date of this Master Declaration, a rating in one of the two highest rating categories by a Rating Agency would be a rating in the “AA” category or better.

**3.16. “Depository” or “DTC”** means The Depository Trust Company or any other qualified securities depository designated by the District as its successor.

**3.17. “Derivative Product”** means a written contract between the District and a Reciprocal Payor under which the District is obligated to pay the District Payments in exchange for the Reciprocal Payor’s obligation to pay Reciprocal Payments; and which provides that the District is not required to fulfill its obligations under the contract if:

- (A) the Reciprocal Payor fails to make any Reciprocal Payment; or
- (B) the Reciprocal Payor fails to comply with its financial status covenants.

**3.18. “Direct Obligations”** means direct obligations of the United States, and any obligations the payment of which is fully and unconditionally guaranteed by the United States.

**3.19. “District”** means the WES, in Clackamas County, Oregon, an intergovernmental entity formed pursuant to ORS 190.010 and the other applicable provisions of ORS Chapter 190.

**3.20. “District Official”** means the District Executive Officer or Director.

**3.21. “District Payment”** means any scheduled payment required to be made by or on behalf of the District under a Derivative Product which is either fixed in amount or is determined according to a formula set forth in the Derivative Product.

**3.22. “Estimated Average Interest Rate”** is the rate at which Variable Rate Obligations are assumed to bear interest. Estimated Average Interest Rate shall be assumed to be equal to (1) if those Bonds were Outstanding during the 12 calendar months immediately preceding the date of calculation, an average of the interest rates per annum which were in effect, and (2) if those Bonds were not Outstanding during the 12 calendar months immediately preceding the date of calculation, (A) with respect to Tax Exempt Bonds, an average of the SIFMA Index during the 12 calendar months immediately preceding the date of calculation, (B) with respect to Bonds that are not Tax-Exempt Bonds, an average of an index determined by the District to be comparable to SIFMA for Bonds that are not Tax Exempt Bonds during the 12 calendar months immediately preceding the date of calculation, (C) with respect to Derivative Products with an index-based rate formula, the rate produced by applying that rate formula to an average of such index during the 12 calendar months immediately preceding the date of calculation, or (D) with respect to Derivative Products that do not have an index-based rate, the rate described in (A) above if the related Bonds are Tax-Exempt Bonds or in (B) above if the related Bonds are taxable, all as specified in either, at the election of the District, a certificate of the District Official or a written statement from an investment banking or financial advisory firm.

**3.23. “Event of Default”** means any event specified in Section 11.2 of this Master Declaration.

**3.24. “First Reserve Subaccount”** means the subaccount of the Revenue Bond Reserve Account that secures the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Bonds and any subsequent Series of Bonds to which the amounts in the First Reserve Subaccount are pledged and is described in Section 5.4.

**3.25. “First Reserve Subaccount Reserve Requirement”** means an amount equal to the Maximum Annual Debt Service on all Outstanding Bonds that are secured by the First Reserve Subaccount or the amount described in the next sentence. If at the time of issuance of a Series of Bonds secured by the First Reserve Subaccount, the amount required to be added to the First Reserve Subaccount to make the balance in the First Reserve Subaccount equal to Maximum Annual Debt Service on all Outstanding Bonds that are secured by the First Reserve Subaccount exceeds the Tax Maximum calculated with respect to such Series of Bonds, then the First Reserve Subaccount Reserve Requirement shall mean the First Reserve Subaccount Reserve Requirement in effect immediately prior to the issuance of that Series of Bonds, plus the Tax Maximum calculated with respect to that Series of Bonds. As of June 2018 the First Reserve Subaccount Reserve Requirement is \$6,907,081, which is equal to Maximum Annual Debt Service on all Outstanding Bonds that are secured by the First Reserve Subaccount, and is funded with the 2016 Bonds Reserve Credit Facility.

**3.26. “First Reserve Subaccount Valuation Date”** means the first Business Day of each Fiscal Year, each date on which amounts are withdrawn from the First Reserve Subaccount, and each Closing date for a Series of Bonds that is secured by the First Reserve Subaccount.

**3.27. “Fiscal Year”** means the fiscal year of the District as established by Oregon Law. At the time this Master Declaration is adopted, the fiscal year of the District begins on July 1 of each calendar year and ends on the next succeeding June 30.

**3.28. “Fitch”** means Fitch Ratings, its successors and assigns.

**3.29. “Gross Revenues”** means all revenues, fees and charges and other revenues resulting from the operation of the Sewer System, including systems development charges, revenues from product sales and interest earnings on Gross Revenues in the Sewer Enterprise Fund. However, the term “Gross Revenues” does not include:

(A) the interest income or other earnings derived from the investment of the Rebate Fund or any escrow fund established for the defeasance or refunding of outstanding indebtedness of the District;

(B) any gifts, grants, donations or other moneys received by the District from any State or Federal District or other person if such moneys are restricted by law or the grantor to uses inconsistent with the payment of Bonds;

(C) the proceeds of any borrowing;

(D) the proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues);

(E) the proceeds of any casualty insurance which the District intends to utilize for repair or replacement of the Sewer System;

(F) the proceeds derived from the sales of assets pursuant to Section 10.7 of this Master Declaration;

(G) any ad valorem or other taxes imposed by the District (except charges or payments for Sewer System services which become “taxes” within the meaning of Article XI, Section 11b of the Oregon Constitution only because they are imposed on property);

(H) any income, fees, charges, receipts, profits or other moneys derived by the District from its ownership or operation of any Separate Utility System; and

(I) Any federal interest subsidies the District receives for Interest Subsidy Bonds.

**3.30. “IGA”** means the document dated as of November 3, 2016 that is titled “An Intergovernmental Partnership Agreement forming the Water Environment Services Partnership” that was approved by CCSD#1 and TCSD and SWMACC, as it has been and may be amended in the future.

**3.31. “Interest Payment Date”** means any date on which Bond interest is scheduled to be paid, and any date on which Bonds are called for redemption.

**3.32. “Interest Subsidy Bonds”** means Bonds for which the District is eligible to receive federal interest rate subsidies that are similar to the interest subsidies that were available for Build America Bonds.

**3.33. “Master Declaration”** means this Amended Master Sewer Revenue Bond Declaration, including any future amendments made in compliance with the Master Declaration.

**3.34. “Maximum Annual Debt Service”** means the greatest Annual Debt Service, calculated on all Bonds which are Outstanding on the date of calculation.



**3.35. “Moody’s”** means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns.

**3.36. “Net Revenues”** means the Gross Revenues less the Operating Expenses.

**3.37. “Operating Expenses”** means all costs which are properly treated as expenses of operating and maintaining the Sewer System under generally accepted accounting principles or rules of accounting applicable to municipal enterprises similar to the Sewer System. However, Operating Expenses do not include:

- (A) any rebates or penalties paid from Gross Revenues under Section 148 of the Code;
- (B) payments of judgments against the District and payments for the settlement of litigation;
- (C) depreciation and amortization of property values or losses, other non-cash expenses and all amounts treated for accounting purposes as payments for capital expenditures;
- (D) debt service payments;
- (E) the expenses of owning, operating or maintaining any Separate Utility System;
- (F) extraordinary non-recurring expenses of the Sewer System; or
- (G) franchise fees and similar charges imposed by the District or Clackamas County on the Sewer System or its operations.

**3.38. “ORS”** means the Oregon Revised Statutes.

**3.39. “Outstanding”** refers to all Bonds authorized and delivered pursuant to this Master Declaration and any Supplemental Declaration except Bonds theretofore canceled or defeased pursuant to Section 14 of this Master Declaration, and Bonds which have matured and not been presented for payment (provided sufficient funds to pay those Bonds have been transferred to the Paying Agent).

**3.40. “Parity Derivative Product”** means a Derivative Product which qualifies as a Parity Obligation in accordance with Section 7.5.

**3.41. “Parity Obligation”** means any obligation payable from the Net Revenues which is issued in accordance with Section 7. , and includes any Parity Derivative Product.

**3.42. “Payment Date”** means a Principal Payment Date or an Interest Payment Date.

**3.43. “Permitted Investments”** means any investments which the District is permitted to make under the laws of the State.

**3.44. “Principal Payment Date”** means any date on which any Bonds are scheduled to be retired, whether by virtue of their maturity or by mandatory sinking fund redemption prior to maturity, and the redemption date of any Bonds which have been called for redemption.

**3.45. “Project”** means any lawful purpose for which Gross Revenues may be spent.

**3.46. “Qualified Consultant”** means an independent engineer, an independent auditor, an independent municipal advisor, or similar independent professional consultant of recognized standing and having experience and expertise in the area for which such person or firm is



retained by the District for purposes of performing activities specified in this Master Declaration or any Supplemental Declaration.

**3.47. “Rate Stabilization Account”** means the Rate Stabilization Account of the Sewer Enterprise Fund established which is described in Section 5.6.

**3.48. “Rating Agency”** means Fitch, Moody’s, S&P, or any other nationally recognized financial rating agency which has rated Outstanding Bonds or a Credit Facility at the request of the District.

**3.49. “Reciprocal Payment”** means scheduled payment to be made to, or for the benefit of the District under a Derivative Product by or on behalf of the Reciprocal Payor, which is either fixed in amount or is determined according to a formula set forth in the Derivative Product.

**3.50. “Reciprocal Payor”** means a party to a Derivative Product (other than the District) that is obligated to make one or more Reciprocal Payments thereunder, and which has at least an investment grade rating from a Rating Agency for its obligations under the Derivative Product.

**3.51. “Record Date”** for the the Series 2009A Obligations, the Series 2009B Obligations, the Series 2010 Obligations, and the Series 2016 Bonds means the fifteenth (15th) day of the month preceding the month in which each Interest Payment Date occurs, whether or not a Business Day.

**3.52. “Registrar” or “Paying Agent”** means the paying agent and registrar designated by the District.

**3.53. “Reserve Credit Facility”** means any arrangement in which the District pays a fee in exchange for an agreement of a Credit Provider to advance money to the District in the future that the District will use to satisfy a reserve requirement for a subaccount in the Revenue Bond Reserve Account. “Reserve Credit Facility” does not include guaranteed investment contracts, master repurchase agreements and similar Permitted Investments.

**3.54. “Reserve Credit Facility Rating”** means a long-term debt, financial strength or claims paying ability rating assigned by a Rating Agency to a Reserve Credit Provider.

**3.55. “Reserve Credit Provider”** means a person or entity that is obligated to make payments under a Reserve Credit Facility, or any person or entity that has assumed, guaranteed, reinsured or otherwise become obligated to perform a Reserve Credit Provider’s obligations to the District under a Reserve Credit Facility.

**3.56. “Revenue Bond Account”** means the Revenue Bond Account described in Section 5.2 of this Master Declaration.

**3.57. “Revenue Bond Reserve Account”** means the Revenue Bond Reserve Account in the Sewer Enterprise Fund described in Section 5.3 of this Master Declaration.

**3.58. “S&P”** means S&P Global Ratings, a corporation organized and existing under the laws of the State of New York, its successors and their assigns.

**3.59. “Separate Utility System”** means any utility property which is declared by the Board to constitute a system which is distinct from the Sewer System in accordance with Section 9. On the date of this Master Declaration the District does not have any Separate Utility Systems.

**3.60. “Series”** refers to all Bonds or Parity Obligations authorized by a single Order and delivered in exchange for payment on the same date, regardless of variations in maturity, interest rate or other provisions, unless the closing documents for the Series provide otherwise.

**3.61. “Series 2009A Obligations”** means the District’s Sewer System Revenue Obligations, Series 2009A, issued pursuant to this Master Declaration.

**3.62. “Series 2009B Obligations”** means the District’s Sewer System Revenue Obligations, Series 2009B, issued pursuant to this Master Declaration.

**3.63. “Series 2010 Obligations”** means the District’s Sewer System Revenue Obligations, Series 2010, issued pursuant to this Master Declaration.

**3.64. “Series 2016 Bonds”** means the District’s Sewer Revenue Refunding Bonds, Series 2016, issued pursuant to this Master Declaration.

**3.65. “Sewer Enterprise Fund”** means the collection of funds and accounts used by the District to account for the Gross Revenues and the proceeds of Bonds.

**3.66. “Sewer System”** means all real and personal property now or hereafter owned, operated, used, or maintained by the District for sanitary sewage disposal, sanitary sewage purification, surface water management, stormwater drainage and similar services within or without the corporate limits of the District. The Sewer System does not include any Separate Utility System.

**3.67. “Stabilized Net Revenues”** means the Net Revenues for a period less deposits to the Rate Stabilization Account for the period, and plus withdrawals from the Rate Stabilization Account for the period.

**3.68. “State”** means the State of Oregon.

**3.69. “Subordinate Obligations”** means obligations having a lien on the Net Revenues that is subordinate and inferior to the lien of the Bonds. Restrictions on Subordinate Obligations are described in Section 8. On the date of this Master Declaration only one Subordinate Obligation is outstanding; it is described in Section 5.5.

**3.70. “Subordinate Obligations Account”** means the Subordinate Obligations Account of the Sewer Enterprise Fund which is described in Section 5.5.

**3.71. “Supplemental Declaration”** means any declaration which supplements or amends this Master Declaration that is entered into by the District in compliance with Section 13.

**3.72. “Tax Maximum”** means for any Series of Bonds, the lesser of the greatest amount of principal, interest and premium, if any, scheduled to be paid in any Fiscal Year on such Series; 125% of average amount of principal, interest and premium, if any, required to be paid on such

Series during all Fiscal Years in which such Series will be Outstanding, calculated as of the date of issuance of such Series; or, ten percent of the proceeds of such Series, as “proceeds” is defined for purposes of Section 148(d) of the Code.

**3.73. “Valuation Date”** means July 1 of each year (or the first Business Day thereafter, if July 1 is not a Business Day), and the Business Day following any transfer from the Revenue Bond Reserve Account to the Revenue Bond Account pursuant to Section 5.4.1 or any similar subsection related to a subsequent subaccount in the Revenue Bond Reserve Account.

**3.74. “Variable Rate Obligations”** means any Bonds issued with a variable adjustable, convertible, or other similar interest rate which changes during the term of the Bonds, and any District Payments or Reciprocal Payments under a Parity Derivative Product for which the interest portion of the payment is based on a rate that changes during the term of the Derivative Product.

#### **Section 4. Deposit, Pledge and Use of Gross Revenues**

**4.1. Deposit of Gross Revenues.** Commencing [date], all Gross Revenues shall be deposited when received in accounts and invested in securities which are not subject to the prior lien or claim of any person. All Gross Revenues shall be credited to the Sewer Enterprise Fund, and shall be used only as described in this Section as long as any Bonds remain Outstanding. Gross Revenues in the Sewer Enterprise Fund shall be used on or before the following dates for the following purposes in the following order of priority:

4.1.1. At any time to pay Operating Expenses which are then due.

4.1.2. Three Business Days prior to each Payment Date, the District shall credit Net Revenues to the Revenue Bond Account in an amount sufficient (with amounts available in the Revenue Bond Account) to pay in full all Bond principal, interest and premium, if any, which is due to be paid on that Payment Date.

4.1.3. On the first day of each month following a Valuation Date on which the balance in a subaccount of the Revenue Bond Reserve Account is determined to be less than its Reserve Requirement, the District shall credit to that subaccount the amount that is required to replenish that subaccount pursuant to Section 5.3.1.4 Section 5.4.7 sets the replenishment requirements for the First Reserve Subaccount.

4.1.4. On the day on which any rebates or penalties for Bonds are due to be paid to the United States pursuant to Section 148 of the Code, the District shall pay the amounts due from the Net Revenues.

4.1.5. On the dates specified in any proceedings authorizing Subordinate Obligations the District shall credit to the Subordinate Obligations Account the Net Revenues required by those proceedings.

4.1.6. On any date, the District may credit Net Revenues to the Rate Stabilization Account, apply Net Revenues to any franchise fees and similar charges imposed by the District or Clackamas County on the Sewer System or its operations, or spend Net Revenues for any



other lawful purpose, but only if all credits and payments having a higher priority under this Section have been made.

**4.2. Pledge of Net Revenues.** The District hereby pledges the Net Revenues and any federal interest subsidies the District receives for Interest Subsidy Bonds to payment of principal of, premium (if any) and interest on all Bonds, and as security for such Bonds. In addition, the District hereby pledges the Net Revenues available for transfer to the Revenue Bond Reserve Account to pay amounts due under any Reserve Credit Facility. Pursuant to ORS 287A.310, these pledges of the Net Revenues hereby made by the District shall be valid and binding from the time of the adoption of this Master Declaration. The Net Revenues so pledged and hereafter received by the District shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever.

## **Section 5. Bond Funds and Accounts**

**5.1. Required Accounts.** So long as Bonds are Outstanding, the District shall maintain the Revenue Bond Account, the Revenue Bond Reserve Account, and the Subordinate Obligations Account as discrete accounts in the Sewer Enterprise Fund.

**5.2. Revenue Bond Account.** The Revenue Bond Account shall be held and maintained by the District, and amounts credited to the Revenue Bond Account shall be deposited in accounts and invested in securities which are not subject to the prior lien or claim of any person. Until all Bonds are paid or defeased, amounts in the Revenue Bond Account shall be used only to pay Bonds. The District shall transfer sufficient amounts from the Revenue Bond Account to the Registrar in time to permit the Registrar to pay all Bond principal, interest and, premium (if any) when due in accordance with the Bonds. Amounts in the Revenue Bond Account shall be invested only in Permitted Investments. Earnings on the Revenue Bond Account shall be credited to the Revenue Bond Account.

### **5.3. Revenue Bond Reserve Account.**

5.3.1. The Revenue Bond Reserve Account shall be held by the District and the District may create subaccounts in the Revenue Bond Reserve Account to secure Bonds. When each subaccount is created, the District shall determine whether the subaccount will secure one or more Series of Bonds. If the District creates a subaccount in the Revenue Bond Reserve Account, the District shall, when it issues the first Series of Bonds that is secured by that subaccount:

5.3.1.1. establish the Reserve Requirement for that subaccount and pledge amounts credited to that subaccount to pay the Bonds that are secured by that subaccount;

5.3.1.2. determine if the Reserve Requirement for that subaccount may be funded with a Reserve Credit Facility and the requirements for such Reserve Credit Facility;

5.3.1.3. Establish the valuation requirements for that subaccount; and,

5.3.1.4. Establish the replenishment requirements for that subaccount.



5.3.2. The District shall not create any subaccounts in the Revenue Bond Reserve Account for any purpose except securing Bonds in accordance with this Master Declaration.

**5.4. The First Reserve Subaccount and the First Reserve Subaccount Reserve Requirement.**

5.4.1. The First Reserve Subaccount is hereby created in the Revenue Bond Reserve Account. The First Reserve Subaccount shall secure only the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Bonds and any subsequent Series of Bonds to which the amounts in the First Reserve Subaccount are pledged. Except as specifically provided in this Section 5.4, amounts credited to the First Reserve Subaccount shall be used only to pay principal, interest and premium, if any, on any Series of Bonds that are secured by the First Reserve Subaccount, and only if amounts in the Revenue Bond Account are not sufficient to make those payments.

5.4.2. The District hereby irrevocably pledges the amounts that are credited to the First Reserve Subaccount to pay the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Bonds. Pursuant to ORS 287A.310, this pledge shall be valid and binding from the Closing date of the Series 2016 Bonds. The amounts so pledged and hereafter received by the District shall immediately be subject to the lien of this pledge without any physical delivery or further act, and the lien of this pledge shall be superior to all other claims and liens whatsoever to the fullest extent permitted by ORS 287A.310.

5.4.3. At Closing of the Series 2016 Bonds the District deposited into the First Reserve Subaccount an amount equal to the First Reserve Subaccount Reserve Requirement. The deposit was permitted to be made from Net Revenues, from Series 2016 Bond proceeds, from other amounts available to the District, or by crediting a Reserve Credit Facility to the First Reserve Subaccount. If the District elects to secure a Series of Parity Obligations with the First Reserve Subaccount, when the District issues that Series the District shall deposit an amount in the First Reserve Subaccount that is sufficient to make the balance in the First Reserve Subaccount at least equal to the First Reserve Subaccount Reserve Requirement, calculated with the Series of Parity Obligations treated as Outstanding.

5.4.4. As of June 2018 the First Reserve Subaccount Reserve Requirement was \$6,907,081, which was equal to Maximum Annual Debt Service on all Outstanding Bonds that are secured by the First Reserve Subaccount, and was funded with the 2016 Bonds Reserve Credit Facility.

5.4.5. The District covenants to maintain a balance in the First Reserve Subaccount which is equal to the First Reserve Subaccount Reserve Requirement, but solely from deposits of Net Revenues pursuant to Section 4.1.3, from the Closing deposit pursuant to Section 18.5.1.1, and similar Closing deposits for any subsequent Series of Bonds secured by the First Reserve Subaccount. However, the District reserves the right to make deposits to the First Reserve Subaccount from other sources.

5.4.6. The District shall value the First Reserve Subaccount on each First Reserve Subaccount Valuation Date. The value of the First Reserve Subaccount shall be equal to the sum of the values of the Permitted Investments credited to the First Reserve Subaccount, calculated as provided in Section 5.4.12, plus the value of any Reserve Credit Facilities for the First Reserve Subaccount, calculated as provided in Section 5.4.10.

5.4.7. If the balance in the First Reserve Subaccount on a First Reserve Subaccount Valuation Date is less than the First Reserve Subaccount Reserve Requirement, the District shall begin making transfers of Net Revenues to the First Reserve Subaccount in accordance with Section 4.1.3.

5.4.7.1. If the deficiency results from a transfer from the First Reserve Subaccount or from the loss of value of Permitted Investments credited to the First Reserve Subaccount, each transfer required under Section 4.1.3 for the First Reserve Subaccount shall: 1) be equal to at least 1/12 of the deficiency discovered on the first First Reserve Subaccount Valuation Date on which the balance in the First Reserve Subaccount is less than the First Reserve Subaccount Requirement and 2) continue until the balance in the First Reserve Subaccount is equal to the First Reserve Subaccount Reserve Requirement.

5.4.7.2. If the deficiency results from a loss or withdrawal of all Reserve Credit Facility Ratings, each transfer required under Section 4.1.3 for the First Reserve Subaccount shall: 1) be equal to at least 1/60 of the deficiency discovered on the first First Reserve Subaccount Valuation Date on which the balance in the First Reserve Subaccount is less than the First Reserve Subaccount Requirement and 2) continue until the balance in the First Reserve Subaccount is equal to the First Reserve Subaccount Reserve Requirement.

5.4.8. If the balance in the First Reserve Subaccount on a First Reserve Subaccount Valuation Date is greater than the First Reserve Subaccount Reserve Requirement, including the calculations required by Section 6.4.3, the District may transfer the excess to the Revenue Bond Account. In addition the District may use the excess for any other purpose if the District obtains an opinion of Bond Counsel stating that the use of the excess for that purpose will not cause interest on any Bonds to become includable in gross income under the Code.

5.4.9. Earnings on the First Reserve Subaccount shall be credited to that subaccount whenever the balance in that subaccount is less than the First Reserve Subaccount Reserve Requirement. Otherwise, earnings shall be credited to the Revenue Bond Account.

5.4.10. Reserve Credit Facilities credited to the First Reserve Subaccount shall be valued on each First Reserve Subaccount Valuation Date in the following manner:

5.4.10.1. A Reserve Credit Facility shall be valued at the amount available to be drawn on it while any Rating Agency has a Reserve Credit Facility Rating in effect for a Reserve Credit Provider that is in one of the two highest rating categories, determined without regard to pluses, minuses or other degrees. Under rating systems in effect on the

date of this Master Declaration, a long-term debt rating in one of the two highest rating categories by a Rating Agency would be a rating in the “AA” or “Aa” category or better.

5.4.10.2. A Reserve Credit Facility shall have no value when no Rating Agency has a Reserve Credit Facility Rating in effect for a Reserve Credit Provider that is in one of the two highest rating categories, determined without regard to pluses, minuses or other degrees.

5.4.11. Moneys in the First Reserve Subaccount may be invested only in Permitted Investments that mature no later than the final maturity date of the Bonds that are secured by the First Reserve Subaccount, and to acquire Reserve Credit Facilities.

5.4.12. Permitted Investments in the First Reserve Subaccount shall be valued on each First Reserve Subaccount Valuation Date in the following manner:

5.4.12.1. Demand deposits, deposits in the Oregon Short Term Fund and other investments which mature in two years or less after the First Reserve Subaccount Valuation Date shall be valued at their face amount, plus accrued interest;

5.4.12.2. Investments which mature more than two years after the First Reserve Subaccount Valuation Date and for which bid and asked prices are published on a regular basis in the Wall Street Journal (or, if not there, then in the New York Times) shall be valued at the average of their most recently published bid and asked prices;

5.4.12.3. Investments which mature more than two years after the First Reserve Subaccount Valuation Date and for which the bid and asked prices are not published on a regular basis in the Wall Street Journal or the New York Times shall be valued at the average bid price quoted by any two nationally recognized government securities dealers (selected by the District in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

5.4.12.4. Certificates of deposit and bankers acceptances which mature more than two years after the First Reserve Subaccount Valuation Date shall be valued at their face amount, plus accrued interest; and

5.4.12.5. Any investment which is not specified above and which matures more than two years after the First Reserve Subaccount Valuation Date shall be valued at its fair market value as reasonably estimated by the District.

5.4.12.6. Any investment which is not specified above and which matures more than two years after the First Reserve Subaccount Valuation Date shall be valued at its fair market value as reasonably estimated by the District.

5.4.13. Withdrawals from the First Reserve Subaccount shall be made in the following order of priority:

5.4.13.1. *First*, from any cash on deposit in the First Reserve Subaccount; and



5.4.13.2. **Second**, from the liquidation proceeds of any Permitted Investments on deposit in such First Reserve Subaccount; and,

5.4.13.3. **Third**, from amounts drawn on Reserve Credit Facilities in the First Reserve Subaccount.

5.4.14. All amounts on deposit in the First Reserve Subaccount (other than amounts attributable to Reserve Credit Facilities) may be applied to the final payment (whether at maturity or by prior redemption) of the last remaining Series of Bonds secured by the First Reserve Subaccount. Amounts so applied shall be credited against the amounts the District is required to transfer into the Revenue Bond Account under Section 4.1.2.

5.4.15. Amounts in the First Reserve Subaccount (other than amounts attributable to Reserve Credit Facilities) may be transferred into escrow to defease Bonds secured by the First Reserve Subaccount, but only if the balance remaining in the First Reserve Subaccount after the transfer is at least equal to the First Reserve Subaccount Reserve Requirement calculated based on the Bonds that are secured by the First Reserve Subaccount which remain Outstanding after the defeasance.

**5.5. Subordinate Obligations Account.** The District has previously executed a Clean Water State Revolving Fund Loan Agreement No. R06224 outstanding in an approximate amount of \$[1,752,447], which constitutes a Subordinate Obligation. So long as any Subordinate Obligations are outstanding, the District shall maintain the Subordinate Obligations Account. The Subordinate Obligations Account may be divided into subaccounts, and the District may establish priorities for funding the subaccounts in the Subordinate Obligations Account. Net Revenues shall be credited to the Subordinate Obligations Account only as permitted by Section 4.1.5. Earnings on the Subordinate Obligations Account shall be credited as provided in the proceedings authorizing the Subordinate Obligations.

**5.6. Rate Stabilization Account.** The Rate Stabilization Account is hereby created within the Sewer Enterprise Fund. The Rate Stabilization Account shall be held and maintained by the District, and amounts credited to the Rate Stabilization Account shall be deposited in accounts and invested in securities which are not subject to the prior lien or claim of any person. Net Revenues may be credited to the Rate Stabilization Account at the option of the District as permitted by Section 4.1.6. Money credited to the Rate Stabilization Account may be withdrawn at any time and used for any purpose for which the Gross Revenues may be used. Amounts withdrawn from the Rate Stabilization Account increase Stabilized Net Revenues for the Fiscal Year in which they are withdrawn, and amounts credited to the Rate Stabilization Account reduce Stabilized Net Revenues for the Fiscal year in which they are credited. Credits to and withdrawals from the Rate Stabilization Account that occur within ninety days after the end of a Fiscal Year may be treated as occurring in the most recently ended Fiscal Year. Earnings on the Rate Stabilization Account shall be credited to the Sewer Enterprise Fund.

## **Section 6. Rate Covenant**

**6.1. General Covenant.** The District covenants for the benefit of the Owners that it will establish and maintain rates and charges in connection with the ownership and operation of the



Sewer System which are sufficient to permit the District to pay all Operating Expenses and all lawful charges against the Net Revenues, to remain in compliance with its duties under this Master Declaration and any Supplemental Declaration, and to make all transfers required by this Master Declaration to the Revenue Bond Account, the Revenue Bond Reserve Account, and the Subordinate Obligations Account.

**6.2. Net Revenue Covenant.** The District covenants for the benefit of the Owners of all Bonds that it shall impose fees, rates and charges in connection with the ownership and operation of the Sewer System which, when combined with other Gross Revenues, are adequate:

6.2.1. To produce Net Revenues in each fiscal Year at least equal to one hundred ten percent (110.00%) of Annual Debt Service due in that Fiscal Year; and

6.2.2. To produce Stabilized Net Revenues each Fiscal Year at least equal to one hundred twenty percent (120.00%) of Annual Debt Service due in that Fiscal Year.

**6.3. Compliance Report.** Not later than ninety days after the end of each Fiscal Year the District shall file a certified report with the District Official which demonstrates whether the District has complied with Section 6.2.1 and Section 6.2.2 during that Fiscal Year. If the report demonstrates that the District has not complied with Section 6.2.1 or Section 6.2.2 during that Fiscal Year, it shall not constitute an Event of Default if:

6.3.1. within one hundred twenty days after the end of the Fiscal Year, the District engages the services of a Qualified Consultant; and,

6.3.2. within one hundred eighty days after the end of the Fiscal Year, the Qualified Consultant recommends a schedule of fees, rates and charges or other actions which the Qualified Consultant reasonably projects will permit the District to comply with Section 6.2.1 and Section 6.2.2 for the remainder of the current Fiscal Year the next Fiscal Year; and,

6.3.3. within two hundred seventy days after the end of the Fiscal Year the District implements the recommendations of the Qualified Consultant.

**6.4. Interest Subsidy Bonds.** The amounts assumed to be paid on Interest Subsidy Bonds shall be calculated as follows:

6.4.1. When calculating Annual Debt Service for the rate covenant in Section 6.2, the District shall subtract from interest to be paid on Interest Subsidy Bonds the federal interest subsidies on Interest Subsidy Bonds that the District reasonably expects, at the beginning of the Fiscal Year, to receive during that Fiscal Year.

6.4.2. When calculating Annual Debt Service and Maximum Annual Debt Service for the tests for issuing Parity Obligations in Section 7. , the District shall subtract from the scheduled payments of interest on Interest Subsidy Bonds the amount of federal interest subsidies that the District would have received, had the Interest Subsidy Bonds that are included in the calculation of Annual Debt Service and Maximum Annual Debt Service been outstanding during the Base Period. For example, if 6.8% of federal interest subsidies were

sequestered during the Base Period, the District shall subtract from the scheduled payments of interest on Interest Subsidy Bonds 93.2% of the interest subsidies that are scheduled to be paid on the Interest Subsidy Bonds that are included in the calculation of Annual Debt Service and Maximum Annual Debt Service.

6.4.3. When calculating the greatest amount of principal, interest and premium, if any, required to be paid in any Fiscal Year on a Series of Interest Subsidy Bonds to determine the Tax Maximum for Interest Subsidy Bonds that are secured by the First Reserve Subaccount, the District shall subtract from the scheduled payments of interest on Interest Subsidy Bonds the amount of federal interest subsidies that the District would have received, had the Interest Subsidy Bonds that are included in the calculation of Annual Debt Service and Maximum Annual Debt Service been outstanding during the Base Period. For example, if 6.8% of federal interest subsidies were sequestered during the Base Period, the District shall subtract from the scheduled payments of interest on Interest Subsidy Bonds 93.2% of the interest subsidies that are scheduled to be paid on the Interest Subsidy Bonds that are included in the calculation of Annual Debt Service and Maximum Annual Debt Service. If the District reduces the amount it holds in a subaccount of the Revenue Bond Reserve Account because Bonds secured by that subaccount have been paid, the District must take into account the amount of federal interest subsidies that the District would have received in the Fiscal Year before the reduction in determining the amount that the District must retain in the First Reserve Subaccount.

## **Section 7. Parity Obligations**

**7.1. Conditions for Issuance.** The District may issue Parity Obligations to provide funds for any purpose relating to the Sewer System, but only if:

7.1.1. No Event of Default under this Master Declaration or any Supplemental Declaration has occurred and is continuing.

7.1.2. At the time of the issuance of the Parity Obligations there is no deficiency in the Revenue Bond Account and the District has made all credits to the replenish subaccounts in the Revenue Bond Reserve Account that are required to have been made by that time pursuant to Section 4.1.3.

7.1.3. The covenant to impose fees, rates and charges in Section 6.2 of this Master Declaration shall apply to the proposed Parity Obligations, and any Supplemental Declaration authorizing the issuance of those Parity Obligations shall contain a recital of that covenant.

7.1.4. There shall have been filed with the District either:

7.1.4.1. a certificate of the District Official stating that Net Revenues (adjusted as provided in the second sentence of Section 7.2) for the Base Period were not less than one hundred twenty percent (120.00%) of the Maximum Annual Debt Service on all Outstanding Bonds, with the proposed Parity Obligations treated as Outstanding; or,

7.1.4.2. a certificate or opinion of a Qualified Consultant stating:

7.1.4.2.1. the amount of the Adjusted Net Revenues computed as provided in Section 7.3 below; and,

7.1.4.2.2. that the amount shown in Section 7.1.4.2.1 is not less than one hundred twenty percent (120.00%) of the Maximum Annual Debt Service on all Outstanding Bonds, with the Proposed Parity Obligations treated as Outstanding.

**7.2. Adjustment of Historical Revenues.** Net Revenues may be adjusted for purposes of Section 7.1.4.1 by adding any Net Revenues the District Official calculates the District would have had during the Base Period because of increases in Sewer System rates, fees and charges which took effect after the beginning of the Base Period. However, no adjustment shall be made for these increases unless they have been approved by the Board prior to delivery of the Proposed Parity Obligations and are required to take effect no later than sixty days after the delivery of the proposed Parity Obligations.

**7.3. Adjustment of Projected Revenues.** Adjusted Net Revenues for purposes of Section 7.1.4.2 shall be computed by adjusting the Net Revenues for the Base Period as provided in this Section 7.3:

7.3.1. The District shall provide the Qualified Consultant with the following information:

7.3.1.1. The Base Period and the Net Revenues for the Base Period;

7.3.1.2. Information regarding any Sewer System utility properties that are being acquired with Parity Obligations and have an earnings record;

7.3.1.3. Any changes in rates and charges which have been adopted by the District since the beginning of the Base Period and the dates on which they are scheduled to take effect;

7.3.1.4. Any changes in customers since the beginning of the Base Period; and,

7.3.1.5. A description of any extensions or additions to the Sewer System that were in the process of construction at the beginning of the Base Period or commenced construction after the beginning of the Base Period, the expected date of completion of those extensions or additions, the estimated operating and capital costs of those extensions or additions, and any other changes to the Gross Revenues or Operating Expenses that the District reasonably expects to result from the completion and operation of those extensions or additions.

7.3.2. Using the information provided by the District pursuant to Section 7.3.1 and any additional information the Qualified Consultant determines is necessary, the Qualified Consultant may adjust the Net Revenues for the Base Period:

7.3.2.1. To reflect any changes that the Qualified Consultant projects will result from the acquisition of Sewer System utility properties that are being financed with the Parity Bonds and that have an earnings record;

7.3.2.2. To reflect any changes in rates and charges which have been adopted by the District and which have taken effect or are scheduled to take effect during the twelve months after the date of the Qualified Consultant's certificate, or which increase rates and charges for inflation at a level which the Qualified Consultant determines is reasonable;

7.3.2.3. To reflect any changes in customers of the Water System that occurred after the beginning of the Base Period and prior to the date of the Qualified Consultant's certificate; and

7.3.2.4. To reflect any changes to Gross Revenues or Operating Expenses not included in the preceding paragraphs that are projected to result from the completion and operation of additions and extensions to the Sewer System that were under construction at the beginning of the Base Period, or commenced construction after the beginning of the Base Period.

**7.4. Refunding Exception.** The District may issue Parity Obligations to refund Outstanding Bonds without complying with Sections 7.1.1, 7.1.2, 7.1.3 and 7.1.4 if the refunded Bonds are defeased on the date of delivery of the refunding Parity Obligations and if the Annual Debt Service on the refunding Parity Obligations does not exceed the Annual Debt Service on the refunded Bonds in any Fiscal Year by more than \$5,000.

**7.5. Derivative Products as Parity Obligations.** A Derivative Product may be a Parity Derivative Product and a Parity Obligation if the obligation to make District Payments under the Derivative Product qualifies as a Parity Obligation under Section 7.1, after the Reciprocal Payments under the Derivative Product are applied to reduce Annual Debt Service. Any Parity Derivative Product shall clearly state that it is a Parity Derivative Product and has qualified as a Parity Obligation under Section 7. of this Master Declaration. The District shall credit any Reciprocal Payments from a Parity Derivative Product directly to the Revenue Bond Account.

**7.6. Lien of Parity Obligations.** Each Series of Parity Obligations issued in accordance with this Master Declaration shall have a lien on the Net Revenues which is equal to the lien of all other Outstanding Bonds.

## **Section 8. Subordinate Obligations**

The District has previously entered into a State Revolving Fund loan agreement as described in Section 5.5; any portion of this loan agreement that remains outstanding after the 2016 Bonds are issued will be subordinated to the Bonds and shall constitute a Subordinate Obligation. The District may issue Subordinate Obligations in the future only if:

**8.1. Payment Limited.** The Subordinate Obligations are payable solely from amounts permitted to be credited to the Subordinate Obligations Account pursuant to Section 4.1.6; and,

**8.2. Statement of Limitation.** The Subordinate Obligations state clearly that they are secured by a lien on or pledge of the Net Revenues which is subordinate and inferior to the lien on, and pledge of, the Net Revenues for the Bonds.



## Section 9. Separate Utility System

The District may declare property which the District owns and is part of the Sewer System (but has a value of less than five percent of the Sewer System at the time of the declaration), and property which the District has not yet acquired but would otherwise become part of the Sewer System, to be part of a Separate Utility System. The District may pay costs of acquiring, operating and maintaining Separate Utility Systems from Net Revenues, but only if there is no deficit in the Revenue Bond Account or the Revenue Bond Reserve Account. The District may issue obligations which are secured by the revenues produced by the Separate Utility System, and may pledge the Separate Utility System revenues to pay those obligations. In addition, the District may issue Subordinate Obligations to pay for costs of a Separate Utility System, and may pledge the revenues of the Separate Utility System to pay the Subordinate Obligations.

## Section 10. General Covenants

The District hereby covenants and agrees with the Owners of all Outstanding Bonds as follows, commencing [starting date]:

**10.1. Payment of Bonds.** That it will promptly cause the principal, premium, if any, and interest on the Bonds to be paid as they become due in accordance with the provisions of this Master Declaration and any Supplemental Declaration.

**10.2. Books and Records; Accounting for Revenues.** That it will maintain complete books and records relating to the operation of the Sewer System and all District funds and accounts in accordance with generally accepted accounting principles applicable to municipal enterprises such as the District, and will cause such books and records to be audited annually at the end of each Fiscal Year, and an audit report prepared by the Auditor and made available for the inspection of Bondowners. Gross Revenues, Operating Expenses, Net Revenues and all similar terms shall be measured and accounted for in accordance with generally accepted accounting principles applicable to municipal enterprises such as the District, and not on a cash basis.

**10.3. No Superior Obligations.** That it will not issue Bonds or other obligations having a claim superior to the claim of the Bonds upon the Net Revenues.

**10.4. Prompt Deposit and Credit.** That it will promptly deposit and credit to all funds and accounts all sums required to be so deposited and credited.

**10.5. Operation of System.** That it will operate the Sewer System in a sound, efficient and economic manner, that it will not enter into any agreement to provide Sewer System products or services at a discount from published rate schedules, and that it will not provide free Sewer System products or services except for fire suppression and in case of emergencies.

**10.6. Insurance.** That it will at all times maintain with responsible insurers all such insurance on the Sewer System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties.

10.6.1. The net proceeds of insurance against accident to or destruction of the Sewer System shall be used first to repair or rebuild the damaged or destroyed Sewer System, and to the

extent excess insurance proceeds remain, shall be applied to the payment or redemption of the Bonds on a pro rata basis.

10.6.2. Insurance described in Section 10.6 shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the District, or in the form of self-insurance by the District. The District shall establish such fund or funds or reserves which it deems are necessary to provide for its share of any such self-insurance.

**10.7. Alienation of System Property.** The District will not, nor will it permit others to, sell, mortgage, lease, transfer, assign, convey or otherwise dispose of or encumber all or any portion of the Sewer System except:

10.7.1. The District may dispose of all or substantially all of the Sewer System, only if the District pays all Bonds or defeases them pursuant to Section 14.

10.7.2. Except as provided in Section 10.7.3, the District will not dispose of any part of the Sewer System in excess of 5% of the aggregate market value of the Sewer System then in service unless prior to such disposition either:

10.7.2.1. there has been filed with the District a certificate of a Qualified Consultant stating that such disposition will not impair the ability of the District to comply with the rate covenants contained in Section 6.1 of this Master Declaration; or

10.7.2.2. provision is made for the payment, redemption or defeasance of a principal amount of Bonds equal to the greater of the following amounts:

10.7.2.2.1. An amount which will be in the same proportion to the net principal amount of Bonds then Outstanding (defined as the total principal amount of Bonds then Outstanding less the amount of cash and investments in the Revenue Bond Debt Service Fund and the Revenue Bond Reserve Account allocable to such Bonds) that the Gross Revenues attributable to the part of the Sewer System sold or disposed of for the 12 preceding months bears to the total Gross Revenues for such period; or

10.7.2.2.2. An amount which will be in the same proportion to the net principal amount of Bonds then Outstanding that the book value of the part of the Sewer System sold or disposed of bears to the aggregate book value of the Sewer System immediately prior to such sale or disposition.

10.7.3. The District may dispose of any portion of the Sewer System that has become unserviceable, inadequate, obsolete, or unfit to be used or no longer necessary for use in the operation of the Sewer System.

10.7.4. If the ownership of all or part of the Sewer System is transferred from the District through the operation of law, the District shall to the extent authorized by law, reconstruct or replace such transferred portion using any proceeds of the transfer unless the Board reasonably determines that such reconstruction or replacement is not in the best interest of the District and the Bondowners, in which case any proceeds shall be used for the payment, redemption or defeasance of the Bonds.



**10.8. Termination or Dissolution of WES and Amendment of the IGA.** WES will not terminate or dissolve while any Bonds are Outstanding. WES may only amend, or consent to the amendment of, the IGA if WES reasonably judges that the amendment does not materially and adversely affect the rights of the owners of any Outstanding Bonds.

## **Section 11. Events of Default and Remedies**

**11.1. Continuous Operation Essential.** The Board hereby finds and determines that the continuous operation of the Sewer System and the collection, deposit, credit and disbursement of the Net Revenues in the manner provided in this Master Declaration and in any Supplemental Declaration are essential to the payment and security of the Bonds, and the failure or refusal of the District to perform the covenants and obligations contained in this Master Declaration or any such Supplemental Declaration will endanger the necessary continuous operation of the Sewer System and the application of the Net Revenues to the operation of the Sewer System and the payment of the Bonds.

**11.2. Events of Default.** The following shall constitute “Events of Default”:

11.2.1. If the District shall fail to pay any Bond principal or interest when due, either at maturity, upon exercise of a right of tender in the case of Variable Rate Obligations, by proceedings for mandatory or optional redemption or otherwise;

11.2.2. Except as provided in Sections 6.3 and 11.3, if the District shall default in the observance and performance of any other of its covenants, conditions and agreements in this Master Declaration, if such default continues for ninety (90) days after the District receives a written notice, specifying the Event of Default and demanding the cure of such default, from the Bondowners Committee or from the Owners of not less than twenty percent (20%) in aggregate principal amount of the Bonds Outstanding;

11.2.3. If the District shall sell, mortgage, lease, transfer, assign, convey or otherwise dispose of or encumber any properties constituting the Sewer System in violation of Section 10.7;

11.2.4. If an order, judgment or decree shall be entered by any court of competent jurisdiction:

11.2.4.1. appointing a receiver, trustee or liquidator for the District or the whole or any part of the Sewer System;

11.2.4.2. approving a petition seeking a declaration of bankruptcy, or the arrangement or reorganization of the District under any applicable law of the United States or the State; or

11.2.4.3. assuming custody or control of the District or of the whole or any part of the Sewer System under the provisions of any other law for the relief or aid of debtors and such order, judgment or decree shall not be vacated or set aside or stayed (or, in case

custody or control is assumed by said order, such custody or control shall not be otherwise terminated) within sixty (60) days from the date of the entry of such order, judgment or decree; or

11.2.5. If the District shall:

11.2.5.1. admit in writing its inability to pay its debts generally as they become due;

11.2.5.2. file a petition in bankruptcy or seeking a composition of indebtedness under any state or federal bankruptcy or insolvency law;

11.2.5.3. make an assignment for the benefit of its creditors;

11.2.5.4. consent to the appointment of a receiver of the whole or any part of the Sewer System; or

11.2.5.5. consent to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the District or of the whole or any part of the Sewer System.

**11.3. Exception.** It shall not constitute an Event of Default under Section 11.2.2 if the default cannot practicably be remedied within ninety days after the District receives notice of the default, so long as the District promptly commences reasonable action to remedy the default after the notice is received, and continues reasonable action to remedy the default until the default is fully and actually remedied.

**11.4. Remedies.** If an Event of Default occurs, any Bondowner may exercise any remedy available at law or in equity. However, the Bonds shall not be subject to acceleration.

**11.5. Appointment of Trustee.** During the continuance of an Event of Default described in Section 11.2, the owners of twenty percent (20%) in aggregate principal amount of the Bonds then outstanding may call a Bondowners meeting for the purpose of electing a Bondowners Committee.

11.5.1. Such meeting shall be called and the proceedings thereof shall be conducted in the manner provided in Section 12 hereof.

11.5.2. At such meeting the Bondowners present in person or by proxy may, by a majority of the votes cast, elect one or more persons, who may or may not be Bondowners, to the Bondowners Committee which shall act as trustee for all Bondowners, and the Bondowners Committee as such trustee may have and exercise all the rights and powers provided for in this Master Declaration to be exercised by the Bondowners Committee. The Bondowners present in person or by proxy at said meeting, or at any adjourned meeting thereof, shall prescribe the manner in which the successors of the persons elected to the Bondowners Committee at such Bondowners meeting shall be elected or appointed, and may prescribe rules and regulations governing the exercise by the Bondowners Committee of the powers conferred upon it herein, and may provide for the termination of the existence of the Bondowners Committee. The members of the Bondowners Committee elected by the



Bondowners in the manner herein provided, and their successors, as a committee are hereby declared to be trustees for the owners of all the Bonds then outstanding, and are empowered to exercise in the name of the Bondowners Committee as trustee, all the rights and powers hereinafter conferred on the Bondowners Committee.

**11.6. Books of District Open to Inspection.**

11.6.1. The District covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the District and all other records relating to the Sewer System shall at all reasonable times be subject to the inspection and use of the Bondowners Committee and any persons holding at least twenty percent (20%) of the principal amount of Outstanding Bonds and their respective agents and attorneys.

11.6.2. The District covenants that if the Event of Default shall happen and shall not have been remedied, the District will continue to account, as a trustee of an express trust, for all Net Revenues and other moneys, securities and funds pledged under the Master Declaration.

**11.7. Payment of Funds to Bondowners Committee.** The District covenants that if an Event of Default shall happen and shall not have been remedied, the District upon demand of the Bondowners Committee, shall, if it is then lawful to do so, pay over to the Bondowners Committee:

11.7.1. forthwith, all moneys, securities and funds then held by the District and pledged under the Master Declaration, and

11.7.2. as promptly as practicable after receipt thereof, all Gross Revenues.

**11.8. Possession by Bondowners Committee of Properties of Sewer System; Receivership.**

At any time after the occurrence of an Event of Default and prior to the curing of such Event of Default the Bondowners Committee, as a matter of right against the District, shall, to the extent permitted by law, be entitled to take possession and control of the business and properties of the Sewer System. Upon taking such possession, the Bondowners Committee shall operate and maintain the Sewer System, make any necessary repairs, renewals and replacements in respect thereof, prescribe rates and charges for the Sewer System, collect the Gross Revenues, and perform all of the agreements and covenants contained in all contracts which the District is at the time obligated to perform. At any such time and if permitted by law the Bondowners Committee shall be entitled to the appointment of a receiver of the business and property of the Sewer System, of the moneys, securities and funds of the District pledged under the Master Declaration, and of the Gross Revenues, and of the income therefrom, with all such powers as the court or courts making such appointment shall confer, including the power to perform and enforce all contracts, to the same extent that the District shall then be entitled and obligated to do.

Notwithstanding the appointment of any receiver, the Bondowners Committee shall be entitled to retain possession and control of and to collect and receive income from any moneys, securities, funds and Gross Revenues deposited, credited or pledged with or to it under the Master Declaration or agreed or provided to be delivered to or deposited, credited or pledged with or to it under the Master Declaration.

## **11.9. Application of Funds by Bondowners Committee.**

11.9.1. During the continuance of an Event of Default, the Gross Revenues received by the Bondowners Committee, whether pursuant to the provisions of the preceding paragraph, or as the result of taking possession of the business and properties of the Sewer System, shall be applied by the Bondowners Committee, first, to the payment of the reasonable and proper charges, expenses and liabilities paid or incurred by the Bondowners Committee (including the cost of securing the services of any engineer or firm of engineers selected for the purpose of rendering advice with respect to the operation, maintenance, repair and replacement of the Sewer System necessary to prevent any loss of Gross Revenues, and with respect to the sufficiency of the rates and charges for services and products sold, furnished or supplied by the Sewer System), second, to the payment of the Operating Expenses, and third to the payment of the principal of, premium, if any, and interest on the Bonds.

11.9.2. In the event that at any time the funds held by the Bondowners Committee and the Paying Agents for the Bonds shall be insufficient for the payment of the principal of, premium, if any, and interest then due on the Bonds, such funds (other than funds held for the payment or redemption of particular Bonds which have theretofore become due at maturity or by call for redemption) and all Gross Revenues and other moneys received or collected for the benefit or for the account of owners of the Bonds by the Bondowners Committee shall be applied as follows:

11.9.2.1. **First**, to the payment to the persons entitled thereto of all installments of interest then due on Bonds in the order of the maturity of such installments, earliest maturities first, and, if the amount available shall not be sufficient to pay in full any installment or installments or interest maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

11.9.2.2. **Second**, to the payment to the persons entitled thereto of the unpaid principal and premium, if any, of any Bonds which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, earliest maturities first, and, if the amount available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal and premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

**11.10. Relinquishment of Possession and Funds Upon Remedy of Default.** If and whenever all overdue installments of interest on all Bonds, together with the reasonable and proper charges, expenses, and liabilities of the Bondowners Committee and the owners of Bonds, their respective agents and attorneys, and all other sums payable by the District under the Master Declaration including the principal of, premium, if any, and accrued unpaid interest on all Bonds which shall then be payable, shall either be paid by or for the account of the District, or provision satisfactory to the Bondowners Committee shall be made for such payment, and all defaults under the Master Declaration or the Bonds shall be made good or secured to the satisfaction of the Bondowners Committee or provision deemed by the Bondowners Committee to be adequate shall be made therefor, the Bondowners Committee shall relinquish possession and control of the

Sewer System and pay over to the District all moneys, securities, funds and Gross Revenues then remaining unexpended in the hands of the Bondowners Committee and thereupon all Gross Revenues shall thereafter be applied as provided in Section 9 of this Master Declaration. No such payment over to the District by the Bondowners Committee or resumption of the application of Gross Revenues as provided in Section 11 of this Master Declaration shall extend to or affect any subsequent default under the Master Declaration or impair any right consequent thereon.

#### **11.11. Suits at Law or in Equity.**

11.11.1. If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Bondowners Committee by its agents and attorneys, shall be entitled and empowered to proceed forthwith to take such necessary steps and institute such suits, actions and proceedings at law or in equity for the collection of all sums due in connection with the Bonds and to protect and enforce the rights of the owners of the Bonds under the Master Declaration, for the specific performance of any covenant herein contained or in aid of the execution of any power herein granted, or for an accounting against the District as trustee of an express trust, or in the enforcement of any other legal or equitable right as the Bondowners Committee, being advised by counsel, shall deem most effectual to enforce any of the rights of the owners of the Bonds.

11.11.2. Any action, suit or other proceedings instituted by the Bondowners Committee hereunder shall be brought in its name as trustee for the Bondowners and all such rights of action upon or under any of the Bonds or the provisions of this Master Declaration may be enforced by the Bondowners Committee without the possession of any of said Bonds, and without the production of the same at any trial or proceedings relative thereto except where otherwise required by law, and the respective owners of said Bonds, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Bondowners Committee the true and lawful trustee of the respective owners of said Bonds, with authority to institute any such action, suit or proceeding; to receive as trustee and deposit in trust any sums becoming distributable on account of said Bonds; to execute any paper or documents for the receipt of such moneys, and to do all acts with respect thereto that the Bondowner himself might have done in person, provided however, that nothing herein contained shall be deemed to authorize or empower the Bondowners Committee to consent to, accept or adopt, on behalf of any owner of Bonds, any plan of reorganization or adjustment affecting the said Bonds of the District or any right of any owner thereof; or to authorize or empower the Bondowners Committee to vote the claims of the owners hereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which the District shall be a party; and provided further, however, that any Bondowner or Bondowners may by mutual agreement transfer title to the Bonds held by him or them to the Bondowners Committee, or may by agreement with other Bondowners create or organize a separate trustee or Bondowners Committee and may confer upon the Bondowners Committee or such separate trustee or Bondowners Committee, such powers and duties as such agreement or agreements shall provide, and the provisions of this Master Declaration shall not be construed as a limitation on the powers and duties which consenting Bondowners may by agreement confer on the Bondowners Committee or such separate trustee or Bondowners Committee. The



Bondowners Committee shall have full power of substitution and delegation in respect to any of the powers hereby granted.

**11.12. Direction of Actions of Bondowners Committee.** The owners of not less than a majority in aggregate principal amount of the Bonds that are the subject of a Bondowners Committee at the time Outstanding, may direct the time, method and place of conducting any proceeding for any remedy available to the Bondowners Committee, or exercising any trust or power conferred upon the Bondowners Committee, provided that the Bondowners Committee shall be provided with reasonable security and indemnity and shall have the right to decline to follow any such direction only (i) if the Bondowners Committee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken; or (ii) if the Bondowners Committee in good faith shall determine that the action or proceeding so directed would involve the Bondowners Committee in personal liability or that the action or proceeding so directed would be unjustly prejudicial to the owners of Bonds not parties to such direction.

**11.13. Suits by Individual Bondowners.** No owner of any one or more of the Bonds shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of any provision of the Master Declaration or the execution of any trust under the Master Declaration or for any remedy under the Master Declaration, unless an Event of Default shall have happened and be continuing, and unless no Bondowners Committee has been created as herein provided, but unless no Bondowners Committee has been created as herein provided, but any remedy herein authorized to be exercised by the Bondowners Committee, except the right to take possession of the Gross Revenues and properties of the Sewer System, but including the right to the appointment of a receiver of the business and properties of the Sewer System, may be exercised individually by any Bondowner, in his own name and on his own behalf or for the benefit of all Bondowners, in the event no Bondowners Committee has been created, or with the consent of the Bondowners Committee, if such Bondowners Committee has been created; provided, however, that nothing contained in the Master Declaration or in the Bonds shall affect or impair the obligation of the District, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of, premium, if any, and interest on the Bonds to the respective owners thereof, or affect or impair the rights of action, which are also absolute and unconditional, of any owner to enforce the payment of this Bonds, or to reduce to judgment his claim against the District for the payment of the principal of and interest on his Bonds, without reference to, or the consent of, the Bondowners Committee or any other owner of Bonds.

**11.14. Waivers of Default.**

11.14.1. No delay or omission of the Bondowners Committee or of any owner of Bonds to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this Article to the Bondowners Committee or to the owners of Bonds may be exercised from time to time and as often as may be deemed expedient by the Bondowners Committee or by such owners.

11.14.2. The Bondowners Committee or the owners of not less than fifty percent (50%) in principal amount of the Bonds that are the subject of the Bondowners Committee and are at



the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the owners of all of the Bonds that are the subject of the Bondowners Committee waive any past default under the Master Declaration with respect to such Bonds and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**11.15. Remedies Granted in Master Declaration Not Exclusive.** No remedy by the terms of the Master Declaration conferred upon or reserved to the Bondowners Committee or the owners of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Master Declaration or existing at law or in equity or by statute on or after the date of adoption of the Master Declaration.

## **Section 12. Bondowners Meetings**

**12.1. Call of Bondowners Meetings.** The District, the Bondowners Committee or the owners of not less than twenty percent (20%) in aggregate principal amount of the Bonds then Outstanding may at any time call a meeting of the owners of the Bonds. Every such meeting shall be held at such place in the City of New York, State of New York, or in the City of Portland, State of Oregon, as may be specified in the notice calling such meeting. Written notice of such meeting, stating the place and time of the meeting and in general terms the business to be transacted, shall be mailed to the Bondowners by the District, the Bondowners Committee or the Bondowners calling such meeting not less than thirty (30) nor more than sixty (60) days before such meeting, and shall be published at least once a week for four (4) successive calendar weeks on any day of the week, the date of first publication to be not less than thirty (30) nor more than sixty (60) days preceding the meeting; provided, however, that the mailing of such notice shall in no case be a condition precedent to the validity of any action taken at any such meeting. The expenses of publication of such notice shall be paid or reimbursed by the District. The list of Bondholders' names & addresses maintained by the Registrar may only be released by the District. Any meeting of Bondowners shall, however, be valid without notice if the owners of all Bonds then Outstanding are present in person or by proxy or if notice is waived before or within thirty (30) days after the meeting by those not so present.

**12.2. Notice to Bondowners.** Except as otherwise provided in this Master Declaration, any provision in this Master Declaration for the mailing of a notice or other paper to Bondowners shall be fully complied with if it is mailed by first class mail, postage prepaid, to each registered owner of any of the Bonds then outstanding at his address, if any, appearing upon the Revenue Bond Register; and any provision in this Master Declaration contained for publication of a notice or other matter shall require the publication thereof in "*The Daily Bond Buyer*" in the City of New York, State of New York (or in lieu of publication in "*The Daily Bond Buyer*," in a daily newspaper printed in the English language and customarily published on each business day of general circulation in the Borough of Manhattan, the City of New York, State of New York), and also in a daily newspaper printed in the English language and customarily published on each business day and of general circulation in the City of Portland, State of Oregon.

### **12.3. Proxies; Proof of Ownership of Bonds.**

12.3.1. Attendance and voting by Bondowners at such meetings may be in person or by proxy. Owners of Bonds may, by an instrument in writing under their hands, appoint any person or persons, with full power and substitution, as their proxy to vote at any meeting for them. Officers or nominees of the District may be present or represented at such meeting and take part therein but shall not be entitled to vote thereat, except as such officers or nominees are Bondowners or proxies for Bondowners.

12.3.2. Any registered owner of Bonds shall be entitled in person or by proxy to attend and vote at such meeting as owner of the Bonds registered in his name without producing such Bonds, and such persons and their proxies shall, if required, produce such proof of personal identity as shall be satisfactory to the Secretary of the meeting. All proxies presented at such meeting shall be delivered to the Inspectors of Votes and filed with the Secretary of the meeting.

12.3.3. The vote at any such meeting of the owner of any Bond entitled to vote thereat shall be binding upon such owner and upon every such subsequent owner of such Bond (whether or not such subsequent owner has notice thereof).

### **12.4. Execution of Instruments by Bondowners.**

12.4.1. Any request, direction, consent or other instrument in writing required or permitted by this Master Declaration to be signed or executed by Bondowners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Bondowners in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument shall be sufficient for any purpose of this Master Declaration if made by either

12.4.1.1. an acknowledgment executed by a notary public or other officer empowered to take acknowledgments of deeds to be recorded in the particular jurisdiction, or

12.4.1.2. an affidavit of a witness to such execution sworn to before such a notary public or other officer.

12.4.2. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such acknowledgment or affidavit shall also constitute sufficient proof of his authority.

12.4.3. The foregoing shall not be construed as limiting the District to such proof, it being intended that the District may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the owner of any Bond shall bind every future owner of the same Bond in respect of anything done by the District in pursuance of such request, direction or consent.

12.4.4. The right of a proxy for a Bondowner to act may be proved (subject to the District's right to require additional proof) by a written proxy executed by such Bondowner as aforesaid.

**12.5. Appointment of Officers at Bondowners Meetings.** Persons named by the District or elected by the owners of a majority in principal amount of the Outstanding Bonds represented at the meeting in person or by proxy in the event the District is not represented at such meeting, shall act as temporary Chairman and temporary Secretary of any meeting of Bondowners. A permanent Chairman and a permanent Secretary of such meeting shall be elected by the owners of a majority in principal amount of the Bonds represented at such meeting in person or by proxy. The permanent chairman of the meeting shall appoint two (2) Inspectors of Votes who shall count all votes cast at such meeting, except votes on the election of Chairman and Secretary as aforesaid, and who shall make and file with the Secretary of the meeting and with the District their verified report of all such votes cast at the meeting.

**12.6. Quorum at Bondowners Meetings.** The owners of not less than the principal amount of the Bonds required for any action to be taken at such meeting must be present at such meeting in person or by proxy to constitute a quorum for the transaction of business, less than a quorum, however, having power to adjourn from time to time without any other notice than the announcement thereof at the meeting; provided, however, that, if such meeting is adjourned by less than a quorum for more than ten (10) days, notice thereof shall be published by the District at least five (5) days prior to the adjourned date of the meeting.

**12.7. Vote Required to Amend Master Declaration.** Any amendment to the provisions of the Master Declaration, in any particular except the percentage of Bondowners the approval of which is required to approve such amendment, may be made by a Supplemental Declaration of the District and an order duly adopted by the affirmative vote at a meeting of Bondowners duly convened and held, or with written consent as hereinafter provided in this Section 12.7, of the owners of not less than fifty-one percent (51%) in principal amount of the Bonds Outstanding when such meeting is held or such consent is given; provided, however, that no such amendment shall:

12.7.1. extend the date of payment of the principal of any Bond or of any installment of interest thereon or reduce the principal or redemption price thereof or the rate of interest thereon or advance the date upon which any Bond may first be called for redemption prior to its fixed maturity date;

12.7.2. give to any Bond or Bonds any preference over any other Bond or Bonds secured equally and ratably therewith;

12.7.3. reduce the aforesaid percentage of Bonds, the owners of which are required to consent to any such order amending the provisions of this Master Declaration; or

12.7.4. authorize the creation of any pledge superior to or, except as provided in Section 7. for the issuance of Parity Obligations, on a parity with the pledge of Net Revenues afforded by this Master Declaration for Bonds, without the consent of the owner of each such Bond affected thereby.

**12.8. Obtaining Approval of Amendments at Bondowners Meeting.** The District may at any time adopt an order amending the provisions of the Master Declaration to the extent that such amendment is permitted by the provisions of Section 13 hereof, to take effect when and as



provided in this Section 12. At any time thereafter such order may be submitted by the District for approval to a meeting of the Bondowners duly convened and held in accordance with the provisions of the Master Declaration. A record in duplicate of the proceedings of each meeting of the Bondowners shall be prepared by the permanent secretary of the meeting and shall have attached thereto the original reports of the inspectors of votes and affidavits by a person or persons having knowledge of the facts, showing a copy of the notice of the meeting and setting forth the facts with respect to the mailing and publication thereof under the provisions of the Master Declaration. Such a record shall be signed and verified by the affidavits of the permanent chairman and the permanent secretary of the meeting, and one duplicate thereof shall be delivered to the District. Any record so signed and verified shall be proof of the matters therein stated. If the order of the District making such amendment shall be approved by an order duly adopted at such meeting of Bondowners by the affirmative vote of the owners of the required percentages of Bonds, a notice stating that an order approving such amendment has been so adopted shall be mailed by the District to each Bondowner who has requested such notice (but failure so to mail copies of such notice shall not affect the validity of such order) and shall be published at least once in the manner provided for publication of notices of redemption of Bonds. Proof of such mailing and publication by the affidavit or affidavits of a person or persons having knowledge of the facts shall be filed with the District. Such order of the District making such amendment shall be deemed conclusively to be binding upon the District, the Paying Agent, and the Owners of all Bonds at the expiration of thirty (30) days after the publication of the notice provided for in this Section 12, except in the event of a final decree of court of competent jurisdiction setting aside such order or annulling the action taken thereby in a legal action or equitable proceeding for such purpose commenced within such period; provided that the District and any Paying Agent during such thirty (30) day period and any such further period during which such action or proceeding may be pending shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such order as they may deem expedient. Nothing in the Master Declaration contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Bondowners or of any right conferred hereunder to make such a call, any hindrance or delay in the exercise of any rights conferred upon or reserved to the Paying Agent or the Bondowners under any of the provisions of the Master Declaration.

### **Section 13. Amendment of Master Declaration**

**13.1. Amendment of Master Declaration Without Bondowner Consent.** Except during any period during which a Bondowners Committee has been duly constituted and is functioning pursuant to Section 11.5 of this Master Declaration, this Master Declaration may be amended by Supplemental Declaration without the consent of any Bondowners for any one or more of the following purposes:

- 13.1.1. To cure any ambiguity or formal defect or omission in this Master Declaration;
- 13.1.2. To add to the covenants and agreements of the District in this Master Declaration, other covenants and agreements to be observed by the District which are not contrary to or inconsistent with this Master Declaration as theretofore in effect;
- 13.1.3. To authorize issuance of Bonds or Subordinate Obligations;



13.1.4. To authorize Parity Derivative Products, and specify the rights and duties of the parties to a Parity Derivative Product;

13.1.5. To modify, amend or supplement this Master Declaration or any Supplemental Declaration to qualify this Master Declaration under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of any Bonds for sale under the securities laws of any of the states of the United States of America;

13.1.6. To confirm, as further assurance, any security interest or pledge created under this Master Declaration or any Supplemental Declaration;

13.1.7. To make any change which, in the reasonable judgment of the District, does not materially and adversely affect the rights of the owners of any Outstanding Bonds;

13.1.8. So long as a Credit Facility (other than a Reserve Credit Facility) is in full force and effect with respect to the Bonds affected by such Supplemental Declaration, to make any other change which is consented to in writing by the issuer of such Credit Facility other than any change which:

13.1.8.1. would result in a downgrading or withdrawal of the rating then assigned to the affected Bonds by the Rating Agencies; or

13.1.8.2. changes the maturity (except as permitted herein), the Interest Payment Dates, interest rates, redemption and purchase provisions, and provisions regarding notices of redemption and purchase applicable to the affected Bonds or diminishes the security afforded by such Credit Facility; or

13.1.8.3. materially and adversely affects the rights and security afforded to the Owners of any Outstanding Bonds not secured by such Credit Facility.

13.1.8.4. To modify any of the provisions of this Master Declaration or any Supplemental Declaration in any other respect whatever, as long as the modification shall take effect only after all affected Outstanding Bonds cease to be Outstanding.

**13.2. Amendment With Bondowner Consent.** Except during any period during which a Bondowners Committee has been duly constituted and is functioning pursuant to Section 11.5 of this Master Declaration, this Master Declaration may be amended for any other purpose only upon consent of Bondowners of not less than fifty-one percent 51% in aggregate principal amount of the Bonds outstanding; provided, however, that no amendment shall be valid without the consent of Bondowners of 100 percent of the aggregate principal amount of the Bonds outstanding which:

13.2.1. Extends the maturity of any Bond, reduces the rate of interest upon any Bond, extends the time of payment of interest on any Bond, reduces the amount of principal payable on any Bond, or reduces any premium payable on any Bond, without the consent of the affected Bondowner; or

13.2.2. Reduces the percent of Bondowners required to approve amendatory Master Declarations.

**13.3. Initial Purchaser As Owner.** For purposes of any consents of Owners required by this Master Declaration or any Supplemental Declaration, including but not limited to Section 13.2, but subject to Section 13.4, the initial purchaser of a series of Bonds may be treated as the Owner of that Series at the time that series of Bonds is delivered in exchange for payment.

**13.4. Issuer of Credit Facility As Owner.** Except as otherwise expressly provided in a Supplemental Declaration, as long as a Credit Facility (other than a Reserve Credit Facility) securing all or a portion of any Outstanding Bonds is in effect, the issuer of such Credit Facility shall be deemed to be the Bondowner of the Bonds secured by such Credit Facility:

13.4.1. at all times for the purpose of the execution and delivery of a Supplemental Declaration or of any amendment, change or modification of this Master Declaration or the initiation by Bondowners of any action which under this Master Declaration requires the written approval or consent of or can be initiated by the Bondowners of at least a majority in principal amount of the affected Bonds at the time Outstanding; and following an Event of Default for all other purposes.

13.4.2. Notwithstanding the foregoing, the issuer of such Credit Facility shall not be deemed to be a Bondowner secured thereby with respect to any such Supplemental Declaration or of any amendment, change or modification of this Master Declaration which:

13.4.2.1. would result in a downgrading or withdrawal of the rating then assigned to the affected Bonds by the Rating Agencies; or

13.4.2.2. changes the maturity (except as expressly permitted herein), the Interest Payment Dates, interest rates, redemption and purchase provisions, and provisions regarding notices of redemption and purchase applicable to the affected Bonds or diminishes the security afforded by such Credit Facility; or

13.4.2.3. reduces the percentage or otherwise affects the classes of affected Bonds, the consent of the Bondowners of which is required to effect any such modification or amendment.

13.4.3. In addition and notwithstanding the foregoing, no issuer of a Credit Facility given as security for any Bonds shall be entitled to exercise any rights under this Section during any period where:

13.4.3.1. the Credit Agreement or Credit Facility to which such Credit Provider is a party shall not be in full force and effect;

13.4.3.2. such Credit Provider shall have filed a petition or otherwise sought relief under any federal or state bankruptcy or similar law;

13.4.3.3. such Credit Provider shall, for any reason, have failed or refused to honor a proper demand for payment under such Credit Facility; or

13.4.3.4. an order or decree shall have been entered, with the consent or acquiescence of such Credit Provider, appointing a receiver or receivers or the assets of the Credit Provider, or if such order or decree having been entered without the consent or acquiescence of such Credit Provider, shall not have been vacated or discharged or stayed within ninety (90) days after the entry thereof.

13.4.4. For purposes of determining the percentage of Bondowners consenting to, waiving or otherwise acting with respect to any matter that may arise under this Master Declaration, the Owners of Bonds which pay interest only at maturity, and mature more than one year after they are issued shall be treated as Owners of Bonds in an aggregate principal amount equal to the accreted value of such Bonds as of the date the Registrar sends out notice of requesting consent, waiver or other action as provided herein.

**13.5. Transition Provision for Amended Master Declaration.** The District shall calculate compliance with the financial covenants in this Master Declaration for Fiscal Year 2017-2018 by using the combined financial statements of the WES partners. The combined financial statements of WES will consist of two separately issued financial statements, one financial statement that will include the operations of TCSD and SWMACC and one for CCSD 1.

#### **Section 14. Defeasance**

The District may defease and deem all or any portion of the Outstanding Bonds to be paid by:

**14.1. Irrevocable Deposit of Direct Obligations.** Irrevocably depositing cash or noncallable, nonprepayable Direct Obligations in escrow with an independent escrow agent which are calculated to be sufficient, without reinvestment, for the payment of Bonds which are to be defeased; and,

**14.2. Opinion of Qualified Consultant.** Filing with the escrow agent an opinion from a Qualified Consultant to the effect that the money and the principal and interest to be received from the Direct Obligations are calculated to be sufficient, without further reinvestment, to pay the defeased Bonds when due; and,

**14.3. Opinion of Bond Counsel.** Filing with the escrow agent an opinion of nationally recognized bond counsel that the proposed defeasance will not cause interest on the defeased Bonds to be includable in gross income under the Code.

If Bonds are defeased under this Section, all obligations of the District with respect to those defeased Bonds shall cease and terminate, except for the obligation of the District, the escrow agent and the Registrar to pay the defeased Bonds from the amounts deposited in escrow, and the obligation of the Registrar to continue to transfer bonds as provided in this Master Declaration.

#### **Section 15. BEO System**

**15.1.** Unless otherwise provided by a Supplemental Declaration, all Bonds shall be subject to the BEO System pursuant to the provisions of this Section 15.



**15.2.** The Bonds shall be initially issued as a BEO security issue with no Bonds being made available to the Owners upon the execution and delivery of the letter of representations among the Paying Agent, DTC and the District. Ownership of the Bonds shall be recorded through entries on the books of banks and broker-dealer participants and correspondents that are related to entries on the DTC BEO system. The Bonds shall be initially issued in the form of separate single fully registered typewritten Bonds for each maturity of the Bonds (the “Global Bonds”) in substantially the form attached hereto as Exhibit A with such changes as the District Official may approve. Each Global Bond shall be registered in the name of CEDE & CO. as nominee (the “Nominee”) of DTC (DTC and any other qualified securities depository designated by the District as a successor to DTC, collectively the “Depository”) as the “Registered Owner”, and such Global Bonds shall be lodged with the Depository until early redemption or maturity of the Bond issue. The Paying Agent shall remit payment for the maturing principal and interest on the Bonds to the Owner for distribution by the Nominee for the benefit of the owners (the “Beneficial Owner” or “Record Owner”) by recorded entry on the books of the Depository participants and correspondents. While the Bonds are in BEO form, the Bonds will be available in denominations of \$5,000 or any integral multiple thereof within a maturity.

**15.3.** In the event the Depository determines not to continue to act as securities depository for the Bonds, or the District determines that the Depository shall no longer so act, then the District will discontinue the BEO system with the Depository. If the District fails to designate another qualified securities depository to replace the Depository or elects to discontinue use of a BEO system, the Bonds shall no longer be a BEO issue but shall be registered in the registration books maintained by the Paying Agent in the name of the Owner as appearing on the Bond register and thereafter in the name or names of the Owners of the Bonds transferring or exchanging Bonds.

**15.4.** While the Bonds are in BEO form, the District and the Paying Agent shall have no responsibility or obligation to any participant or correspondent of the Depository or to any Registered Owner on behalf of which such participants or correspondents act as agent for the Owner with respect to:

15.4.1. The accuracy of the records of the Depository, the Nominee or any participant or correspondent with respect to any ownership interest in the Bonds;

15.4.2. The delivery to any participant or correspondent or any other person, other than an Owner as shown in the registration books maintained by the Paying Agent, of any notice with respect to the Bonds, including any notice of prepayment;

15.4.3. The selection by the Depository of the beneficial interest in Bonds to be redeemed prior to maturity; or

15.4.4. The payment to any participant, correspondent, or any other person other than the owner of the Bonds as shown in the registration books maintained by the Paying Agent, of any amount with respect to principal of or interest on the Bonds.

**15.5.** Notwithstanding the BEO system, the District may treat and consider the Owner in whose name each Bond is registered in the registration books maintained by the Paying Agent as the Owner and absolute owner of such Bond for the purpose of payment of principal and interest



with respect to such Bond, or for the purpose of giving notices of redemption and other matters with respect to such Bond, or for the purpose of registering transfers with respect to such Bond, or for all other purposes whatsoever. The District shall pay or cause to be paid all principal and interest on the Bonds only to or upon the order of the Registered Owner, as shown in the registration books maintained by the Paying Agent, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the District's obligation with respect to payment thereof to the extent of the sum or sums so paid.

**15.6.** Upon delivery by the Depository to the District and to the Owner of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, then the word "Nominee" in this Master Declaration shall refer to such new nominee of the Depository, and upon receipt of such notice, the District shall promptly deliver a copy thereof to the Paying Agent. The Depository shall tender the Bonds it holds to the Paying Agent for re-registration.

### **Section 16. Redemption of Bonds**

**16.1.** Unless otherwise provided by a Supplemental Declaration, all Bonds shall be subject to the redemption terms of this Section 16.

**16.2.** The District reserves the right to purchase Bonds in the open market.

**16.3.** If Bonds are subject to mandatory redemption the Paying Agent shall, without further action by the District, select the particular Bonds to be redeemed in accordance with the mandatory redemption schedule, by lot within each maturity, call the selected Bonds, and give notice of their redemption in accordance with this Section 16.

**16.4.** If certain maturities of Bonds are subject to both optional and mandatory redemption, the District may elect to apply any of those Bonds which it has previously optionally redeemed. In addition, if the District purchases Bonds which are subject to mandatory redemption, the District may elect to apply against the mandatory redemption requirement any such Bonds which it has previously purchased. If the District makes such an election, it shall notify the Paying Agent not less than sixty days prior to the mandatory redemption date to which the election applies.

**16.5.** So long as the BEO System remains in effect with respect to the Bonds, and unless DTC consents to a shorter period, the Paying Agent shall provide not less than 20 days nor more than 60 days' notice of redemption, and shall provide such information in connection therewith as required by the letter of representations submitted to DTC in connection with the issuance of the Bonds.

**16.6.** During any period in which the BEO System is not in effect with respect to the Bonds, unless waived by any Owner of the Bonds to be redeemed, official notice of any redemption of Bonds shall be given by the Paying Agent on behalf of the District by mailing a copy of an official redemption notice by first class mail postage prepaid at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of the Bonds to be redeemed, at the address shown on the Revenue Bond Register or at such other address as is furnished in writing by such owner to the Paying Agent. All such official notices of redemption shall be dated and shall state:

16.6.1. The redemption date;

16.6.2. The redemption price;

16.6.3. If less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;

16.6.4. That on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; and

16.6.5. The place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Paying Agent.

**16.7.** The District shall deposit with the Paying Agent, on or before the redemption date, an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

**16.8.** Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the District shall default in the payment of the redemption price or unless the notice was conditional as described in Section 16.9) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the Redemption Price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Paying Agent and shall not be reissued. Notwithstanding that any Bonds called for redemption shall not have been surrendered, no further interest shall accrue on any such Bonds. From and after such notice having been given and such deposit having been made, the Bonds to be redeemed shall not be deemed to be Outstanding hereunder, and the District shall be under no further liability in respect thereof.

**16.9.** Any notice of optional redemption given for the Bonds pursuant to this Section 16 may state that the optional redemption is conditional upon receipt by the Paying Agent of moneys sufficient to pay the redemption price of such Bonds or upon the satisfaction of any other condition, and/or that such notice may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission or of the failure of any such condition shall be given by the Paying Agent to affected owners of the Bonds as promptly as practicable.

### **Section 17. Authentication, Registration and Transfer**

**17.1.** The provisions of this Section 17 apply only if the Bonds cease to be a BEO issue, and unless otherwise specified in a Supplemental Declaration.

17.2. No Bond shall be entitled to any right or benefit under this Master Declaration unless it shall have been authenticated by an authorized officer of the Paying Agent. The Paying Agent shall authenticate all Bonds to be delivered at Closing, and shall additionally authenticate all Bonds properly surrendered for exchange or transfer pursuant to this Master Declaration.

17.3. All Bonds shall be in registered form. U.S. Bank National Association is hereby appointed to serve as Paying Agent for the Bonds. A successor Paying Agent may be appointed for the Bonds by ordinance or resolution of the District. The Paying Agent shall provide notice to Owners of any change in the Paying Agent not later than the Bond payment date following the change in Paying Agent.

17.4. The ownership of all Bonds shall be entered in the Bond register maintained by the Paying Agent and the District and Paying Agent may treat the person listed as owner in the Bond register as the owner of the Bond for all purposes.

17.5. The Paying Agent shall mail each interest payment on the Interest Payment Date (or the next Business Day if the Interest Payment Date is not a Business Day) to the name and address of the Owner, as that name and address appear on the Bond register as of the Record Date. If payment is so mailed, neither the District nor the Paying Agent shall have any further liability to any party for such payment.

17.6. Bonds may be exchanged for an equal principal amount of Bonds of the same Series and maturity which are in different authorized denominations, and Bonds may be transferred to other owners if the Owner submits the following to the Paying Agent:

17.6.1. Written instructions for exchange or transfer satisfactory to the Paying Agent, signed by the Owner or his attorney in fact and guaranteed or witnessed in a manner satisfactory to the Paying Agent; and

17.6.2. The Bonds to be exchanged or transferred.

17.7. The Paying Agent shall not be required to exchange or transfer any Bonds submitted to it during any period beginning with a Record Date and ending on the next following payment date; however, such Bonds shall be exchanged or transferred promptly following the payment date.

17.8. The Paying Agent shall not be required to exchange or transfer any Bonds which have been designated for redemption if such Bonds are submitted to it during the fifteen-day period preceding the designated redemption date.

17.9. For purposes of this Section, Bonds shall be considered submitted to the Paying Agent on the date the Paying Agent actually receives the materials described in Section 17.6.

17.10. The District may alter these provisions regarding registration and transfer by mailing notification of the altered provisions to all Owners. The altered provisions shall take effect on the date stated in the notice, which shall not be earlier than 45 days after notice is mailed.

### **Section 18. The Series 2016 Bonds**

18.1. Pursuant to the authority of District Order No. 2016-71 adopted July 7, 2016 and this Master Declaration, the District has issued its Sewer Revenue Refunding Bonds, Series 2016, in

the aggregate principal amount of \$83,250,000. The Series 2016 Bonds shall be Bonds as defined in this Master Declaration. The Series 2016 Bonds shall bear interest payable on June 1 and December 1 of each year at the following rates, commencing December 1, 2016, and shall mature in the following years in the following principal amounts:

<b>Due December 1</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>CUSIP Base (179282)</b>
2016	1,015,000	2.000	FE3
2017	280,000	2.000	FF0
2018	285,000	2.000	FG8
2019	1,495,000	5.000	FH6
2020	3,095,000	5.000	FJ2
2021	4,125,000	5.000	FK9
2022	4,345,000	5.000	FL7
2023	4,705,000	5.000	FM5
2024	4,945,000	5.000	FN3
2025	5,200,000	5.000	FP8
2026	5,470,000	5.000	FQ6
2027	5,720,000	4.000	FR4
2028	5,925,000	3.000	FS2
2029	6,075,000	2.000	FT0
2030	6,200,000	2.125	FU7
2031	6,335,000	2.375	FV5
2032	6,270,000	3.000	FW3
2033	6,245,000	2.500	FX1
2035	5,520,000*	2.625	FY9

\* Subject to mandatory sinking fund redemption as described in the next subsection.

**18.2.** The Series 2016 Bonds maturing on December 1, 2035, are subject to mandatory sinking fund redemption at a price of 100 percent of the principal amount of the Series 2016 Bonds to be redeemed plus accrued interest to the date of redemption on December 1 in years and amounts as follows:

<b>Date December 1</b>	<b>Mandatory Sinking Fund Redemption</b>
2034	4,080,000
2035	1,440,000

\* Final maturity.

A Series 2016 Term Bond subject to optional redemption and redeemed in part will have the principal amount within the respective mandatory redemption dates selected by the District.

**18.3.** The Series 2016 Bonds maturing on or after December 1, 2027 may be redeemed at the option of the District on or after December 1, 2026, at par plus accrued interest to the date of redemption.



**18.4.** The Series 2016 Bonds shall be special obligations of the District, and shall be payable solely from the Net Revenues and amounts required to be deposited in the Revenue Bond Account and Revenue Bond Reserve Account as required and as provided by this Master Declaration. The Series 2016 Bonds are not general obligations of the District and are payable solely from the amounts described in the previous sentence.

**18.5.** The Series 2016 Bonds shall be in substantially the form attached as Appendix A to the 2016 Declaration and shall be signed with the facsimile or manual signature of a District Official.

18.5.1. The Series 2016 Bond proceeds received by the District were applied as follows:

18.5.1.1. \$241,747.84 to the First Reserve Subaccount or to acquire a Reserve Credit Facility for the First Reserve Subaccount to meet the First Reserve Subaccount Reserve Requirement;

18.5.1.2. \$92,253,999.50 to refund portions of borrowings issued under the District's Master Sewer Revenue Bond Order dated September 15, 1994 and Clean Water State Revolving Fund Loan Agreement No. 22403; and

18.5.1.3. The balance of the proceeds to pay costs incurred in connection with the issuance of the Series 2016 Bonds.

### **Section 19. Tax-Exempt Status of Series 2016 Bonds**

**19.1. General Covenant.** The District covenants for the benefit of the Owners of the Series 2016 Bonds to comply with all provisions of the Code which are required for interest on the Series 2016 Bonds to be excluded from gross income for federal taxation purposes. In determining what actions are required to comply, the District may rely on an opinion of Bond Counsel. The District makes the following specific covenants with respect to the Code:

19.1.1. The District will not take any action or omit any action if it would cause the Series 2016 Bonds to become "arbitrage Bonds" under Section 148 of the Code.

19.1.2. The District shall operate the facilities financed with the Series 2016 Bonds so that the Series 2016 Bonds do not become private activity Bonds within the meaning of Section 141 of the Code.

19.1.3. The District shall pay, when due, all rebates and penalties with respect to the Series 2016 Bonds which are required by Section 148(f) of the Code.

**19.2. Covenants as Contracts.** The covenants contained in Section 19 and any covenants in the closing documents for the Series 2016 Bonds shall constitute contracts with the owners of the Series 2016 Bonds, and shall be enforceable by them.

### **Section 20. Provisions Related to 2016 Bonds Reserve Credit Facility**

**20.1. Definitions.**

20.1.1. “2016 Bonds Reserve Credit Facility” means: Municipal Bond Debt Service Reserve Insurance Policy No. 217755-S.

20.1.2. “2016 Bonds Reserve Credit Provider” means: Assured Guaranty Municipal Corp.

20.1.3. “Authorizing Documents” means this Master Declaration.

20.1.4. “First Reserve Bonds” means 2016 Bonds and other Bonds secured by the First Reserve Subaccount.

## **20.1. Provisions.**

20.1.1. As described below, the District shall repay any amounts owed to the 2016 Bonds Reserve Credit Facility solely from Net Revenues that are available for such purpose pursuant to Section 4.1.3 of this Master Declaration. The 2016 Bonds Reserve Credit Facility is a Reserve Credit Facility under this Master Declaration.

20.1.2. The 2016 Bonds Reserve Credit Provider shall be entitled to exercise the rights in this Master Declaration only while the 2016 Bonds Reserve Credit Facility is in effect and the 2016 Bonds Reserve Credit Provider is not in default under the 2016 Bonds Reserve Credit Facility. If the 2016 Bonds Reserve Credit Facility is not in effect or 2016 Bonds Reserve Credit Provider is in default under the 2016 Bonds Reserve Credit Facility, the 2016 Bonds Reserve Credit Provider shall have no rights to notice or consent, among the others rights, outlined in this Master Declaration. The rights granted to the 2016 Bonds Reserve Credit Provider in this Section 20 shall not extend to any other Owner.

20.1.2.1. Upon any payment by the 2016 Bonds Reserve Credit Provider under the 2016 Bonds Reserve Credit Facility, the 2016 Bonds Reserve Credit Provider shall furnish to the District written instructions as to the manner in which payment of amounts owed to the 2016 Bonds Reserve Credit Provider as a result of such payment under the 2016 Bonds Reserve Credit Facility shall be made. Amounts drawn under the 2016 Bonds Reserve Credit Facility shall be used solely to pay scheduled payments of principal and interest due on the First Reserve Bonds.

20.1.2.2. The District shall pay the 2016 Bonds Reserve Credit Provider, but solely from Net Revenues as permitted by this Master Declaration, the principal amount of any draws under the 2016 Bonds Reserve Credit Facility and pay all related reasonable expenses incurred by the 2016 Bonds Reserve Credit Provider and shall pay interest thereon from the date of payment by the 2016 Bonds Reserve Credit Provider at the Late Payment Rate. “Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the First Reserve Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate, the Prime Rate shall be the

prime or base lending rate of such national bank as the 2016 Bonds Reserve Credit Provider shall designate. If the interest provisions of this Section 20.1.2.2 shall result in an effective rate of interest which, for any period, exceeds the limit of the usury or any other laws applicable to the indebtedness created herein, then all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied as additional interest for any later periods of time when amounts are outstanding hereunder to the extent that interest otherwise due hereunder for such periods plus such additional interest would not exceed the limit of the usury or such other laws, and any excess shall be applied upon principal immediately upon receipt of such moneys by the 2016 Bonds Reserve Credit Provider, with the same force and effect as if the District had specifically designated such extra sums to be so applied and the 2016 Bonds Reserve Credit Provider had agreed to accept such extra payment(s) as additional interest for such later periods. In no event shall any agreed-to or actual exaction as consideration for payment obligation created herein exceed the limits imposed or provided by the law applicable to this transaction for the use or detention of money or for forbearance in seeking its collection.

20.1.2.3. Repayment of draws and payment of expenses and the interest accrued thereon at the Late Payment Rate (collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12th of the aggregate of Policy Costs related to such draw. Amounts in respect of Policy Costs paid to the 2016 Bonds Reserve Credit Provider shall be credited first to interest due, then to the expenses due and then to principal due.

20.1.2.4. As and to the extent that payments are made to the 2016 Bonds Reserve Credit Provider on account of principal due, the coverage under the 2016 Bonds Reserve Credit Facility will be increased by a like amount, subject to the terms of the 2016 Bonds Reserve Credit Facility.

20.1.2.5. All cash and investments in the First Reserve Subaccount of the Revenue Bond Reserve Account shall be transferred to the Revenue Bond Account for payment of debt service on the First Reserve Bonds before any drawing may be made on the 2016 Bonds Reserve Credit Facility or on any alternative credit instrument. Payment of any Policy Costs shall be made prior to replenishment of any such cash amounts. Draws on all alternative credit instruments (including the 2016 Bonds Reserve Credit Facility) on which there is available coverage shall be made on a pro rata basis (calculated by reference to available coverage under each such alternative credit instrument) after applying available cash and investments in the First Reserve Subaccount of the Revenue Bond Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to alternative credit instruments shall be made on a pro-rata basis prior to replenishment of any cash drawn from the First Reserve Subaccount of the Revenue Bond Reserve Account. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms of the applicable alternative credit instrument without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.



20.1.2.6. Upon a failure to pay Policy Costs when due or any other breach of the terms of this Section 20, the 2016 Bonds Reserve Credit Provider shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under the Master Declaration, other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect owners of the Bonds.

20.1.2.7. The Master Declaration shall not be discharged until all Policy Costs owing to the 2016 Bonds Reserve Credit Provider shall have been paid in full. The District's obligation to pay such amounts shall expressly survive payment in full of the First Reserve Bonds.

20.1.2.8. Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Master Declaration.

20.1.2.9. The Paying Agent shall ascertain the necessity for a claim upon the 2016 Bonds Reserve Credit Facility in accordance with the provisions of Section 5 hereof and shall provide notice to the 2016 Bonds Reserve Credit Provider in accordance with the terms of the 2016 Bonds Reserve Credit Facility at least three business days prior to each date upon which interest or principal is due on the First Reserve Bonds.

20.1.2.10. The District will pay or reimburse the 2016 Bonds Reserve Credit Provider any and all reasonable charges, fees, costs, losses, liabilities and expenses which the 2016 Bonds Reserve Credit Provider may pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the 2016 Bonds Reserve Credit Facility, (ii) the administration, enforcement, defense or preservation of any rights in respect of the Authorizing Documents, including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the District) relating to the Authorizing Documents, any party to the Authorizing Document or the transactions contemplated by the Authorizing Documents, (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under the Authorizing Document, if any, or the pursuit of any remedies under the Authorizing Documents, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, (iv) any amendment, waiver or other action with respect to, or related to the Authorizing Documents, the 2016 Bonds Reserve Credit Facility or any other Related Document whether or not executed or completed, or (v) any action taken by the 2016 Bonds Reserve Credit Provider to cure a default or termination or similar event (or to mitigate the effect thereof) under the Authorizing Documents; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the 2016 Bonds Reserve Credit Provider spent in connection with the actions described in clauses (ii)-(v) above. The 2016 Bonds Reserve Credit Provider reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Authorizing Documents. Amounts payable by the District hereunder shall bear interest at the Late Payment Rate from the date such amount is paid or incurred by the 2016 Bonds



Reserve Credit Provider until the date the 2016 Bonds Reserve Credit Provider is paid in full.

20.1.2.11. The obligation of the District to pay all amounts due under this Section 20 shall be a special limited obligation of the District payable solely from Net Revenues that are available for such purpose pursuant to Section 4.1.3 of this Master Declaration, but otherwise shall be an absolute and unconditional obligation of the District, irrespective of (i) any lack of validity or enforceability of or any amendment or other modifications of, or waiver with respect to the First Reserve Bonds, or Authorizing Documents, or (ii) any amendment or other modification of, or waiver with respect to the 2016 Bonds Reserve Credit Facility; (iii) any exchange, release or non-perfection of any security interest in property securing the First Reserve Bonds, or Authorizing Documents; (iv) whether or not such First Reserve Bonds are contingent or matured, disputed or undisputed, liquidated or unliquidated; (v) any amendment, modification or waiver of or any consent to departure from the 2016 Bonds Reserve Credit Facility, or Authorizing Documents; (vi) the existence of any claim, setoff, defense (other than the defense of payment in full), reduction, abatement or other right which the District may have at any time against the Paying Agent or any other person or entity other than the 2016 Bonds Reserve Credit Provider, whether in connection with the transactions contemplated herein, or in the Authorizing Documents or any unrelated transactions; (vii) any statement or any other document presented under or in connection with the 2016 Bonds Reserve Credit Facility proving in any and all respects invalid, inaccurate, insufficient, fraudulent or forged or any statement therein being untrue or inaccurate in any respect; or (viii) any payment by the 2016 Bonds Reserve Credit Provider under the 2016 Bonds Reserve Credit Facility against presentation of a certificate or other document which does not strictly comply with the terms of the 2016 Bonds Reserve Credit Facility.

20.1.2.12. The prior written consent of the 2016 Bonds Reserve Credit Provider shall be a condition precedent to the deposit of any credit facility credited to the First Reserve Subaccount of the Revenue Bond Reserve Account in lieu of a cash deposit into the First Reserve Subaccount of the Revenue Bond Reserve Account.

20.1.2.13. No provision of the Authorizing Documents shall be amended, supplemented, modified or waived, without the prior written consent of the 2016 Bonds Reserve Credit Provider, in a manner that could adversely materially affect the payment obligations of the District under this Section 20 or the priority accorded to the reimbursement of Policy Costs under the Authorizing Documents. The 2016 Bonds Reserve Credit Provider is hereby expressly made a third party beneficiary of the Authorizing Documents.

20.1.2.14. The District covenants to provide to the 2016 Bonds Reserve Credit Provider, promptly upon request, any information regarding the First Reserve Bonds or the financial condition and operations of the District as reasonably requested by the 2016 Bonds Reserve Credit Provider. The District will permit the 2016 Bonds Reserve Credit Provider to discuss the affairs, finances and accounts of the District or any information the 2016 Bonds Reserve Credit Provider may reasonably request regarding the security for the First Reserve Bonds with appropriate officers of the District and will use commercially reasonable efforts to enable the 2016 Bonds Reserve Credit Provider to

have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.

20.1.2.15. Notices to the 2016 Bonds Reserve Credit Provider shall be sent to the following address (or such other address as the 2016 Bonds Reserve Credit Provider may designate in writing): Assured Guaranty Municipal Corp., 31 West 52<sup>nd</sup> Street, New York, New York 10019, Attention: Managing Director– Surveillance, Re: Policy No. 217755-S.

EXECUTED ON BEHALF OF THE DISTRICT BY AN AUTHORIZED DISTRICT OFFICIAL AS OF THE \_\_ DAY OF \_\_\_\_\_, 2018.

WES HEREBY ACCEPTS ITS SUBSTITUTION FOR CCSD#1 UNDER THIS AMENDED MASTER DECLARATION, AND ACCEPTS ALL RIGHTS AND OBLIGATIONS OF THE “DISTRICT” UNDER THIS AMENDED MASTER DECLARATION AND RELATED DOCUMENTS.

**WATER ENVIRONMENT SERVICES**

By: \_\_\_\_\_  
Greg Geist, District Director

Acknowledged:

**U.S. BANK, NATIONAL ASSOCIATION**, as Paying Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Board of County Commissioners as the Governing Body of  
Water Environment Services

Adoption of an Order Effectuating Certain WES Partnership Agreement Provisions

<b>Purpose/Outcomes</b>	Adoption of an Order that effectuates provisions relating to ensuring only Rate Zone Two (CCSD#1) ratepayers pay for current debt previously issued by CCSD#1
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Continues until repayment of previously issued debt
<b>Previous Board Action</b>	Discussed at April 10, 2018 Policy Session
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers.</li> <li>2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.</li> </ol>
<b>Contact Person</b>	Chris Storey, WES Assistant Director
<b>Contract No.</b>	N/A

**BACKGROUND:**

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the “Agreement”) creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the “Partners”). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC are attached for reference.

As of July 1, 2017, both SWMACC and TCSD’s budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period allows time to implement a complex process of integrating and moving the operations and functionalities

of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

The proposed attached board order provides the mechanism to ensure that only Rate Zone Two (CCSD#1) ratepayers pay for the CCSD#1 Legacy Debt. It provides that this will be measured through tested ratemaking, whereby each year WES staff will analyze the revenues generated from Rate Zone Two and ensure that they are sufficient to meet the principal and interest payment obligations relating to the CCSD#1 Legacy Debt. If they are not, then in the following fiscal year the rates for Rate Zone Two will be increased to both be sufficient for current obligations and to repay any earlier deficiency.

**RECOMMENDATION:**

Staff recommends that the BCC, as the governing body of Water Environment Services, adopt the proposed board order effectuating those certain provisions of the WES Partnership Agreement.

Respectfully submitted,



Chris Storey  
WES Assistant Director



WHEREAS, on November 3, 2016, an intergovernmental Partnership Agreement as amended (the "Partnership Agreement") was entered into by Clackamas County Service District No. 1 ("CCSD#1") and the Tri-City Service District ("TCSD"), creating a new municipal entity known as Water Environment Services ("WES"), to which the Surface Water Management Agency of Clackamas County ("SWMACC" and, together with CCSD#1 and TCSD, the "Partners") joined as a partner in May 2017 and which was amended on May 24, 2018 with an effective date of June 30, 2018.

WHEREAS, the Partners to the Partnership Agreement agreed pursuant to Section 3.07 thereof that the CCSD#1 Bonds (defined below) would be charged only to Rate Zone Two customers, which encompasses the boundaries of CCSD#1 and includes revenues from current or prior contract customers of CCSD#1. This recognition of prior indebtedness at the time of joining the Partnership, and the commitment to charge the costs of the same to Rate Zone Two customers only, is the "Prior Bond Commitment"; and

WHEREAS, Section 1.11 (a) of the Partnership Agreement defines CCSD#1 Bonds as all outstanding borrowings of CCSD#1 as of November 6, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, and any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same; and

WHEREAS, Section 3.07 of the Partnership Agreement calls for this Board to adopt an Order to establish the manner in which WES ensures compliance with the Prior Bond Commitment; and

WHEREAS, the combination of sanitary sewer monthly service charge revenues ("Total Retail Monthly Service Charges) and operating payments from Cities ("Total Wholesale Monthly Service Charges") of CCSD#1 (i.e. Rate Zone Two) has always substantially exceeded the required operating expenses of CCSD#1 and annual debt service on the CCSD#1 Bonds, and WES expects this practice will continue;

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Tested Ratemaking. Compliance with the Prior Bond Commitment will be determined through tested ratemaking. The Partners desire that WES account for its operations as a single entity to gain the efficiencies of a more regionalized and simplified structure. Therefore compliance with the Prior Bond Commitment shall be determined solely based on the rates that WES imposes, and shall not be based on a separate financial statement, accounting, or audit of CCSD#1.

2. Flexible Means. From time to time, is it expected that budget and rate making conventions will change as technology and the WES organizational structure evolves. WES management will adjust for these changes, at the discretion of WES management, to assure Rate Zone 2 customers are in compliance with the Prior Bond Commitment.
3. Rate Zone Two Prior Bond Commitment Fee. To comply with the Prior Bond Commitment in a fiscal year, WES shall impose charges only in Rate Zone Two to pay the principal and interest expense on the CCSD#1 Bonds due and payable in that fiscal year. This amount shall be described as the "Rate Zone 2 Prior Bond Commitment Fee."
4. Fee Evaluation. Within 150 days of the end of a fiscal year, WES management will compare actual cash collections generated from the Rate Zone 2 Prior Bond Commitment Fee to the required principal and interest payments due on the CCSD#1 Bonds for that fiscal year.
5. Evaluation Response. If the cash collections generated from the Rate Zone 2 Prior Bond Commitment Fee in a fiscal year is less than the principal and interest required to be paid on the CCSD#1 Bonds in that fiscal year, then in the first Fiscal Year following such discovery, WES shall make corrective rate adjustments for ratepayers in Rate Zone Two such that collections are estimated to be sufficient to cover that year's principal and interest due on the CCSD#1 Bonds plus the amount necessary to reimburse any earlier deficiency.

ADOPTED this 24<sup>th</sup> day of May, 2018.

BOARD OF COUNTY COMMISSIONERS  
as the governing body of Water Environment Services

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Chair

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Recording Secretary



Board of County Commissioners as the Governing Body of  
Water Environment Services

Adoption of an Order Accepting Substitution for CCSD#1 With Respect to Certain Borrowings

<b>Purpose/Outcomes</b>	Adoption of an Order that accepts obligations of CCSD#1 under the Amended Master Sewer Revenue Bond Declaration and existing loan documents
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Continues until repayment of previously issued debt
<b>Previous Board Action</b>	Discussed at April 10, 2018 Policy Session
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers.</li> <li>2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.</li> </ol>
<b>Contact Person</b>	Chris Storey, WES Assistant Director
<b>Contract No.</b>	N/A

**BACKGROUND:**

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the “Agreement”) creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the “Partners”). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC are attached for reference.

As of July 1, 2017, both SWMACC and TCSD’s budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period allows time to implement a complex process of integrating and moving the operations and functionalities

of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

The proposed attached board order is WES agreeing to the substitution for CCSD#1 under the Amended Master Sewer Revenue Bond Declaration. This will have WES "step into the shoes" of CCSD#1 for the current debt – with only rate zone two making payment with respect to such debt. Having WES enter the municipal debt market in this fashion will allow rate zone one (TCSD) and rate zone three (SWMACC) customers access to debt financing on far more favorable terms than if they attempted to do so individually. It also allows for substitution of WES for CCSD#1 with respect to its single outstanding Clean Water Fund loan through the Oregon Department of Environmental Quality.

**RECOMMENDATION:**

Staff recommends that the BCC, as the governing body of Water Environment Services, adopt the proposed board order accepting substitution for CCSD#1 under the Amended Master Sewer Revenue Bond Declaration and existing loan documents.

Respectfully submitted,

  
Chris Storey  
WES Assistant Director



In the Matter of an Order of the  
WES Partnership Accepting the  
Obligations of CCSD#1 under the  
Amended Master Sewer Revenue  
Bond Declaration And Existing Loan

Order No. \_\_\_\_\_

WHEREAS, Clackamas County Service District No. 1 (“CCSD#1”), Tri-City Service District, and the Surface Water Management Agency of Clackamas County entered into an Intergovernmental Partnership Agreement pursuant to ORS Chapter 190 forming an intergovernmental entity known as Water Environment Services, a municipal partnership (“WES Partnership”); and,

WHEREAS, on May 24, 2018, the Board of County Commissioners of Clackamas County, acting as the governing body of CCSD#1, adopted the Amended Master Sewer Revenue Bond Declaration (the “Amended Declaration”); and,

WHEREAS, the Amended Declaration substitutes the WES Partnership for CCSD#1 under the Amended Declaration, and transfers all rights and obligations of CCSD#1 under the Amended Declaration from CCSD#1 to the WES Partnership; and,

WHEREAS, The Board of CCSD#1 expects that substituting the WES Partnership for CCSD#1 as issuer of the Outstanding Bonds will improve the financial performance and operating efficiency, reduce the capital needs, and improve the regulatory management of the issuer, as described in detail in the Order adopted by the Board of CCSD#1; and,

WHEREAS, the acceptance of the WES Partnership of the substitution is consistent with the requirements of the partnership agreement’s requirements that the WES Partnership become the operating entity on behalf of all the partners, including CCSD#1, and will improve the WES Partnership’s ability to borrow funds and efficiently conduct business; and,

WHEREAS, it is desirable to memorialize the acceptance by the WES Partnership of its substitution for CCSD#1 under the Amended Declaration, and the acceptance by the WES Partnership of all of CCSD#1’s rights and obligations under the Amended Declaration; and,

WHEREAS, CCSD#1 also has an outstanding loan with the State of Oregon, CWSRF Loan No. R06224 (the “Loan”); and,

WHEREAS, it is desirable to memorialize the acceptance by the WES Partnership of its substitution for CCSD#1 under the Loan, and the acceptance by the WES Partnership of all of CCSD#1’s rights and obligations under the Loan;

NOW THEREFORE, IT IS HEREBY ORDERED, by the Board of County Commissioners of Clackamas County, acting as the governing body of the WES Partnership, that the WES

Partnership hereby accepts its substitution for CCSD#1 under the Amended Declaration and the Loan, hereby accepts all rights and obligations of CCSD#1 under the Amended Declaration and the Loan and related documents for each, such as the tax certificate and continuing disclosure certificate for outstanding borrowings, and hereby authorizes the Executive Officer or Director of the WES Partnership to sign the Amended Declaration on behalf of the WES Partnership.

ADOPTED this 24<sup>th</sup> day of May, 2018.

BOARD OF COUNTY COMMISSIONERS,  
acting as the governing body of Water Environment Services

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

May 24, 2018

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a Revenue Agreement with the State of Oregon,  
acting by and through its Oregon Health Authority for the Reproductive Health Program

<b>Purpose/Outcomes</b>	Implementation of the Reproductive Health Program Medical Services Agreement to provide reproductive health services, supplies, and devices to individuals covered by the Oregon Health Plan (OHP) as well as clients.
<b>Dollar Amount and Fiscal Impact</b>	This is revenue generating through fees for services.
<b>Funding Source</b>	Funding provided by the State of Oregon - Oregon Health Authority. No County General Funds are involved.
<b>Duration</b>	Effective upon signature and no termination.
<b>Previous Board Action</b>	No Previous Board Action
<b>Strategic Plan Alignment</b>	1. Provide patient-centered health center services to vulnerable populations so they can experience improved health. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Deborah Cockrell, FQHC Director – (503) 742-5495
<b>Contract No.</b>	8803

**BACKGROUND:**

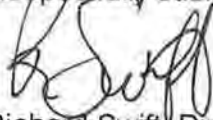
The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of the Reproductive Health Program Medical Services Agreement to set forth the conditions for being enrolled as a provider agency with the State of Oregon, Oregon Health Authority (OHA), Center for Prevention and Health Promotion (CPHP) and to receive payment by CPHP for reproductive health services, supplies, and devices furnished by CCHCD to eligible clients.

This contract is effective upon signature and continues through such time as CCHCD or CPHP terminates. This contract has been reviewed by County Counsel on May 03, 2018.

**RECOMMENDATION:**

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

Respectfully submitted,



Richard Swift, Director  
Health, Housing, and Human Services

## REPRODUCTIVE HEALTH PROGRAM MEDICAL SERVICES AGREEMENT

### #8803

This Medical Services Agreement (Agreement) sets forth the conditions for being enrolled as a provider agency (Agency) with the State of Oregon, Oregon Health Authority (OHA), Center for Prevention and Health Promotion (CPHP) and to receive payment by CPHP for reproductive health services, supplies, and devices furnished by Agency to persons eligible (Clients). To be enrolled as a provider agency under this Agreement, Agency must identify in Appendix A the Clinics enrolled under this Agreement.

Eligibility as a provider in the Reproductive Health (RH) Program is conditioned on the Agency's execution and delivery of the application and required certification. The information disclosed by the Agency may be subject to verification by CPHP. This information will be used for purposes related to the administration of the RH Program.

As a condition for participation as an Agency with OHA, Agency agrees as follows:

#### A. Services:

1. To provide reproductive health services, supplies, and devices to individuals covered by the Oregon Health Plan (OHP) as well as Clients.
2. To follow counseling, education, and clinical practices related to reproductive health care based on evidence-based, national standards of care.
3. To enroll as an OHP Provider prior to final approval as an Agency and comply with all applicable Health Systems Division (HSD) statutes and rules.
4. To adhere to all applicable OARs. "OARs" means the CPHP Oregon Administrative Rules, OAR 333-004-2000 through 333-004-2190, as those rules may be adopted or amended from time to time.
5. To provide all reproductive health services, supplies, and devices for which CPHP pays the Agency under this Agreement as an independent contractor. The Agency is not an "officer", "employee", or "agent" of CPHP or OHA, as those terms are used in ORS 30.265. Nothing in this Agreement requires Agency to perform services described in this section if OHA has no funding available to pay for services.

**B. Accurate billing:** To certify by signature of the Agency or designee, including electronic signatures on a claim form or transmittal document, that the care, services, equipment or supplies claimed were actually provided and medically appropriate, were documented at the time they were provided, and were provided in accordance with professionally recognized standards of health care, OARs, and this Agreement. The Agency is solely responsible for the accuracy of claims submitted and the use of a billing entity does not change the Agency's responsibility for the claims submitted on Agency's behalf. Any overpayment made to the Agency by OHA may be recouped by OHA including withholding of future payments or other processes as authorized by law.

**C. Payment:** To accept CPHP's payment for any reproductive health services, supplies, and devices as payment in full and to not make any additional charge to a Client except as specifically allowed by the OARs. Eligibility for payment is determined using the procedures described in the OARs. Claims and data must be submitted through secure means as instructed by CPHP.



accurate in any respect, or failure to notify CPHP of changes in name, address, business affiliation, licensure, or ownership may result in sanctions, termination of the agreement, or payment recovery pursuant to OAR 333-004-2140, 333-004-2150, and 333-004-2160 subject to Agency appeal rights described in OAR 333-004-2170.

**K. Effective date:** This Agreement is effective upon the date of approval of the CPHP representative, as indicated by the signature at the end of the Agreement or upon the date of approval as an OHP provider by HSD, whichever is the later, unless those dates are prior to April 1, 2018, in which case this Agreement is effective on April 1, 2018. Any prior contract, price agreement, or vendor agreement between OHA and Agency for reproductive health services, and contraceptive supplies and devices is terminated as of April 1, 2018. Nothing in this Agreement is intended to terminate an MSA, the Agency has with OHA for Oregon ContraceptiveCare that is subject to OARs 333-004-0000 through 333-004-0230.

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**Agency name**

By signing this Agreement you acknowledge that you have read the Agreement, understand the terms of the Agreement and agree to be bound by the terms and conditions of the Agreement.

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Signature of agency authorized business representative

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Date

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Printed name

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Title of business representative

**CPHP:** By its signature, the Center for Prevention and Health Promotion certifies that the Agency qualifies as a RH Program Provider Agency.

By: \_\_\_\_\_

Date: \_\_\_\_\_

---

Printed name

---

Title

**NOTE:** If an agency changes name, address, business affiliation, licensure, ownership, certification, or status, including new or closing clinics, CPHP and HSD must be notified in writing within 30 days of the change in accordance with Section H of the Agreement. Payments made to agencies who have not furnished such notification may be recovered.

May 24, 2018

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval for renewal of Revenue Intergovernmental Agreement with  
Clackamas County Community Corrections, to provide  
Behavioral Health Services to Community Corrections Consumers

<b>Purpose/Outcomes</b>	Provide mental health and substance abuse consultation and treatment services to targeted consumers served by Community Corrections Residential Services
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum value is \$512,360. Invoices will be issued monthly for true and verifiable expense.
<b>Funding Source</b>	This is a revenue agreement for CC Health Centers paid by CC Community Corrections budget.
<b>Duration</b>	Effective July 01, 2018 and terminates on June 30, 2019
<b>Previous Board Action</b>	The Board previously viewed this contract on December 21, 2017 – agenda item 122117 – A6 & June 29, 2017 – agenda item 062917-A4
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
<b>Contact Person</b>	Alison Bort, Mental Health Program Supervisor – 503-722-6502
<b>Contract No.</b>	8714

**BACKGROUND:**

The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of an Intra-Agency Agreement with Clackamas County Community Corrections to provide behavioral health services to Community Corrections' consumers. Clackamas County Community Corrections purchases Residential Psychiatric Services, and Medication Evaluations from Health Centers Behavioral Health Clinics.

This agreement allows Clackamas County Health Centers Behavioral Health Clinics to provide mental health and substance abuse consultation and treatment services to targeted consumers served by Community Corrections' Residential Services.

This is a renewal agreement. The contract maximum is \$512,360. The agreement is effective July 1, 2018 and expires June 30, 2019. This contract has been reviewed by County Counsel on May 10, 2018.

**RECOMMENDATION:**

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift", written over the printed name.

Richard Swift, Director  
Health, Housing, and Human Services

**INTRA-AGENCY AGREEMENT**  
**BETWEEN**  
**CLACKAMAS COUNTY**  
**HEALTH, HOUSING, AND HUMAN SERVICES DEPARTMENT**  
**HEALTH CENTERS DIVISION**  
**AND**  
**CLACKAMAS COUNTY**  
**COMMUNITY CORRECTIONS**

Contract #8714

**I. PURPOSE**

This agreement between allows **Clackamas County Community Corrections**, herein referred to as CCCC, and **Clackamas County Health Centers Division**, herein referred to as CCHCD, to work together to provide substance abuse and mental health services to targeted clients within Corrections' Residential Services Division. The parties agree that it is appropriate to develop guidelines for their working relationship and for services to be provided.

**II. SCOPE OF WORK AND COOPERATION**

A. CCCC will:

1. Prioritize clients to receive service prior to referral. This prioritization will be coordinated through the CCCC liaison staff member who will monitor both the type and the flow of referrals.
2. Provide referral forms on each client to include a signed consent to release information at the same time the referral is made.
3. Provide accessibility of CCCC staff to the designated CCHCD liaison and CCHCD staff providing treatment services.
4. Provide assistance with personnel selection for CCCC/CCHCD services as requested.
5. Provide appropriate clinical office space for individual and group treatment services provided at CCCC facilities.
6. CCCC and CCHCD will collaborate to find coverage for approved absences greater than 30 days.

B. CCHCD will:

1. Through CCHCD clinical staff on site will provide crisis consultation to CCCC staff regarding CSAP clients at risk of hospitalization due to psychiatric crises. If CCHCD clinical staff are not on site at CSAP, CCCC staff should initiate contact with CCHCD and provide relevant information. During regular office hours (8:30 am to 6:30 pm Monday through Friday), services will be accessed by calling 503-655-8401 and requesting to speak with the CSAP Supervisor or the on-call adult crisis staff person. After 6:30 pm and on weekends and holidays, after hours services will be accessed by calling 503-655-8401.
2. Provide counseling to adults in the CSAP program with mental or emotional problems. All contracted Mental Health Specialists assigned to work in the CSAP program will have the core competencies to provide mental health services and will be expected to provide needed mental health and substance abuse services on site.



3. CCHCD will ensure services are provided under the terms of this contract as scheduled except on County holidays or when staff providing services listed in item # 6 below are absent on leaves approved by CCHCD.
  4. CCHCD staff stationed off site will be released for CCHCD Treatment Program staff group supervisions and/or meetings on site at CSAP and occasional Behavioral Health Center staff meetings or trainings. The determination of frequency is dependent upon the need of the program, CCHCD and staff. The normal frequency for staff meetings and/or group supervisions is twice a month.
  5. In order to document treatment according to agency standards, meet for supervision, and attend staff meetings and trainings, approximately 60% of the clinician's time is devoted to provision of direct clinical services. If additional duties are requested such as serving as a field instructor to students, then a reduction in direct service will occur.
  6. With funds available from CCCC Residential Services, CCHCH will provide agency consultation services and substance abuse group treatment. This also includes mental health services as needed for those with significant mental health issues. Services will be delivered on site by 4 Mental Health Specialists (160 hours per week).
  7. CCHCD and CCCC will collaborate to find coverage for approved absences greater than 30 days.
- C. Other services and supports for CSAP clients and CCHCD Mental Health Specialists:
1. **Psychiatric Services/Medication Evaluations**  

If a client in CSAP meets mental health treatment medical necessity and is seeing one of the contracted Mental Health Specialist on site for mental health specific services then that client can be referred for a psychiatric evaluation and treatment. A referral does not guarantee any services will be offered as CCHDC does not provide psychiatric care for all patients. If the client can be served by a PCP, then they will be referred to a medical provider.
  2. **Training – CCHCD Required Training**  

Annual training dollars will be provided for continuing education and to retain certifications for the three full-time contracted CCHCD staff. No cost to CCCC. Time away for trainings will generally be no greater than one week per year.
  3. **Clinical Supervision**  

With funds available from CCCC, clinical supervision will be provided for each of the treatment staff by a CCHCD program supervisor with expertise in mental health and addictions treatment. The frequency of supervision will be determined by CCHCD based on the needs of the employee.

### **III. COMPENSATION**

- A. CCCC agrees to pay CCHCD an amount not to exceed **\$42,696.67** per month for the services described in Section II.B, and Clinical supervision listed in C.
- B. Monthly payments from CCCC will be made to CCHCD on the basis of requests for payment submitted as follows:

**Community Corrections / Health Centers Division**

Intra-Agency Agreement - #8714

Page 3

1. CCHCD will bill CCCC for true and verifiable expenses for hours worked to perform the work and services outlined in this contract.
2. CCHCD will submit a payment request by the 25<sup>th</sup> of the month following service.
- C. CCCC will pay salary and fringe costs for an approved absence of 30 days or less. CCHCD will pay payroll costs of an approved absence more than 30 days.
- D. An accounting of revenue received will occur December 31, 2018 and June 30, 2019 from recovered Phase IV CSAP insurance billings, will be credited to the total contract expense.

**IV. LIAISON RESPONSIBILITY**

CCCC will assign a liaison for the programs. CCHCD's liaison will be the Program Supervisor providing clinical supervision. Questions or concerns shall be resolved between the referring CCCC Residential Services and Field Services staff and the CCHCD therapist, whenever possible. Unresolved issues or concerns shall be referred to the respective liaisons as primary program contacts responsible for implementation of this agreement.

**V. CONFIDENTIALITY**

CCCC's confidentiality policy No. 214 will be the basis for release of information from CCCC's files; the CCHCD Policy and Procedures on confidentiality of records will be the basis for release of treatment information which is of a confidential nature will be safeguarded and not made available to unauthorized persons, and each party will uphold other contracted agreements concerning confidentiality pursuant to state and federal statutes.

Both CCCC and CCHCD will comply with all applicable provision of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), PL 104-191, and 45 CFR Parts 160-164, 42 CFR Part 2.

**VI. AMENDMENTS**

This agreement may be amended at any time with the concurrence of both parties. Amendments are effective only after signature by all persons signing this agreement.

**VII. TERM OF AGREEMENT**

- A. This agreement is effective **July 1, 2018** and expires **June 30, 2019**.
- B. This agreement is subject to termination by either party on 30 days' written notice to the other.

This agreement consists of seven (7) sections and the following Exhibit which by this reference is incorporated herein.

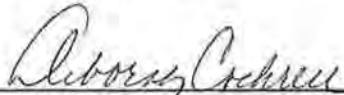
Exhibit A      Budget

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

**COMMUNITY CORRECTIONS  
DEPARTMENT**

  
\_\_\_\_\_  
Jenna Morrison, Director  
5/7/18  
\_\_\_\_\_  
Date

**CLACKAMAS COUNTY  
HEALTH CENTERS DIVISION**

  
\_\_\_\_\_  
Deborah Cockrell, Director  
5/8/2018  
\_\_\_\_\_  
Date

**HEALTH, HOUSING, AND HUMAN SERVICES  
DEPARTMENT**

\_\_\_\_\_  
Richard Swift, Director  
\_\_\_\_\_  
Date

COPY

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Professional, Technical, and Personal Services Contract with  
Cascadia Behavioral Healthcare, Inc. for Supported Employment Services for  
Health Share Medicaid Residents of Clackamas County

<b>Purpose/Outcomes</b>	Provide Supported Employment services to Health Share Medicaid residents of Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment for two years is \$100,000.
<b>Funding Source</b>	No County General Funds are involved. Funding provided through State of Oregon, Oregon Health Plan (OHP).
<b>Duration</b>	Effective July 1, 2018 through June 30, 2020
<b>Previous Board Action</b>	No previous Board action.
<b>Strategic Plan Alignment</b>	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.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	#8770

**BACKGROUND:**

The Behavioral Health Division (BHD) of the Health, Housing & Human Services Department (H3S) request the approval of Professional, Technical and Personal Services Contract #8770 with Cascadia Behavioral Healthcare, Inc., to provide Supported Employment services to Health Share Medicaid residents of Clackamas County. Supported Employment is an evidence-based practice with services intended to promote rehabilitation and return to productive employment.

This Contract, reviewed and approved by County Counsel on May 7, 2018, is effective July 1, 2018 and terminates on June 30, 2020 with a maximum payment of \$100,000.

**RECOMMENDATION:**

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

Respectfully submitted,



Richard Swift, Director  
Health, Housing & Human Services Department

*Healthy Families. Strong Communities.*





**PROFESSIONAL, TECHNICAL, AND CONSULTANT SERVICES CONTRACT  
CONTRACT # 8770**

This Professional, Technical, and Consultant Services Contract (this "Contract") is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and **Cascadia Behavioral Healthcare, Inc.**, hereinafter called "CONTRACTOR".

**CONTRACT**

**1.0 Engagement**

COUNTY hereby engages CONTRACTOR to provide **Supported Employment Services to Health Share Medicaid residents of Clackamas County** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein (the "Services").

**2.0 Term**

Services provided under the terms of this Contract shall commence **July 1, 2018 and shall terminate June 30, 2020** unless terminated earlier by one or both parties as provided for in paragraph 6.0.

**3.0 Compensation and Fiscal Records**

3.1 Compensation. COUNTY shall compensate CONTRACTOR as specified in **Exhibit C**, Compensation, for satisfactorily performing contracted services as specified in **Exhibit B**, Scope of Work, as follows:

Total payment to CONTRACTOR shall not exceed **\$100,000.00**.

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

3.2. Method of Payment. To receive payment, CONTRACTOR shall submit invoices as described in **Exhibit C**, Compensation.

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

3.4 Financial Records. CONTRACTOR shall maintain complete and legible financial records pertinent to payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles. Financial records shall be retained for at least six (6) years after final payment is 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 CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, CONTRACTOR shall repay the amount of the excess to COUNTY.

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

3.4.2 COUNTY may conduct a fiscal compliance review of CONTRACTOR as part of compliance monitoring of this Contract. CONTRACTOR agrees to provide, upon reasonable notice, access to all financial

books, documents, papers and records of CONTRACTOR which are pertinent to this Contract to ensure appropriate expenditure of funds under this Contract. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

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

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

#### **4.0 Manner of Performance**

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

CONTRACTOR 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 CONTRACTOR'S warranty, in this Contract that CONTRACTOR has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this 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 CONTRACTOR, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of CONTRACTOR'S breach of this 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 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this Contract without written consent of COUNTY.

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

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

## 5.0 General Conditions

5.1 Indemnification. CONTRACTOR agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of CONTRACTOR, and CONTRACTOR's officers, agents, and employees, in performance of this Contract.

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

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

5.2 Insurance. COUNTY shall enforce CONTRACTOR 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, CONTRACTOR shall maintain in force, at its own expense, each insurance noted in **Exhibit D**.

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 CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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 for the activity contracted herein except as set forth in this Contract.

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

5.8.1 Workers' Compensation. All subject employers working under this Contract must either maintain workers' compensation insurance as required in the **Exhibit D**.

5.8.2 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 provisions herein, which would conflict with such law, are deemed inoperative to that extent.

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

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

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

5.8.5 As required by ORS 279B.230, CONTRACTOR shall promptly, as due, make payment to any person or partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness and injury, to the employees of CONTRACTOR, of all sums that CONTRACTOR agrees to pay for the services and all monies and sums that CONTRACTOR collected or deducted from the wages of its employees pursuant to any law, Contract or Agreement for the purpose of providing or paying for such services.

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

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

## 6.0 Termination

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

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

- i. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the Contract may be modified to accommodate a reduction in funds.
- ii. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.
- iii. If any license or certificate required by law or regulation to be held by CONTRACTOR to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- iv. If CONTRACTOR fails to provide services, outcomes, reports as specified by COUNTY in this Contract.
- v. If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within ten (10) days or such longer period as COUNTY may authorize.

6.3 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. CONTRACTOR and COUNTY shall continue to perform all duties and obligations under this Contract with respect to individuals under care of CONTRACTOR to the date of termination.

## 7.0 Notices

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

If to CONTRACTOR:

Cascadia Behavioral Healthcare, Inc.  
PO Box 8459  
Portland, OR 97207

If to COUNTY:

Clackamas County Behavioral Health Division  
2051 Kaen Road, Suite #154  
Oregon City, OR 97045

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

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Exhibit A – Definitions                                |
| <input checked="" type="checkbox"/> | Exhibit B – Scope of Work                              |
| <input checked="" type="checkbox"/> | Exhibit C – Compensation                               |
| <input checked="" type="checkbox"/> | Exhibit D – Insurance                                  |
| <input type="checkbox"/>            | Exhibit E – CMHP Required Provider Contract Provisions |
| <input checked="" type="checkbox"/> | Exhibit F – OHP Required Federal Terms & Conditions    |
| <input type="checkbox"/>            | Exhibit G – CMHP Service Element                       |
| <input type="checkbox"/>            | Exhibit H – Business Associate Agreement (BAA)         |

- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)
- Exhibit J – Certification Statement for Independent Contractor
- Exhibit K – Performance Standards

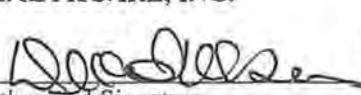
[Signature Page Follows]

**SIGNATURE PAGE**

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

**CASCADIA BEHAVIORAL  
HEALTHCARE, INC.**

**COUNTY OF CLACKAMAS**

 5/7/2018  
Authorized Signature Date

\_\_\_\_\_  
Richard Swift Date  
Health, Housing, and Human Services

**Derald Walker, PhD / President-CEO**  
Name / Title (Printed)

146332-18  
Oregon Business Registry #

Domestic Nonprofit Corporation / Oregon  
Entity Type / State of Formation



May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #2 to an Intergovernmental Agreement with  
the State of Oregon, Department of Consumer and Business Services,  
Senior Health Insurance Benefits Assistance (SHIBA)

<b>Purpose/Outcomes</b>	To support the activities of the Social Services' Volunteer Connection SHIBA Program to provide information, counseling and assistance to seniors and other Medicare recipients regarding health insurance matters.
<b>Dollar Amount and Fiscal Impact</b>	Amendment #2 extends the agreement for 2 years, and adds \$32,000 for a new revenue total of \$64,000.
<b>Funding Source</b>	Federal State Health Insurance Assistance Program (SHIP) grant provided through the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA). There is no match requirement. County General Funds are not involved.
<b>Duration</b>	April 1, 2018 through March 31, 2020
<b>Previous Board Action</b>	The original agreement was approved by the Board of County Commissioners on December 15, 2016 agenda item 121916-A12. Amendment #1 was approved November 22, 2017, agenda item 112218-A3.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with H3S's strategic priority to increase self-sufficiency for our clients.</li> <li>2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Brenda Durbin, Director – Social Services Division – (503)655-8641
<b>Contract No.</b>	8046

**BACKGROUND:**

Social Services Division of the Health, Housing and Human Services Department requests the approval of Amendment #2 to an Intergovernmental Agreement with the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) supporting Social Services' Volunteer Connection SHIBA Program. The SHIBA program provides information, counseling and assistance to seniors and other Medicare recipients regarding health insurance matters.

The Volunteer Connection program within Social Services Division has operated the SHIBA program for several years. This program is designed to educate seniors and other Medicare recipients about their rights, resources and needs relating to Medicare and other health insurance. The program provides education through the fraud hotline, SHIBA helpline, and at public group presentations. In addition, information is made available during public outreach events, such as the Clackamas County Fair and Medicare enrollment events at locations such as low cost housing units. Information presented has included financial assistance for citizens with limited resources,

*Healthy Families. Strong Communities.*

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

[www.clackamas.us](http://www.clackamas.us)

**AMENDMENT #2 to  
INTERGOVERNMENTAL AGREEMENT # 45G000212**

1. This agreement is between the State of Oregon Acting by and through its Department of Consumer and Business Services, Oregon Health Insurance Marketplace, Senior Health Insurance Benefit Assistance Program ("Agency"), and Clackamas County acting by and through its Health, Housing and Human Services Department, Social Services Division ("Local Government").
2. The Contract is hereby amended as follows (new language is indicated by bold underlining font, and deleted language is indicated by strikethrough font).

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement shall be effective retroactively to April 1, 2016, and terminates on **March 31, 2020**, ~~March 31, 2018~~, unless terminated earlier in accordance with Section 16. This Agreement may be extended if the grant period is extended or for additional grant years and/or funds.

SECTION 6: COMPENSATION AND PAYMENT TERMS

- 6.1 A) Agency agrees to pay Local Government a not-to-exceed amount of \$16,000.00 for performance of the work set forth in Exhibit A for the period of April 1, 2016 through March 31, 2017. Funding for future years is dependent on Agency receiving grant awards from the ACL.
- B) Agency agrees to pay Local Government a not-to-exceed amount of \$16,000.00 for performance of the work set forth in Exhibit A for the period of April 1, 2017 through March 31, 2018. Funding for future years is dependent on Agency receiving grant awards from the ACL.
- C) Agency agrees to pay Local Government a not-to-exceed amount of \$32,000.00 for performance of the work set forth in Exhibit A for the period of April 1, 2018 through March 31, 2020. Funding for future years is dependent on Agency receiving grant awards from the ACL.**

3. Except as expressly amended above, all other terms and conditions of original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract 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.

**Signatures on next page**

May 24, 2018

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of Amendment #1 to an Intergovernmental Agreement with the State of Oregon, Department of Consumer and Business Services, Oregon Insurance Division, Senior Health Insurance Benefits Assistance (SHIBA) - Senior Medicare Patrol (SMP)

<b>Purpose/Outcomes</b>	To provide grant funds for the Senior Medicare Patrol (SMP) program to provide outreach, education and individual counseling regarding Medicare/Medicaid fraud, waste, and abuse to people in our community.
<b>Dollar Amount and Fiscal Impact</b>	Amendment #1 extends the agreement for 3 years, and adds \$40,000, for a new revenue total of \$70,000.
<b>Funding Source</b>	U.S. Administration for Community Living, State of Oregon, Department of Human Services, Aging and People with Disabilities, State Unit on Aging Grant provided through State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance. There is no match requirement. County General Funds are not involved.
<b>Safety Impact</b>	None
<b>Duration</b>	June 1, 2018 to May 31, 2021
<b>Previous Board Action</b>	The original agreement was approved the Board of Commissioners on February 11, 2016, agenda item 021116-A2.
<b>Strategic Plan Alignment</b>	1. This funding aligns with H3S's strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Brenda Durbin, Director – Social Services Division – (503) 655-8641
<b>Contract No.</b>	7529

**BACKGROUND:**

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval of a Grant Agreement from the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) to help carry out the Senior Medicare Patrol (SMP) program. The SMP program is intended to support the activities of the SSD Volunteer Connection's SHIBA program.

SHIBA is designed to educate senior and other Medicare recipients of their rights, resources and needs relating to Medicare and other health insurance. These services are invaluable to our seniors and disabled citizens and provide a much needed resource for our most vulnerable populations.

The SMP grant funds help the Volunteer Connection SHIBA program improve and expand State efforts to provide Medicare/Medicaid beneficiaries education of healthcare fraud, errors and abuse. Outreach efforts focus on high populations in rural, Hispanic and tribal communities.

**AMENDMENT #1 to  
INTERGOVERNMENTAL AGREEMENT # 40G000140**

1. This agreement is between the State of Oregon Acting by and through its Department of Consumer and Business Services, Oregon Health Insurance Marketplace, Senior Health Insurance Benefit Assistance Program ("Agency"), and Clackamas County acting by and through its Health, Housing & Human Services Department, Social Services Division ("Local Government").
2. The Contract is hereby amended as follows (new language is indicated by bold underlining font, and deleted language is indicated by strikethrough font).

**SECTION 3: EFFECTIVE DATE AND DURATION**

This Agreement is effective on June 1, 2015 and terminates on **May 31, 2021** ~~May 31, 2018~~, unless terminated earlier in accordance with Section 16.

**SECTION 6: COMPENSATION AND PAYMENT TERMS**

~~1.)~~ Agency shall pay Local Government a fixed fee of ~~\$30,000~~ for completing all work and delivering all deliverables required of Local Government under this Agreement. Agency agrees to pay Local Government ~~\$5,000~~ on a semi-annual basis beginning June 1, 2015 – May 31, 2018. Payment will be made after completion of all work and delivery of all deliverables to Agency's satisfaction and submission of satisfactory invoice.

**2.) Agency shall pay Local Government a fixed fee of \$40,000.00 for completing all work and delivering all deliverables required of Local Government under this Agreement. Agency agrees to pay Local Government \$5,000.00 on a quarterly basis beginning June 1, 2018 – May 31, 2019, and \$2,500.00 on a quarterly basis beginning June 1, 2019 – May 31, 2021. Payment will be made after completion of all work and delivery of all deliverables to Agency's satisfaction and submission of satisfactory invoice.**

**EXHIBIT A – STATEMENT OF WORK**

The Local Government Agency shall:

28. Record SMP outreach events by completing the SHIBA Public and Media Activity form, including the SMP special use field.



May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #154433, Amendment #2 with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	To provide Older American Act (OAA) and Oregon Project Independence (OPI) funded services, as well as Special Project Allocation (SPA) funded evidence-based health promotion services for persons age 60 and over in Clackamas County
<b>Dollar Amount and Fiscal Impact</b>	The total agreement is \$5,898,692. Funded by Federal OAA Funds and State General Funds designated for the OPI and SPA Programs.
<b>Funding Source</b>	Federal Older American Act & State General Fund - County General Funds used to meet match requirements for internal programs.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	071317-A9
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	8385

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Grant Agreement #154433, Amendment #2 with the State of Oregon, Dept. of Human Services, Aging and People with Disabilities, State Unit on Aging. This agreement provides funding for the Social Services Division to administer Older American Act (OAA) and Oregon Project Independence (OPI) funded services as well as Special Project Allocation (SPA) funds for evidence-based health promotion services for persons 60 and over living in Clackamas County. The services provided include nutrition programs, evidence-based health promotion activities, family caregiver supports, transportation, information and referral activities, and In-home services. These services link residents with resources to meet their individual needs. This helps them to remain independent and involved in the community as long as possible.



**Grant Agreement Number 154433**

**AMENDMENT TO  
STATE OF OREGON  
GRANT AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This is amendment number **2** to Grant Agreement Number **154433** between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and

**Clackamas County Social Services Division (CCSS)**

**District 2, Type A**

**Serving: Clackamas County**

**PO Box 2950 - 2051 Kaen Road**

**Oregon City, Oregon 97045**

**Telephone: 503-655-8640**

**Facsimile: 503-655-8889**

**E-mail address: [brendadur@co.clackamas.or.us](mailto:brendadur@co.clackamas.or.us); [stefanierei@co.clackamas.or.us](mailto:stefanierei@co.clackamas.or.us)**

hereinafter referred to as "Recipient".

1. This amendment shall become effective on the date this amendment has been fully executed by every party and, when required, approved by Department of Justice.
2. The Agreement is hereby amended as follows:
  - a. Agreement Face Sheet, Contract Administrator information only is amended as follows: Deleted language is ~~struck through~~, and new language is **underlined and bold**.

**Agreement Administrator: ~~Sarah D. Odell~~ Kristi Murphy or delegate**  
**Telephone: ~~503-945-6029~~ 503-945-6140**  
**Facsimile: 503-373-1133**  
**E-mail address: [Tatia.A.Halleman@state.or.us](mailto:Tatia.A.Halleman@state.or.us)**
  - b. Section 3. "Grant Disbursement Generally," is amended as follows: Deleted language is ~~struck through~~, and new language is **underlined and bold**.

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is ~~\$5,463,474.00~~ **\$5,898,692.00**. DHS will not disburse grant to Recipient in excess of the not-to-exceed amount and

**RECIPIENT, BY EXECUTION OF THIS AMENDMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**4. Signatures.**

**Clackamas County Social Services Division (CCSS)**

**By:**

\_\_\_\_\_  
Authorized Signature

Richard Swift  
\_\_\_\_\_  
Printed Name

Director, Health Housing & Human Services Dept.  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**State of Oregon acting by and through its Department of Human Services**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Via e-mail by Steven Marlowe, Assistant Attorney General  
\_\_\_\_\_  
Assistant Attorney General

May 9, 2018  
\_\_\_\_\_  
Date

**DHS, Seniors & People with Disabilities, State Unit on Aging**  
**Reviewed and approved for release by Tatia Halleman on April 20, 2018**

May 24, 2018

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Subrecipient Agreement, Amendment #2  
 with Canby Adult Center to Provide Social Services for  
Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the Canby Adult Center to provide Older American Act (OAA) funded services for persons in the Canby service area.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$158,841 for a revised agreement maximum of \$324,044. This agreement is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	Older American Act (OAA), Special Project Allocation (SPA), State Special Transportation Formula (STF) funds, TriMet general fund, and Low Income Home Energy Assistance Program (LIHEAP) funds - no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	071317-A15
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8347; Subrecipient #18-003-02

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement, Amendment #2; with Canby Adult Center to provide Older American Act (OAA) funded services for persons living in the Canby service area. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

This is a budget adjustment that distributes the OAA program funding, as well as the State SPA funds for approved evidence-based Physical Activity/Falls Prevention programming, Ride Connection transportation pass through TriMet general fund as well as STF funds and the LIHEAP funding for services to be provided during the 2018-19 fiscal year.



Subrecipient Agreement Amendment  
Health, Housing and Human Services

H3S Contract#: 8347 Subrecipient #: 18-003 Board Agenda #: 071317-A15

Division: Social Services Amendment Number: 2

Contractor: Canby Adult Center, The Friends of the

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$158,841.

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This Amendment #2, when signed by the The Friends of the Canby Adult Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend and restart the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

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

**Term and Effective Date.** This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

1. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is \$165,203. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The

- b. SUBRECIPIENT shall not smoke or permit smoking in the vehicle;
  - c. SUBRECIPIENT shall maintain appropriate safety equipment in the vehicle, including but not limited to:
    - i. First Aid Kit;
    - ii. Fire Extinguisher;
    - iii. Roadside reflective or warning devices;
    - iv. Flashlight;
    - v. Chains or other traction devices (when appropriate); and,
    - vi. Disposable gloves.
  - d. SUBRECIPIENT shall maintain the vehicle in good operating condition, by providing the following:
    - i. Seatbelts;
    - ii. Side and rear view mirrors;
    - iii. Horn; and,
    - iv. Working turn signals, headlights, taillights, and windshield wipers.
2. SUBRECIPIENT shall maintain a preventative maintenance schedule, which incorporates, at a minimum, all maintenance recommended by the vehicle manufacturer. SUBRECIPIENT shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. SUBRECIPIENT shall provide all equipment necessary to transport Clients using wheelchairs.

**TO READ:** All the above with the addition of:

- 3. SUBRECIPIENT shall pay for all preventative maintenance and other repair costs incurred in a timely manner. Invoices shall be submitted by SUBRECIPIENT for eligible vehicles, specified in Section C. Vehicles, paragraph 1, as per Section C. Vehicles, paragraph 2.

**TO READ: Exhibit 6 – Budget and Units of Services – Unit Cost Schedule**

**To Read:**

**CANBY ADULT CENTER**  
 Fiscal Year 2018-19

	OAA III B	OAA III C1	OAA III C2	OAA III D	Required Match	NSIP Funds	State Funds	Ride Connection		TriMet	MEDICAID	LIEAP	Program Income	NO. OF UNITS	TOTAL COST	Reimbursement Rate
	Funds	Funds	Funds	Funds				STF	5310 Funds							
Federal Award Numbers	16A0RT3SS	16A0RT3CM	16A0RT3HD	16A0RT3PH		16A0RNSIP	N/A	Funds	OR-65-012	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CFDA Number	93.044	93.045	93.045	93.043		93.053	N/A	N/A	20.513	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Service Category	(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(10)	(13)	(14)	(15)	(16)	(16)	(17)	(18)
Case Management	\$2,480				\$275									107.25 hrs	\$2,755	\$23.12/hr
Reassurance	\$1,810				\$201									87	\$2,011	\$20.86
Info. & Assistance	\$2,262				\$252									157	\$2,514	\$13.58
Public Outreach	\$350				\$39									7	\$389	\$50.00
Transportation - OAA	\$5,315				\$591								\$842	1,884	\$6,748	\$3.16
PHYSICAL ACTIVITY/FALLS PREVENTION				\$6,000	\$0		\$9,600							208 Classes	\$15,600	\$75.00
Trans - Ride Con. Out of Dist					\$0			\$17,119					\$978	1,956	\$18,097	\$8.75
Non Medical T19 Transportation					\$0					617	1,413			145	\$2,030	\$14.00
Ride Connection Vehicle Maintenance					\$256.75				\$2,000.00					N/A	\$2,257	N/A
OAA Meal Site Management		\$16,890	\$26,810		\$4,859									38,000	\$48,559	\$1.15
Food Service - DAA & NSIP		\$16,082	\$25,528		\$4,627	\$23,940							\$36,480	38,000	\$106,657	\$1.05
LIEAP Intakes					\$0							\$625		96	\$625	\$25.00
<b>TOTALS</b>	<b>\$12,217</b>	<b>\$32,972</b>	<b>\$52,338</b>	<b>\$6,000</b>	<b>\$11,102</b>	<b>\$23,940</b>	<b>\$9,600</b>	<b>\$17,119</b>	<b>\$2,000</b>	<b>\$617</b>	<b>\$1,413</b>	<b>\$625</b>	<b>\$38,300</b>		<b>\$208,243</b>	

Source of OAA Match - Staff time

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

Contracted Amount: \$158,841

Federal Award Totals 129,467

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Subrecipient Agreement, Amendment #2 with Friends of the Estacada Community Center to Provide Social Services for Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the Friends of the Estacada Community Center to provide Older American Act (OAA) funded services for persons in the Estacada service area.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$79,765 for a revised agreement maximum of \$162,233. This agreement is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	Older American Act (OAA), Special Project Allocation (SPA), State Special Transportation Formula (STF) funds, TriMet general fund - no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	071317-A13
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with the strategic priority to increase self-sufficiency for our clients.</li> <li>2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.</li> </ol>
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8349; Subrecipient #18-006-02

**BACKGROUND:**

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

This is a budget adjustment that distributes the OAA program funding, as well as the State funds for approved evidence-based Physical Activity/Falls Prevention programming, and the Ride Connection transportation funds for services to be provided during the 2018-19 fiscal year.

This amendment adds \$79,765 in funding for the 2018-19 fiscal year and extends the term of the agreement to June 30, 2019.



Subrecipient Agreement Amendment  
Health, Housing and Human Services

H3S Contract#: 8349 Subrecipient #: 18-006 Board Agenda #: 071317-A13

Division: Social Services Amendment Number: 2

Contractor: Estacada Community Center, The Friends of the

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$79,765.

This Amendment #2, when signed by the The Friends of the Estacada Community Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend and restart the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

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

**Term and Effective Date.** *This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.*

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

4. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is \$82,468. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with

The Friends of the Estacada Community Center  
Subrecipient Grant Agreement #18-006, Amendment 2

**I. Amend: Exhibit 2 Transportation Provider Standards, A. Vehicle Standards**

1. SUBRECIPIENT shall maintain its vehicles to provide comfortable and safe Rides to Clients. SUBRECIPIENT's vehicles shall meet the following requirements:
  - a. The interior of the vehicle shall be clean;
  - b. SUBRECIPIENT shall not smoke or permit smoking in the vehicle;
  - c. SUBRECIPIENT shall maintain appropriate safety equipment in the vehicle, including but not limited to:
    - i. First Aid Kit;
    - ii. Fire Extinguisher;
    - iii. Roadside reflective or warning devices;
    - iv. Flashlight;
    - v. Chains or other traction devices (when appropriate); and,
    - vi. Disposable gloves.
  - d. SUBRECIPIENT shall maintain the vehicle in good operating condition, by providing the following:
    - i. Seatbelts;
    - ii. Side and rear view mirrors;
    - iii. Horn; and,
    - iv. Working turn signals, headlights, taillights, and windshield wipers.
2. SUBRECIPIENT shall maintain a preventative maintenance schedule, which incorporates, at a minimum, all maintenance recommended by the vehicle manufacturer. SUBRECIPIENT shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. SUBRECIPIENT shall provide all equipment necessary to transport Clients using wheelchairs.

**TO READ:** All the above with the addition of:

3. SUBRECIPIENT shall pay for all preventative maintenance and other repair costs incurred in a timely manner. Invoices shall be submitted by SUBRECIPIENT for eligible vehicles, specified in Section C. Vehicles, paragraph 1, as per Section C. Vehicles, paragraph 2.

The Friends of the Estacada Community Center  
 Subrecipient Grant Agreement #18-006, Amendment 2

**TO READ: Exhibit 6 – Budget and Units of Services – Unit Cost Schedule**

**Estacada Community Center**  
 Fiscal Year 2018-19

To Read:

	DAA IIB	OAA IIC1	OAA IIC2	DAA IID	Required	NSIP	State	Ride Conn/TriMet			TriMet	MEDICAD	OAA	NO. OF	TOTAL	REIMBURSE
	Funds	Funds	Funds	Funds	Match	Funds	Funds	TriMet	STF Funds	STF Funds	STF Funds	Funds	Prog Inc	UNITS	COST	MENT RATE
Federal Award Numbers	16A06TSS	16A08TCH	16A08TRD	16A08TDPH	N/A	16A08SSP	N/A	Funds	N/A	OR-65-012	N/A	N/A	N/A	N/A	N/A	N/A
CFDA Number	31.044	93.045	93.046	93.343	N/A	93.053	N/A	N/A	N/A	20.513	N/A	N/A	N/A	N/A	N/A	N/A
Service Category	(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
Case Management	1735				193									20.00	1,928	\$21.68
Reassurance	1714				191									75.0	1,905	\$22.85
Information & Assistance	2500				278									151.1	2,778	\$16.55
Public Outreach	200				22									4.0	222	\$50.00
Transportation - OAA	5588				619									1,172.2	6,387	\$4.75
Trans - Ride Con In Dist					0			9,891					659	1319	10,550	\$7.50
Trans - Ride Con Out Dist					0				2,608				174	348	2,782	\$7.50
Ride Con - Vehicle Maint					256.75					2,500.00				N/A	2,757	N/A
Trans-T 19 non medical					0						638	1,462		150	2,100	\$14.00
Tai Chi Moving for Better Balance Class				3,300	0		4,500							104 Classes	7,800	\$75.00
Meal Site Mngt. - CAA		3,768	7,050		419								15,525	17,250	26,760	\$1.12
Food Service - Frozen HDM		1,528	8,373		181	3,905								5,500	15,087	\$0.30
APD Medicaid HDM			(6,325)		(703)	(2,984)						28,559	(2,723)	3,025	19,724	\$5.76
<b>TOTALS</b>	<b>\$11,717</b>	<b>\$5,384</b>	<b>\$10,057</b>	<b>\$3,300</b>	<b>\$1,453</b>	<b>\$1,521</b>	<b>\$4,500</b>	<b>\$9,891</b>	<b>\$2,608</b>	<b>\$2,500</b>	<b>\$638</b>	<b>\$30,321</b>	<b>\$13,656</b>		<b>\$97,579</b>	

Source of OAA Match - Staff time

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

Contract Amount: \$ 79,765  
 Federal Award Totals \$ 34,530

COPY

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Subrecipient Agreement, Amendment #3 with Foothills Community Church/Molalla Adult Community Center to Provide Social Services for Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the Foothills Community Church/Molalla Adult Community Center provide Older American Act (OAA) funded services for persons in the Molalla area.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$139,051 for a revised agreement maximum of \$281,197. This agreement is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	Older American Act (OAA), Special Project Allocation (SPA), State Special Transportation Formula (STF) funds, TriMet general fund, and Low Income Home Energy Assistance Program (LIHEAP) funds - no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	07-13-17-A2
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8348; Subrecipient #18-007-03

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement, Amendment #3; with Foothills Community Church/Molalla Adult Community Center to provide Older American Act (OAA) funded services for persons living in the Molalla service area. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

This is a budget adjustment that distributes the OAA program funding, as well as the State SPA funds for approved evidence-based Physical Activity/Falls Prevention programming, Ride Connection transportation pass through Special Transportation Formula funds and LIHEAP funding for services to be provided during the 2018-19 fiscal year.



Subrecipient Agreement Amendment  
Health, Housing and Human Services

H3S Contract#: 8348 Subrecipient #: 18-007 Board Agenda #: 071317-A2

Division: Social Services Amendment Number: 3

Contractor: Foothills Community Church, Molalla Adult Community Center

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$139,051.

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This Amendment #3, when signed by the Foothills Community Church, Molalla Adult Community Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend and restart the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

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

**Term and Effective Date.** This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

1. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is \$146,646. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to

Assistance application assistance outlined in this Agreement are from HEAT Oregon, an Oregon nonprofit organization.

**I. Amend: Exhibit 2 Transportation Provider Standards, A. Vehicle Standards**

1. SUBRECIPIENT shall maintain its vehicles to provide comfortable and safe Rides to Clients. SUBRECIPIENT's vehicles shall meet the following requirements:
  - a. The interior of the vehicle shall be clean;
  - b. SUBRECIPIENT shall not smoke or permit smoking in the vehicle;
  - c. SUBRECIPIENT shall maintain appropriate safety equipment in the vehicle, including but not limited to:
    - i. First Aid Kit;
    - ii. Fire Extinguisher;
    - iii. Roadside reflective or warning devices;
    - iv. Flashlight;
    - v. Chains or other traction devices (when appropriate); and,
    - vi. Disposable gloves.
  - d. SUBRECIPIENT shall maintain the vehicle in good operating condition, by providing the following:
    - i. Seatbelts;
    - ii. Side and rear view mirrors;
    - iii. Horn; and,
    - iv. Working turn signals, headlights, taillights, and windshield wipers.
2. SUBRECIPIENT shall maintain a preventative maintenance schedule, which incorporates, at a minimum, all maintenance recommended by the vehicle manufacturer. SUBRECIPIENT shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. SUBRECIPIENT shall provide all equipment necessary to transport Clients using wheelchairs.

**TO READ:** All the above with the addition of:

3. SUBRECIPIENT shall pay for all preventative maintenance and other repair costs incurred in a timely manner. Invoices shall be submitted by SUBRECIPIENT for eligible vehicles, specified in Section C. Vehicles, paragraph 1, as per Section C. Vehicles, paragraph 2.

**TO READ: Exhibit 6 – Budget and Units of Services – Unit Cost Schedule**

To Read:

Foothills Community Church  
 Molalla Adult Community Center Services  
 Fiscal Year 2018-19

Federal Award Numbers	OAA III B	OAA III C1	OAA III C2	OAA III D	OAA	NSIP	Other	Ride Conn/TriMet		TriMet	Medicaid	LIHEAP	P.I. (if applicable)	NO. OF UNITS	TOTAL COST	Reimbursement Rate	
	Funds	Funds	Funds	Funds	Match	Funds		Funds	STF	\$310	STF Funds	Funds	Funds				
	16AAGR135S	16AAGR13CM	16AAGR13HD	16AAGR13PH	N/A	16AAGR13SP		Funds	OR-65-012	N/A	N/A	N/A					
CFDA Number	93.044	93.045	93.045	93.043		93.053		N/A	20.513	N/A							
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
Case Management	7,749				862									103.37 Hrs	\$8,611	\$26.18	
Reassurance	4,899				545									157	\$5,444	\$31.23	
Information & Assistance	1,085				121									81	\$1,206	\$13.44	
Public Outreach	300				33									6	\$333	\$50.00	
Transportation - OAA III-B	0				0								0	0	\$0	\$5.00	
OAA - Meal Site Mgmt		5,997	4,229		1,137								17,280	18,000	\$28,643	\$1.29	
Food Service - Frozen HDMs			11,000		1,223	3,905								5,500	16,128	\$0.71	
APD Medicaid HDMs			(4,486)		(500)	(1,694)					20,511		(2,064)	2,150	\$11,757	\$7.79	
Physical Activity/Falls Prevention Programs				6,000	0		9,600							208	Classes	\$15,600	\$75.00
Non Medical Medicaid Rides										1,489	3,411			350	\$4,900	\$14.00	
Transport - Ride Conn Out of Dist.								22,213					1,269	2,539	\$23,482	\$8.75	
Vehicle Maintenance - Ride Conn.					\$513.50				\$3,500								
Special Tran. Formula-TAXI and or Van								39,791						1,532	\$39,791	N/A	
LIHEAP Intakes												1,625		65	\$1,625.00	\$25.00	
<b>TOTALS</b>	<b>\$14,033</b>	<b>\$5,997</b>	<b>\$10,733</b>	<b>\$6,000</b>	<b>\$3,934</b>	<b>\$2,211</b>	<b>\$9,600</b>	<b>\$62,004</b>	<b>\$3,500</b>	<b>\$1,489</b>	<b>\$23,922</b>	<b>1625</b>	<b>\$15,485</b>		<b>\$157,521</b>		

CFDA Number 20.513 & Federal Award Number applies to Ride Connection Vehicle Maintenance funds only. The balance of the Ride Connection Funding is State/Local funds

Source of OAA Match - Staff time

County Contract Amount: \$139,051

Federal Award Totals      \$42,474

COPY

May 24, 2018

Board of County Commissioners  
 Clackamas County

Members of the Board:

**Approval of an Intergovernmental Subrecipient Agreement, Amendment #2 with City of Gladstone/Gladstone Senior Center to Provide Social Services for Clackamas County Residents age 60 and over**

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the City of Gladstone/Gladstone Senior Center to provide Older American Act (OAA) funded services for persons in the City of Gladstone.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$43,677 for a revised agreement maximum of \$88,231. This agreement is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	Older American Act (OAA), Special Project Allocation (SPA), TriMet general fund - no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	071317-A3
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8360; Subrecipient #18-012-02

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement, Amendment #2; with City of Gladstone/Gladstone Senior Center to provide Older American Act (OAA) funded services for persons living in Gladstone. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

This is a budget adjustment that distributes the OAA program funding, as well as the State funds for approved evidence-based Physical Activity/Falls Prevention programming, and the Ride Connection transportation fund for services to be provided during the 2018-19 fiscal year.



Subrecipient Agreement Amendment  
Health, Housing and Human Services

H3S Contract#: 8348 Subrecipient #: 18-012 Board Agenda #: 071317-A3

Division: Social Services Amendment Number: 2

Contractor: City of Gladstone - Senior Center

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$43,677.

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This Amendment #2, when signed by the City of Gladstone - Senior Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend and restart the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

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

**Term and Effective Date.** This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

1. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is \$44,544. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The

I. **Amend:** Exhibit 2 Transportation Provider Standards, **A. Vehicle Standards**

1. SUBRECIPIENT shall maintain its vehicles to provide comfortable and safe Rides to Clients. SUBRECIPIENT's vehicles shall meet the following requirements:
  - a. The interior of the vehicle shall be clean;
  - b. SUBRECIPIENT shall not smoke or permit smoking in the vehicle;
  - c. SUBRECIPIENT shall maintain appropriate safety equipment in the vehicle, including but not limited to:
    - i. First Aid Kit;
    - ii. Fire Extinguisher;
    - iii. Roadside reflective or warning devices;
    - iv. Flashlight;
    - v. Chains or other traction devices (when appropriate); and,
    - vi. Disposable gloves.
  - d. SUBRECIPIENT shall maintain the vehicle in good operating condition, by providing the following:
    - i. Seatbelts;
    - ii. Side and rear view mirrors;
    - iii. Horn; and,
    - iv. Working turn signals, headlights, taillights, and windshield wipers.
2. SUBRECIPIENT shall maintain a preventative maintenance schedule, which incorporates, at a minimum, all maintenance recommended by the vehicle manufacturer. SUBRECIPIENT shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. SUBRECIPIENT shall provide all equipment necessary to transport Clients using wheelchairs.

**TO READ:** All the above with the addition of:

3. SUBRECIPIENT shall pay for all preventative maintenance and other repair costs incurred in a timely manner. Invoices shall be submitted by SUBRECIPIENT for eligible vehicles, specified in Section C. Vehicles, paragraph 1, as per Section C. Vehicles, paragraph 2.

To Read:

**CITY OF GLADSTONE - SENIOR CENTER**  
 Fiscal Year 2018-19

	OAA III B	OAA III C1	OAA III C2	OAA III D	Required Match	NSIP Funds	Other State Funds	MEDICAID Funds	TriMet STF Funds	Ride Connection		Prog. Income	NO. OF UNITS	TOTAL COST	Reimbursement Rates
	Funds	Funds	Funds	Funds						TriMet	5310 Funds				
Federal Award Numbers	16AAORT3SS	16AAORT3CM	16AAORT3HD	16AAIRT3PH	N/A	16AAORNSIP		N/A	N/A	Funds	OR-65-012				
CFDA Number	93.044	93.045	93.045	93.043		93.053			N/A	N/A	20.513				
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Case Management	2,661				296								179 hrs	2,957	\$34.33
Reassurance	2,911				324								77	3,235	\$37.72
Information & Assist.	3,322				369								190	3,691	\$17.44
Transportation - OAA	4,288				477							1,175	1,567	5,940	\$2.74
Community Outreach	500				56								10	556	\$50.00
PHYSICAL ACTIVITY/ FALLS PREVENTION (Evidence Based)				825	0		825						22 Classes	1,650	\$75.26
Trans - Ride Con In Dist					0					11,548		1,117	1,489	12,665	\$7.76
Ride Conn. - Vehicle Maint.					256.75						1,000	0	N/A	1,257	N/A
Medicaid Transp. non-medical					0			1,063	2,437				250	3,500	\$14.00
OAA Meal Site Mgmt		1,640	4,101		638							9,720	10,125	16,099	\$1.12
Medicaid Meals			(2,405)		(267)	(906)		10,971				(1,104)	1,150	6,289	\$5.70
<b>TOTALS</b>	\$13,682	\$1,640	\$1,696	\$825	\$2,149	(\$906)	\$825	\$12,034	\$2,437	\$11,548	\$1,000	\$10,908		\$57,839	

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

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

Prog. Income = Program Income/Participant Donations

**CONTRACT AMOUNT:**     \$       43,677

Federal Award Total   \$       17,937

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May 24, 2018

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 to an Agency Service Agreement with  
The Inn for Transitional Shelter & Host Home Services

<b>Purpose/Outcomes</b>	Agency provides transitional shelter services and case management to displaced youth found to be out of home and in need of shelter.
<b>Dollar Amount and Fiscal Impact</b>	Amendment #1 adds \$60,058 for a total of \$100,056
<b>Funding Source</b>	State of Oregon Housing and Community Services, State Homeless Assistance Program (SHAP) funds and County General Funds.
<b>Duration</b>	July 1, 2017 through June 30, 2019
<b>Previous Board Action</b>	None.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing.</li> <li>2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Brenda Durbin, Director – Social Services Division – (503) 655-8641
<b>Contract No.</b>	8337

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services Department requests approval of amendment #1 to an Agency Service Agreement with The Inn, Home for Boys, Inc. (The Inn). This amendment provides funding for bednights for displaced youth who are found to be out of home and in need of shelter, including case management. Funding also supports Host Home services to assist participants in remaining stable within families for the school year, demonstrate academic progress, and move toward future education and employment goals.

The amendment is effective July 1, 2017 through June 30, 2019. The amendment extends the agreement for one year to align with the funding source period, adding \$10,030 to the first year, and \$50,028 to the second year. The funding source for this agreement is State Homeless Assistance Program (SHAP) funds from the State of Oregon Housing and Community Services. County General funds of \$6,000 for each year are also included for the Host Home program.

*Healthy Families. Strong Communities.*

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

[www.clackamas.us](http://www.clackamas.us)



**Contract Amendment  
Health, Housing and Human Services Department**

H3S Contract Number 8337 Board Agenda Number TBD

and Date May 24, 2018

Division Social Services Amendment No. 1

Contractor The Inn

Amendment Requested By Brenda Durbin, Director

Changes:       Scope of Services                       Contract Budget  
                     Contract Time                                       Other \_\_\_\_\_

**Justification for Amendment:**

Amendment #1 extends the agreement for one year, from June 30, 2018 to June 30, 2019 to align with the funding source period. It also adds EHA funds for bednights of \$10,030 to the first year, July 1, 2017 to June 30, 2018. During the second year, July 1, 2018 to June 30, 2019, the amendment adds \$44,028 of EHA funds for bednights and \$6,000 CGF funds for Host Home. Maximum compensation is increased by \$60,058 for a maximum contract value of \$100,056.

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

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**AMEND: Section I. SCOPE OF SERVICES, paragraph B:**

- B. Services required under the terms of this agreement shall commence July 1, 2017 of this agreement and shall terminate June 30, 2018.

**TO READ:**

- B. Services required under the terms of this agreement shall commence July 1, 2017 of this agreement and shall terminate ***June 30, 2019***.

**AMEND: Section II. COMPENSATION AND RECORDS, paragraph A:**

- A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I: Scope of Services and completing the requirements of *Exhibit B: Reporting Requirements* attached hereto.
  - i. \$36.00 per person in residence per night, up to a maximum compensation of \$33,998 for 944 bed nights.
  - ii. \$6,000 for supportive services provided on an as-needed basis to Host Home youth participants and host families.

Total maximum compensation under this contract shall not exceed \$39,998.

**The Inn**

Agency Service Contract # 8337-- Amendment # 1

Page 3 of 3

COUNTY will pay AGENCY \$23.10 per hour for Case Managers' time up to the contract limit of \$6,000 for Host Home services.

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

**TO READ:**

Total maximum compensation under this contract shall not exceed **\$100,056 as follows:**

**July 1, 2017 to June 30, 2018:**

**\$44,028 EHA funds for 1,223 bednights, and \$6,000 CGF funds for Host Home**

**July 1, 2018 to June 30, 2019:**

**\$44,028 EHA funds for 1,223 bednights, and \$6,000 CGF funds for Host Home**

COUNTY will pay AGENCY \$36.00 per person in residence per night with payments to be made as outlined in Exhibit B: Reporting Requirements. The maximum compensation allowed under this contract for emergency shelter bednights is **\$88,056** of EHA funds, for a total of **2,446** bednights.

COUNTY will pay AGENCY \$23.10 per hour for Case Managers' time up to the contract limit of **\$12,000** for Host Home services.

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

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

**AGENCY**

**THE INN**

By: 

Natalie Wood, Executive Director

**MAY 3, 2018**

Date

10570 SE Washington St. #204

Street Address

Portland, OR 97216

City / State / Zip

(503)234-8757

1 503-234-8758

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 and Human Services Department

Date

COPY

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Subrecipient Agreement, Amendment #2 with  
City of Oregon City/Pioneer Community Center to Provide Social Services for  
Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the City of Oregon City/Pioneer Community Center to provide Older American Act (OAA) funded services for persons in the cities of Oregon City and West Linn.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$112,934 for a revised agreement maximum of \$229,582. This agreement is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	Older American Act (OAA), Special Project Allocation (SPA), State Special Transportation Formula (STF) funds, TriMet general fund, and Low Income Home Energy Assistance Program (LIHEAP) funds - no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	071317-A7
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with the strategic priority to increase self-sufficiency for our clients.</li> <li>2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.</li> </ol>
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8361; Subrecipient #18-009-02

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement, Amendment #2; with City of Oregon City/Pioneer Community Center to provide Older American Act (OAA) funded services for persons living in the Pioneer Community Center service area which includes the City of West Linn. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

This is a budget adjustment that distributes the OAA program funding, as well as the State SPA funds for approved evidence-based Physical Activity/Falls Prevention programming, Ride Connection transportation pass through TriMet general fund as well as STF funds and the LIHEAP funding for services to be provided during the 2018-19 fiscal year.

Subrecipient Agreement Amendment  
Health, Housing and Human Services

H3S Contract#: 8361 Subrecipient #: 18-009 Board Agenda #: 071317-A7

Division: Social Services Amendment Number: 2

Contractor: City of Oregon City - Pioneer Community Center

Amendment Requested By: Brenda Durbin, CCSS Director

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Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$112,934.

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This Amendment #2, when signed by the City of Oregon City - Pioneer Community Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend and restart the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

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

**Term and Effective Date.** This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

- 4. Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is \$116,648. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)



**I. Amend: Exhibit 2 Transportation Provider Standards, A. Vehicle Standards**

1. SUBRECIPIENT shall maintain its vehicles to provide comfortable and safe Rides to Clients. SUBRECIPIENT's vehicles shall meet the following requirements:
  - a. The interior of the vehicle shall be clean;
  - b. SUBRECIPIENT shall not smoke or permit smoking in the vehicle;
  - c. SUBRECIPIENT shall maintain appropriate safety equipment in the vehicle, including but not limited to:
    - i. First Aid Kit;
    - ii. Fire Extinguisher;
    - iii. Roadside reflective or warning devices;
    - iv. Flashlight;
    - v. Chains or other traction devices (when appropriate); and,
    - vi. Disposable gloves.
  - d. SUBRECIPIENT shall maintain the vehicle in good operating condition, by providing the following:
    - i. Seatbelts;
    - ii. Side and rear view mirrors;
    - iii. Horn; and,
    - iv. Working turn signals, headlights, taillights, and windshield wipers.
2. SUBRECIPIENT shall maintain a preventative maintenance schedule, which incorporates, at a minimum, all maintenance recommended by the vehicle manufacturer. SUBRECIPIENT shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. SUBRECIPIENT shall provide all equipment necessary to transport Clients using wheelchairs.

**TO READ:** All the above with the addition of:

SUBRECIPIENT shall pay for all preventative maintenance and other repair costs incurred in a timely manner. Invoices shall be submitted by SUBRECIPIENT for eligible vehicles, specified in Section C. Vehicles, paragraph 1, as per Section C. Vehicles, paragraph 2.

*THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK*

**TO READ:** Exhibit 6 – Budget and Units of Services – Unit Cost Schedule

**City of Oregon City - Pioneer Community Center**  
 Fiscal Year 2018-19

	OAA IIB Funds	OAA IIC1 Funds	OAA IIC2 Funds	OAA IID Funds	NSIP Funds	OAA & Other Match	Other State Funds	Ride Connection			TriMet STF Funds	MEDICAID Funds	LIEAP Funds	Program Income	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE
								In Dist	STF	5310 Funds							
								TriMet Funds	Funds	OR-65-012							
Federal Award Numbers	16A0RT3SS	16A0RT3CM	16A0RT3HD	16A0RT3PH	16A0RNSIP												
CFDA Numbers	93.044	93.045	93.045	93.043	93.053												
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
LIEAP Intakes													2075		83	2,075	\$25.00
Case Management	4,792					533									121.7 hrs	5,325	\$39.37
Reassurance	3,770														95	3,770	\$39.85
Information & Assistance	3,359					374									117	3,733	\$28.815
Transportation - OAA	13,988					1,555							2,331	4,663	17,875	\$3.00	
Physical Activity/ Falls Prevention				900		0	900								24 Classes	1,800	\$75.00
OAA Meal Site Management		6,442	17,930			2,710							30,600	36,000	57,682	\$1.03	
Medicaid HDM - APD			(4,496)		(1,694)	(500)					20,511		(1,826)	2,150	11,994	\$8.69	
Transportation - Ride Con In District								22,188					1,345	2,689	23,533	\$8.25	
Transportation - Ride Con Out-of Dist									5,156				0	0	5,156	#DIV/0!	
Transportation - Ride Con. Veh. Maint.						770				5,500				N/A	6,270	N/A	
Transport - non-med T19											4,083	9,357		960	13,440	\$14.00	
<b>TOTALS</b>	<b>25,909</b>	<b>6,442</b>	<b>13,434</b>	<b>900</b>	<b>(1,694)</b>	<b>5,442</b>	<b>900</b>	<b>22,188</b>	<b>5,156</b>	<b>5,500</b>	<b>4,083</b>	<b>29,868</b>	<b>2,075</b>	<b>32,449</b>		<b>152,652</b>	

Source of OAA Match - Staff time & Units of Service in excess of contract  
 CFDA Number 20.513 & Federal Award Number applies to Ride Connection Vehicle Maintenance funds only  
 Contract Amount: \$ 112,934

Federal Award Totals \$ 50,491

COPY

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Subrecipient Agreement, Amendment #2 with City of Wilsonville/Wilsonville Community Center to Provide Social Services for Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the City of Wilsonville/Wilsonville Community Center to provide Older American Act (OAA) funded services for persons in the Wilsonville community.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$57,794 for a revised agreement maximum of \$116,163. This agreement is funded through the Social Services Division Program agreements with the Oregon Department of Human Services and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	Older American Act (OAA) and Special Project Allocation (SPA) - no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	082417-A1
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8363; Subrecipient #18-011-02

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement, Amendment #2; with City of Wilsonville/Wilsonville Community Center to provide Older American Act (OAA) funded services for persons living within the Wilsonville Community Center's service area. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

This is a budget adjustment that distributes the OAA program funding, as well as the State SPA funds for approved evidence-based Physical Activity/Falls Prevention programming for services to be provided during the 2018-19 fiscal year.

Subrecipient Agreement Amendment  
Health, Housing and Human Services

H3S Contract#: 8363 Subrecipient #: 18-011 Board Agenda #: 070017-A

Division: Social Services Amendment Number: 2

Contractor: City of Wilsonville – Community Center

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$57,794.

---

This Amendment #2, when signed by the City of Wilsonville – Community Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend and restart the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

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

**Term and Effective Date.** This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

**4. Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is \$58,369. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 5 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)



City of Wilsonville – Community Center  
Subrecipient Grant Agreement #18-011, Amendment 2

- a. **Grant Funds.** The COUNTY's funding of \$53,869 in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging.
- b. **Other Funds.** The COUNTY's funding of \$4,500 for Physical Activity/Falls Prevention outlined in this agreement are from State of Oregon, Department of Human Services, State Unit on Aging, Special Program Allocation.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2018 through June 30, 2019 is:

4. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is **\$57,794**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 5 – Budget and Units of Services.)
  - a. **Grant Funds.** The COUNTY's funding of **\$53,594** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging.
  - b. **Other Funds.** The COUNTY's funding of **\$4,200** for Physical Activity/Falls Prevention outlined in this agreement are from State of Oregon, Department of Human Services, State Unit on Aging, Special Program Allocation.

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II. **AMEND:** Exhibit 5 – Budget and Units of Services - Unit Cost Schedule

CITY OF WILSONVILLE - COMMUNITY CENTER

Fiscal Year 2017-18

	OAA III B Funds	OAA III C1 Funds	OAA III C2 Funds	OAA III D Funds	OAA Match	NSIP Funds	Other State Funds	Prog. Income	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE
Federal Award Numbers	16AAORT3SS	16AAORT3CM	16AAORT3HD	16AAORT3PH		16AAORNSIP					
CFDA Number	93.044	93.045	93.045	93.043	N/A	93.053					
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Case Management	\$2,106				234				73 Hrs	\$2,340	\$28.84
Reassurance	\$1,894				211				67	\$2,105	\$28.33
Info. & Assistance	\$1,460				162				65	\$1,622	\$22.46
Transportation	\$5,371				597				1,343	\$5,968	\$4.00
PHYSICAL ACTIVITY/ FALLS PREVENTION				\$3,300	0		4,500		104 Classes	\$7,800	\$75.00
OAA/NSIP Food Service		\$8,880	\$6,107		1,667	\$8,938		\$13,200	13,750	38791.6	\$1.30
OAA Meal Site Mngt.		\$9,369	\$6,444		1,758				13,750	\$17,571	\$0.68
<b>TOTALS</b>	<b>\$10,831</b>	<b>\$18,249</b>	<b>\$12,551</b>	<b>\$3,300</b>	<b>\$4,629</b>	<b>\$8,938</b>	<b>\$4,500</b>	<b>\$13,200</b>		<b>\$76,198</b>	

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

Prog. Income = Program Income/Participant Donations

**CONTRACT AMOUNT:** 58,369

Federal Award Total \$ 53,869

**To Read:**

CITY OF WILSONVILLE - COMMUNITY CENTER

Fiscal Year 2018-19

**TO READ:** Exhibit 5 – Budget and Units of Services – Unit Cost Schedule  
 City of Wilsonville – Community Center  
 Subrecipient Grant Agreement #18-011, Amendment 2

	OAA III B Funds	OAA III C1 Funds	OAA III C2 Funds	OAA III D Funds	OAA Match	NSIP Funds	Other State Funds	Prog. Income	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE
Federal Award Numbers	16AAORT3SS	16AAORT3CM	16AAORT3HD	16AAORT3PH		16AAORNSIP					
CFDA Number	93.044	93.045	93.045	93.043	N/A	93.053					
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Case Management	\$2,106				234				73 Hrs	\$2,340	\$28.84
Reassurance	\$1,894				211				67	\$2,105	\$28.33
Info. & Assistance	\$1,460				162				65	\$1,622	\$22.46
Transportation	\$5,371				597				1,343	\$5,968	\$4.00
PHYSICAL ACTIVITY/ FALLS PREVENTION				\$3,300	0		4,200		100 Classes	\$7,500	\$75.00
OAA/NSIP Food Service		\$8,880	\$6,107		1,667	\$8,663		\$13,200	13,750	38516.6	\$1.28
OAA Meal Site Mngt.		\$9,369	\$6,444		1,758				13,750	\$17,571	\$0.68
<b>TOTALS</b>	<b>\$10,831</b>	<b>\$18,249</b>	<b>\$12,551</b>	<b>\$3,300</b>	<b>\$4,629</b>	<b>\$8,663</b>	<b>\$4,200</b>	<b>\$13,200</b>		<b>\$75,623</b>	

Page 4 of 5

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

Prog. Income = Program Income/Participant Donations



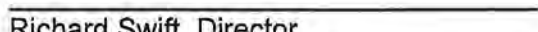
**CONTRACT AMOUNT:** 57,794

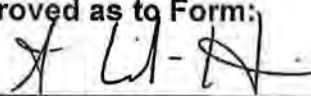
Federal Award Total \$ 53,594

City of Wilsonville – Community Center  
Subrecipient Grant Agreement #18-011, Amendment 2

Except as set forth herein, the County and the Contractor ratify the remainder of the Contract and affirm that no other changes are made hereby.

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

<b>City of Wilsonville</b>	<b>CLACKAMAS COUNTY</b>
By:  Bryan Cosgrove, City Manager	Commissioner: Jim Bernard, Chair Commissioner: Sonya Fischer Commissioner: Ken Humberston Commissioner: Paul Savas Commissioner: Martha Schrader
Date: <u>4/26/2018</u>	<b>Signing on Behalf of the Board:</b>
<b>Approved as to Content:</b>	
 Brian Stevenson, Senior Services Manager	 Richard Swift, Director Health, Housing & Human Services Dept.
Date: <u>4/24/18</u>	Date: _____

**Approved as to Form:**  
  
Amanda Guile-Hinman, Asst. City Attorney  
City of Wilsonville, Oregon  
Date: 4/24/18



May 24, 2018

Board of Commissioners  
 Clackamas County

Members of the Board:

Approval of a Local Grant Agreement with  
Children's Center for Child Abuse Medical Assessments

<b>Purpose/Outcomes</b>	Child abuse medical assessment will be provided for a minimum of 48 children suspected of being abused.
<b>Dollar Amount and Fiscal Impact</b>	\$202,000 No County staff are funded through this contract
<b>Funding Source</b>	County General Fund
<b>Duration</b>	July 1, 2018 through June 30, 2019
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	CYF-8815

**BACKGROUND:**

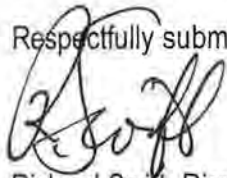
The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of Local Grant Agreement with Children's Center to provide Child Abuse Medical Assessments to a minimum of 48 children. Children who are determined to have been abused and their families will be referred to resources, services, and treatment, as appropriate.

This Agreement has been reviewed and approved by County Counsel. Its funding source is County General Funds and it has a maximum value of \$202,000. The Agreement is effective as of July 1, 2018 and it terminates June 30, 2019.

**RECOMMENDATION:**

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

Respectfully submitted,



Richard Swift, Director  
 Health, Housing & Human Services

<b>CLACKAMAS COUNTY, OREGON</b> <b>LOCAL RECIPIENT GRANT AGREEMENT CYF-8815</b> Program Name: <b>Child Abuse Medical Assessment</b> Program/Project Number: CYF-8815	
This Agreement is between <u>Clackamas County, Oregon</u> , acting by and through its Children, Youth & Families Division (COUNTY) and <u>Children's Center</u> (RECIPIENT), an Oregon Non-profit Organization.	
<b>COUNTY Data</b>	
Grant Accountant: <b>Michael Morasko</b>	Program Manager: <b>Sarah Van Dyke</b>
Clackamas County Finance 2051 Kaen Rd. Oregon City, OR 97045 503-742-5435 mmorasko@clackamas.us	Clackamas County Children, Youth & Families Division 150 Beaver Creek Rd. Oregon City, OR 97045 503-650-5685 svandyke@clackamas.us
<b>RECIPIENT Data</b>	
Finance/Fiscal Representative: <b>Leslie Everson</b>	Program Representative: <b>Leslie Everson</b>
Children's Center 1713 Penn Lane Oregon City, OR 97045 503-655-7725 leslie@childrenscentercc.org	Children's Center 1713 Penn Lane Oregon City, OR 97045 503-655-7725 leslie@childrenscentercc.org
FEIN: 75-3027143	

### RECITALS

1. Child abuse is defined as physical injury, general and/or severe neglect, sexual abuse, sexual assault, exploitation, emotional maltreatment and or willful harm or endangerment. Without treatment, child victims of abuse are likely to suffer long-term trauma that can adversely affect the course of their lives. During the 2016-17 fiscal year, Children's Center provided medical examinations and/or forensic interviews for 462 Clackamas County children who were suspected victims of abuse or neglect
2. Children's Center will provide child abuse medical assessments and forensic interviews for children suspected of experiencing abuse to determine whether or not abuse has occurred and if there is a need for further treatment. A total of 48 children will be served under this award. The children and their families will be connected to other treatment, as appropriate.
3. County General Fund dollars will be used to finance this Agreement as part of its commitment to end Child Abuse in Clackamas County. Children's Center is a private, non-profit child abuse intervention center accredited by the National Children's Alliance. It supports Clackamas County Children and families experiencing suspected physical abuse, sexual abuse, emotional abuse and neglect, including drug endangerment and witness to violence.
4. Children's Center is the only agency located in Clackamas County able to provide this unique and specialized service to children and families in crisis due to child abuse. It has demonstrated capacity and expertise to provide the services outlined in this Agreement.

- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
- c) **Budget.** RECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: RECIPIENT Program Budget. RECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or Agreement.
- d) **Allowable Uses of Funds.** RECIPIENT shall use funds only for those purposes authorized in this Agreement.
- e) **Period of Availability.** RECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15<sup>th</sup> of the following month using the forms and instructions outlined in Exhibit D-1: Request for Reimbursement. RECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance Reporting.** RECIPIENT must submit Performance Reports on a quarterly basis according to the schedule specified in Exhibit C: Performance Reporting Schedule. Quarterly Reports include Exhibits A-2: Work Plan Quarterly Report, A-3: Demographic Report, and A-4: Client Feedback Survey and Report. All reports must be submitted on templates provided, must reference this Agreement number, and be signed and dated by an authorized official of RECIPIENT.
- i) **Audit.** RECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** RECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. The COUNTY, and its duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of RECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- k) **Record Retention.** RECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2018), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** RECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and RECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold RECIPIENT grant funds until compliance is

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

- 3) **Professional Liability.** If the Agreement involves the provision of professional services, RECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this Agreement, with limits not less than \$2,000,000 per occurrence for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its elected officials, agents, officers, and employees" as an additional insured, but only with respect to RECIPIENT's activities under this Agreement.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by RECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, RECIPIENT shall furnish a Certificate of Insurance to COUNTY. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 9) **Primary Coverage Clarification.** RECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
- 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- 11) **Waiver of Subrogation.** RECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.



SIGNATURE PAGE TO RECIPIENT AGREEMENT  
(CLACKAMAS COUNTY)


AGREED as of the Effective Date.

**RECIPIENT**

Children's Center  
1713 Penn Lane  
Oregon City, OR 97045

**CLACKAMAS COUNTY**

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


By:   
Tom Soma, Executive Director

Dated: 5-9-18

**Signing on behalf of the Board:**

By: \_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Services

Dated: \_\_\_\_\_

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

Dated: 5/14/18

Approved to Form

By: Kathleen Rasketer 5/9/18  
County Counsel Date

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

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Service Agreement with Rx Strategies partnering  
with Clackamas County Health Centers Division  
for Third Party Administration of 340B Claims Management of Pharmacy Services

<b>Purpose/Outcomes</b>	The intent of the Service Agreement is to provide Third Party Administration for 340B Claims Management of pharmacy services to Clackamas County Health Centers Division (CCHCD) clinics.
<b>Dollar Amount and Fiscal Impact</b>	The Agreement has a maximum value of \$500,000.00
<b>Funding Source</b>	No County General Funds are involved. This is partially revenue generating through the fees for pharmacy services. The expenses are administration fees for the Third Party Administrator.
<b>Duration</b>	Effective upon signature and terminates on June 30, 2023
<b>Strategic Plan Alignment</b>	1. Provide patient-centered health center services to vulnerable populations so they can experience improved health. 2. Ensure safe, healthy and secure communities
<b>Previous Board Action</b>	There has been no previous board action on this item.
<b>Contact Person</b>	Deborah Cockrell, FQHC Director – 503-742-5495

**BACKGROUND:**

CCHCD sought proposals from eligible applicants able to provide 340B Third Party Administration including claims management of pharmacy services and administrative support functions for the constituent clinics of the CCHCD. The awarded proposer is qualified to administrate 340B covered medications in accordance with Federal and State statutes and regulations.

**PROCUREMENT PROCESS:**

A Request for Proposals in accordance with ORS and LCRB rules was published October 26, 2017, #2017-78 Third Party Administration for 340B Claims Management of Pharmacy Services. Four responsive Proposals were submitted and were opened on November 28, 2017. A notice of intent to award after a full evaluation of the received Proposals was publicly posted on January 11, 2018. The total contract amount is not to exceed \$500,000.00.

County Counsel has reviewed and approved this contract.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve and sign the contract RxStrategies for Third Party Administration for 340B Claims Management of Pharmacy Services

Richard Swift, Director  
Health, Housing, and Human Services



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between RxStrategies, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2023. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. This Contract covers the Scope of Work as described in RFP #2017-78 Third Party Administration for 340B Claims Management of Pharmacy Services issued November 28, 2017, attached and hereby incorporated by reference as Exhibit A. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit "A", the Contractor's Proposal attached and hereby incorporated by reference as Exhibit "B", the mutually agreed upon Scope of Work attached and hereby incorporated by reference as Exhibit "C", and the Qualified Service Organization Business Associate Agreement attached and hereby incorporated by reference as Exhibit "D".

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed five hundred thousand dollars (\$500,000.00), for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Article III.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, and D.

6. Contractor Data.

Name: RxStrategies, Inc.
Address: 1900 Glades Road, Suite 150, Boca Raton, Florida, 33431
Contractor Contract Administrator: Rhodie Smith
Phone No.: 561-910-5164
Email: rsmith@rxstrategies.com
MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.



7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Article V)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Article III**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal

delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor 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 Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this 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.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections

20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the 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 the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.



(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

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

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

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the

nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

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

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

**29. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

**30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

RxStrategies, Inc.

Clackamas County:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Oregon Business Registry #

\_\_\_\_\_  
Date

\_\_\_\_\_  
Entity Type / State of Formation

Approved as to Form:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ARTICLE III  
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Third Party Administration of the 340B program including claims management of pharmacy services and administrative support functions, including diversion avoidance for the constituent clinics of the Clackamas County Health Centers Division (CCHCD) as further described in Exhibits A, B and C.

The County Contract administrator for this Contract is: Amy Council.

**CONSIDERATION**

- a. Consideration Rates –Time and Material rates as further described and incorporated by reference in Exhibit C.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of five hundred thousand dollars (\$500,000.00). Invoices shall be submitted to: Clackamas County Health Centers Division, Attn: Accounts Payable, 2051 Kaen Road, Oregon City, OR 97045, or via email at [HealthCenterAP@clackamas.us](mailto:HealthCenterAP@clackamas.us).
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.



**ARTICLE IV  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by County     Not required by County**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

**3.  Required by County     Not required by County**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4.  Required by County     Not required by County**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

**ARTICLE V**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT A**  
**Request for Proposals #2017-78**  
**Third Party Administration for 340B Claims Management of Pharmacy Services**



**REQUEST FOR PROPOSALS #2017-78**

**FOR**

**Third Party Administration for  
340B Claims Management of Pharmacy Services**

**BOARD OF COUNTY COMMISSIONERS**

**JIM BERNARD, Chair**

**SONYA FISCHER, Commissioner**

**KEN HUMBERSTON, Commissioner**

**PAUL SAVAS, Commissioner**

**MARTHA SCHRADER, Commissioner**

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**Donald Krupp  
County Administrator**

**George Marlton  
Procurement Division Director**

**Abigail Churchill  
Analyst**

**PROPOSAL CLOSING DATE, TIME AND LOCATION**

**DATE: November 28 2017**

**TIME: 2:00 PM, Pacific Time**

**PLACE: Clackamas County Procurement Division  
Clackamas County Public Services Building  
2051 Kaen Road, Oregon City, OR 97045**



**SCHEDULE**

Request for Proposals Issued.....October 26, 2017

Protest of Specifications Deadline.....November 2, 2017, 5:00 PM, Pacific Time

Deadline to Submit Clarifying Questions.....November 20, 2017, 5:00 PM, Pacific Time

Request for Proposals Closing Date and Time.....November 28, 2017, 2:00 PM, Pacific Time

Deadline to Submit Protest of Award.....Seven (7) days from the Intent to Award

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**SECTION 1**  
**NOTICE OF REQUEST FOR PROPOSALS**

Notice is hereby given that Clackamas County through its Board of County Commissioners will receive sealed Proposals per specifications until **2:00 PM, November 28, 2017** (“Closing”), to provide Third Party Administration for 340B Claims Management of Pharmacy Services. No Proposals will be received or considered after that time.

Proposal packets are available from 7:00 AM to 6:00 PM Monday through Thursday at Clackamas County Procurement Division, Clackamas County Public Services Building, 2051 Kaen Road, Oregon City, OR 97045, telephone (503) 742-5444 or may be obtained at <http://www.clackamas.us/bids/>. Sealed Proposals are to be sent to Clackamas County Procurement Services – Attention George Marlton, Director at the above Kaen Road address. Sealed Proposals may be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us).

Contact Information

Procurement Process and Technical Questions: Abigail Churchill, 503-742-5449, [achurchill@clackamas.us](mailto:achurchill@clackamas.us).

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

Clackamas County encourages bids from Minority, Women, and Emerging Small Businesses.

## SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

**2.1 Modification or Withdrawal of Proposal:** Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

**2.2 Requests for Clarification and Requests for Change:** Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. County will provide reasonable notice of its decision to all Proposers that have provided an address to the Procurement Division for this procurement. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

**2.3 Protests of the RFP/Specifications:** Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

**2.4 Addenda:** If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check the Bids and Contract Information page at <http://www.clackamas.us/bids/> for any published Addenda or response to clarifying questions.

**2.5 Submission of Proposals:** All Proposals must be submitted in a sealed envelope bearing on the outside, the name and address of the Proposer, the project title, and Closing date/time. Proposals must be submitted in accordance with Section 5.

All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Response form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.



**2.6 Post-Selection Review and Protest of Award:** County will name the apparent successful Proposer in a “Notice of Intent to Award” letter. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers will be notified in writing of the selection of the apparent successful Proposer(s) and shall be given seven (7) calendar days from the date on the “Notice of Intent to Award” letter to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for award, i.e. the protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

**2.7 Acceptance of Contractual Requirements:** Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

**2.8 Public Records:** Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.501(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

**“This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.500(1). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

**2.9 Investigation of References:** County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any

other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

**2.10 RFP Proposal Preparation Costs and Other Costs:** Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

**2.11 Clarification and Clarity:** County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

**2.12 Right to Reject Proposals:** County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

**2.13 Cancellation:** County reserves the right to cancel or postpone this RFP at any time or to award no contract.

**2.14 Proposal Terms:** All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

**2.15 Oral Presentations:** At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

**2.16 Usage:** It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

**2.17 Review for Responsiveness:** Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

**2.18 RFP Incorporated into Contract:** This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

**2.19 Communication Blackout Period:** Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

**2.20 Prohibition on Commissions and Subcontractors:** County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

**2.21 Ownership of Proposals:** All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

**2.22 Clerical Errors in Awards:** County reserves the right to correct inaccurate awards resulting from its clerical errors.

**2.23 Rejection of Qualified Proposals:** Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

**2.24 Collusion:** By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

**2.25 Evaluation Committee:** Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

**2.26 Commencement of Work:** The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

**2.27 Best and Final Offer:** County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial Proposal received. Therefore, each Proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

**2.28 Nondiscrimination:** The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

**2.29 Intergovernmental Cooperative Procurement Statement:** Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any Proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public

agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.



## **SECTION 3 SCOPE OF WORK**

### **3.1. INTRODUCTION**

Clackamas County is seeking Proposals for Third Party Administration for 340B Claims Management of Pharmacy Services under guideline and participation of 42USC253b(a)(5)(A)(i) of The Public Health and Welfare Act.

**Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.**

### **3.2 BACKGROUND**

Clackamas County, on behalf of the Clackamas County Health Centers Division (CCHCD) is seeking proposals from eligible applicants able to provide 340B Third Party Administration including claims management of pharmacy services and administrative support functions, including diversion avoidance for the constituent clinics of the CCHCD.

The County reserves the right to make multiple awards. The County also reserves the right to reject any and all proposals, when it is in the public interest to do so.

Proposers must be qualified to administrate 340B covered medications in accordance with all applicable Federal and State statutes and regulations.

Proposer must also be able to identify and arrange direct Clackamas County – contract pharmacy agreements with appropriate retail outlets located in proximity to Clinic locations and to facilitate ongoing relations with existing contract pharmacies.

#### **PLEASE NOTE:**

- The CCHCD currently use Cardinal and McKesson as their 340B Wholesalers. Proposers must be able to utilize these companies as Wholesalers or be a registered 340B wholesaler.
- The CCHCD is a safety-net clinic and seeks low-cost options for its clients, including the use of generic pharmaceuticals and low dispensing fees.
- The CCHCD uses OCHIN EPIC, and Anasazi Cerner as their electronic health records database.

### **3.3. SCOPE OF WORK**

1. The proposer must be qualified to order and administrate 340B covered medications in accordance with all applicable Federal and State, statutes and regulations.
2. The proposer will provide third party administration and management services for County's eligible patients, via jointly Administrator-County selected "contract pharmacy or pharmacies". The proposer must be able to directly administer "a bill to/ship to" 340B virtual inventory replenishment model on behalf of all Clackamas County HRSA parent and child site locations and contract pharmacies.
3. The proposer must independently negotiate agreements with contract pharmacies willing to contract with Clackamas County for local dispensing. Clackamas County's current 340B network pharmacies to include but not limited to Safeway, Kroger (Fred Meyer), Rite-Aid,

- Genoa, and Geneva Woods pharmacies. The proposer will register and certify the contract pharmacies, with the Office of Pharmacy Affairs.
4. The proposer must have the ability to independently establish a contractual relationship with the County-selected 340B wholesaler(s).
  5. The proposer must maintain all records and reports required under the resultant contract with Clackamas County and/or those required by the 340B or other applicable Federal and State statutes and regulations, for both the County and the contract pharmacy or pharmacies (to include mail order). Such records and reports shall be retained in accordance with the applicable Federal and State documentation regulations.
  6. The proposer must maintain client/patient medication profiles.
  7. The proposer shall manage the remittance of the revenue due Clackamas County based on the 340B prescriptions issued by CCHCD.
  8. The proposer must establish and maintain a prescription dispensing tracking system to ensure there is no diversion of 340B medications and no Medicaid duplicate- discounts.
  9. The proposer must establish and retain financial records in accordance with GAAP and must open such reports to Clackamas County, the State of Oregon and the Comptroller General of the United States, during normal business hours.
  10. The proposer must establish and maintain ordering/dispensing reports that meet the requirements of the County and the 340B Wholesaler.
  11. The proposer should have the capabilities to provide 340B pharmacy benefits management or consolidation of benefits (COB) for both uninsured and insured patients.
  12. The proposer will be required to send regular scheduled Managed Medicaid Retroactive Claims File to the State of Oregon with a copy to Clackamas County to ensure duplicate discounts are avoided.
  13. The proposer will have a method to allow Clackamas County to manage and selectively carve in referral prescriptions.
  14. The proposer must have the capability to give Clackamas County the option to select real-time or retrospective 340B prescription eligibility.
  15. The proposer must provide Clackamas County with self-auditing tools for all pharmacies in its network, to assist Clackamas County in maintaining a compliant 340B program.
  16. The proposer must provide face to face account review with a representative of Clackamas County annually, bi-annually would be preferred.
  17. The proposer must have a method, such as a software filter, to determine and administer a 340B “Winners only” program.

**3.3.2. Term of Contract:**

The term of the contract shall be from the effective date through December 31, 2020 with two, one year options to renew for a maximum contract term of 5 years.

**3.3.3. Sample Contract:** Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Professional Services Contract for this RFP can be found at <http://www.clackamas.us/bids/terms.html>.

Professional Services Contract (unless checked, item does not apply)

The following paragraphs of the Professional Services Contract will be applicable:

- Article I, Paragraph 4 – Travel and Other Expense is Authorized
- Article II, Paragraph 29 – Confidentiality
- Article II, Paragraph 29 – Criminal Background Check Requirements
- Article II, Paragraph 30 – Key Persons
- Exhibit A –Business Associate Agreement

The following insurance requirements will be applicable:

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

**SECTION 4  
EVALUATION PROCEDURE**

**4.1** An evaluation committee will review all Proposals that are initial deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring s. The invited s will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

**4.2 Evaluation Criteria**

<u>Category</u>	<u>Points available:</u>
Proposer’s General Background and Qualifications	0-30
Scope of Work	0-45
Fees	0-25
<b>Available points</b>	<b>0-100</b>

**4.3** Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.



**SECTION 5  
PROPOSAL CONTENTS**

**5.1. Vendors must observe submission instructions and be advised as follows:**

**5.1.1.**

Complete Proposals may be mailed to the below address or emailed to [Procurement@clackamas.us](mailto:Procurement@clackamas.us). The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal. If the Proposal is mailed, an original copy and an electronic copy (on compact disk or jump drive) must be included. The Proposal (hardcopy or email) must be received by the Closing Date and time indicated in Section 1 of the RFP.

**5.1.2. Mailing address including Hand Delivery, UPS and FEDEX:**

Clackamas County Procurement Division – Attention George Marlton, Director  
Clackamas County Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045

**5.1.3.**

County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

**Provide the following information in the order in which it appears below:**

**5.2. Proposer’s General Background and Qualifications:**

- Description of the firm.
- Credentials/experience of key individuals that would be assigned to this project.
- Description of providing similar services to public entities of similar size within the past five (5) years.
- Description of the firm’s ability to meet the requirements in Section 3.
- Description of what distinguishes the firm from other firms performing a similar service.

**5.3. Scope of Work**

**Questions**

In each response, as applicable, please indicate the number of years of experience that proposer has in providing each type of service and if these services have been provided for Clackamas County Health Centers. **Complete answers to each question will determine point values.**

**Proposer’s General Background and Qualifications      0 – 30 points**

1. Describe your experience and qualifications providing 340B Third Party Administration.
2. Describe your experience negotiating 340B agreements with contract pharmacies. Do you have current agreements with any of Clackamas County’s contract pharmacies? (Kroger, Safeway, Rite-Aid, Genoa, and Geneva Woods).
3. Describe your agencies experience working with 340B wholesalers. Do you currently work with any of the 340B wholesalers Clackamas County contracts with? (McKesson, Cardinal)

4. Do you have experience sending regularly scheduled Managed Medicaid rebate exclusion files to the State of Oregon to ensure duplicate discounts are avoided? If so, please describe your process.
5. References: Please submit complete contact information for at least two Federally Qualified Health Centers you have provided Third Party Administration services for, preferably in Oregon.

**5.4 Scope of Work**

**0 – 45 points**

1. Describe your ability to directly administer a bill to/ship to 340B virtual inventory replenishment model.
2. Describe your process for managing the remittance of the revenue including payment frequency and remittance method due to CCHCD based on the 340B prescriptions issued by the CCHCD.
3. Describe the ordering/dispensing reports that you provide to CCHCD and to 340B Wholesalers. Please provide sample reports and/or screen shots of the portal.
4. Describe your capability to provide 340B pharmacy benefits management or consolidation of benefits (COB) for both uninsured and insured patients.
5. Describe your method to allow CCHCD to manage and selectively carve in referral prescriptions.
6. Do you have the capability to give CCHCD the option to select real-time or retrospective 340B prescription eligibility? If so, please describe your process.
7. Do you have the ability to provide CCHCD with self-auditing tools to assist Clackamas County in maintaining a compliant 340B program? Please describe your process(s) utilized and support provided to ensure contracted CCHCD are in compliance with the 340B program.
8. Describe the support you will provide to CCHCD staff including onsite visits if applicable, including HRSA audits.
9. The CCHCD uses OCHIN EPIC and Anasazi Cerner for their Electronic Health Record. Describe your methods of access to patient and prescriber information including but not limited to interfacing with OCHIN EPIC and Anasazi Cerner and/or other electronic health records databases. Please provide an overview of your implementation strategy, number of years of experience, and an estimated time to implement.
10. Please describe your remediation or true up process to maintain a compliant virtual inventory model.
11. Please describe your experience fulfilling Uniform Data System (UDS) report requests from other Federal Qualified Health Centers.

**5.5 Fees**

**0 – 25 points**

1. Please provide the quotation for services, including all charges, such as fees per prescription and any other miscellaneous charges to CCHCD.
2. Please provide a detailed description of your administrative fees and a line item breakdown.

Please describe your method for determining distribution of revenue funds received from the contract pharmacy.

**5.6. References**

Provide three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references.

**5.7. Completed Proposal Certification (see the below form)**

**PROPOSAL CERTIFICATION**  
**Third Party Administration**

Submitted by: \_\_\_\_\_  
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agent or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
  - 1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
  - 2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
  - 3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer fully understands and submits its Proposal with the specific knowledge that:
  - 1. The selected Proposal must be approved by the Board of Commissioners.
  - 2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i) That the Proposer is legally qualified to contract with the County.
- (j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

**(k)** The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

Resident Bidder, as defined in ORS 279A.120

Non-Resident, Resident State \_\_\_\_\_

Oregon Business Registry Number \_\_\_\_\_

**Contractor's Authorized Representative**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ Phone: (    ) \_\_\_\_\_

e-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

**Contract Manager:**

Name \_\_\_\_\_ Title: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email Address: \_\_\_\_\_



**Exhibit A**  
**Business Associate Agreement**

# EXHIBIT A

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into as of **XXXX** ("Effective Date") by and between **Clackamas County Health, Housing and Human Services, XXXX Division** ("Covered Entity") and **Contractor Name** ("Business Associate") in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations ("HIPAA").

### RECITALS

**Whereas**, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement ("Agreement");

**Whereas**, such information may be Protected Health Information ("PHI") as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

**Now, Therefore**, the parties hereby agree as follows:

### SECTION I - DEFINITIONS

- 1.1 "Breach" is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member's course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 "Covered Entity" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 "Designated Record Set" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 "Effective Date" shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

- 1.8 "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 "Protected Information" shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity's behalf.
- 1.12 "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 "Unsecured Protected Health Information" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

## SECTION II - OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
- 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
- 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
- 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.



**SECTION III - THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**SECTION IV - NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

**SECTION V - BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
  - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. In plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

## SECTION VI - TERM AND TERMINATION

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or

destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## SECTION VII - GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Covered Entity.** Covered Entity agrees to indemnify, defend and hold harmless the Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Covered Entity's breach of Section 4.1 of this Business Associate Agreement. Accordingly, on demand, Covered Entity shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Covered Entity's breach hereunder. Covered Entity's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate's breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.6 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.7 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

[Signature Page Follows]

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

**Business Associate**

**Contractor Name**

**Covered Entity**

**Clackamas County**

By: \_\_\_\_\_  
Signature Authority

By: \_\_\_\_\_  
Richard Swift

Title: (Title) \_\_\_\_\_

Title: Director, H3S \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

S:\Admin\CONTRACTS\ADMINISTRATION\Boilerplate Contracts\Business Associate-QSO\BAA 2017-Approved by Counsel 09-06-2017.docx

SAMPLE



**EXHIBIT B**  
**Contractor's Response**



**EXPERIENCED | INNOVATIVE | ACCOUNTABLE**

RxStrategies, Inc., Request for Proposal (RFP) Response:

**November 28, 2017**

**Clackamus County**

**REQUEST FOR PROPOSAL #2017-78**

**Third Party Administration for  
340B Claims Management of Pharmacy Services**

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1900 Glades Road  
Suite 350  
Boca Raton, FL 33431  
Office: 561.910.9100  
Toll Free: 877.464.3879  
Fax: 561.416.2011

November 27, 2017

George Marlton  
Procurement Division Director  
Clackamas County Procurement Division  
2051 Kaen Road  
Oregon City, OR 97045  
procurement@clackamas.us

RE: RFP 340B Third Party Administration for 340B Claims Management of Pharmacy Services

Dear Mr. Marlton:

RxStrategies, Inc. ("RXS") is pleased to enclose its comprehensive proposal to Clackamas County, on behalf of the Clackamas County Health Centers Division ("CCHCD") for RFP #2017-78, 340B Third Party Administration for 340B Claims Management of Pharmacy Services.

As the leader in 340B program management for the Federally Qualified Health Center ("FQHC") community, RXS provides a customized solution to fit the needs of each of its FQHC clients, its patients and its contract pharmacies. RXS pledges to provide the most advanced and compliant 340B solution to CCHCD. In fact, RXS is prepared to offer CCHCD indemnification against audit findings while the program is under RXS management, if, CCHCD uses the proprietary 340B Compliance Plus<sup>™</sup> program from RXS.

RxStrategies believes that its comprehensive 340BPlus<sup>™</sup> platform takes the worry out of the 340B program for the covered entity while providing maximum results for all concerned. RXS delivers its solution after consulting with and learning from its clients the key needs of the 340B program. Each client has different needs and priorities and it is the job of RXS to deliver that customized solution.

I think that you will find the approach of RXS to your 340B needs to be refreshing. All of us at RXS look forward to working with CCHCD to deliver the most compliant, profitable and efficient 340B program possible.

Sincerely,

Fenton Markevich  
President and CEO



## ABOUT US

who we are, what we do and how we do it



<https://twitter.com/340BPlus>



<https://www.linkedin.com/company/rxstrategiesinc->



### Who We Are

RxStrategies (RXS) provides solutions that assist 340B “Qualified Entities” in meeting the challenges of regulatory compliance, patient eligibility, pharmacy replenishment, program tracking and reporting for the Federal 340B Drug Pricing Program.

### What We Do

As a full-service pharmaceutical services organization, RxStrategies provides a diverse range of 340B services to all “Qualified Entities” in-house and/or contract pharmacies, including “real-time” comprehensive solutions to the challenges of regulatory compliance, patient eligibility, pharmacy replenishment, program tracking and reporting of the Federal 340B Drug Pricing Program.

### How We Do It

RxStrategies, Inc., has developed a proprietary system, called **340BPlus<sup>™</sup>** that allows full compliance with all of the 340B regulations and allows the qualified entity, its pharmacy or pharmacies (in-house and/or contracted) and, most importantly its patients access to the benefits of the 340B program without the worry of program compliance. **340BPlus<sup>™</sup>** takes care of everything including patient eligibility, prescription tracking, inventory management, inventory replenishment, billing and overall program management.

**RxStrategies the knowledgeable leader, removing the challenges organizations face when implementing 340B Drug Pricing Programs**

**Our History**

Established in 2002 and headquartered in Boca Raton, Florida, RxStrategies, Inc., provides accountability, transparency and value-based solutions for the Federal 340B Drug Pricing Programs. RxStrategies has been working to ease the implementation of the Federal 340B Drug Pricing Program for nearly a decade. As a leading expert, our company offers prescription discounts to qualified entities in order for them to best serve patients.

**Our Mission**

To design and implement customized 340B pharmacy solutions that allow our clients to maximize the value of the Federal 340B discount drug pricing program within and across their organization.

**Our Values**

These distinguishing factors are woven into our framework:

Commitment to Excellence	Integrity
Enhanced Financial Transparency	Accountability
Focus on Quality	Innovation
User Friendly Solutions	Client Satisfaction

RxStrategies provides federally qualified entities and their pharmacy partners with a full turn-key solution for the implementation and on-going management of the 340B discount prescription drug program. The 340B program is a proven vehicle to provide the much-needed prescription drugs to your patients at the lowest cost possible under the law and also increases the value and quality of care that your centers provide.

**Our Focus**

RxStrategies is solution oriented. We take the questions and difficulty out of applying 340B. Our **340BPlus<sup>™</sup>** program is specifically designed to ensure patient eligibility, prescription tracking, inventory management, inventory replenishment, billing and program management. Our pharmacy network is focused to bring savings to millions of patients eligible under the 340B program.

## OUR LEADERSHIP

our company leaders

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Mr. Fenton Markevich  
President and CEO

Since December 2005, Fenton Markevich has served as President and Chief Executive Officer of RxStrategies, Inc. With more than 30 years of experience as a Chief Financial Officer and Chief Executive Officer of technology based organizations, Markevich brings a disciplined approach to addressing the complex issues of managing and administering the complexities of the 340B program.

Markevich holds undergraduate and graduate degrees from the University of Notre Dame and DePaul University.

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Mr. Skip Devanny  
Chief Revenue Officer

Skip Devanny, Chief Revenue Officer joined the RxStrategies' senior leadership team in 2015 and has responsibility for sales and marketing including the delivery of customized 340B pharmacy administration and split billing solutions to the growing 340B marketplace. Devanny joined RxStrategies with acknowledged industry leadership and an extensive background in both split billing and contract pharmacy market facing roles within the 340B space.

Devanny is a graduate of Trinity University and Washington University in St. Louis (MBA).

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Mr. Tim Vroman  
Chief Operating Officer

Tim Vroman, Chief Operating Officer, joined RxStrategies in January 2012 with 10 years of pharmacy benefit management experience and works closely with RxStrategies' senior leadership team to design and deliver innovative 340B solutions to the market and its clients. Prior to joining RxStrategies, Vroman was instrumental in the development of the products, infrastructure and overall business for Cypress Care, while serving as CFO/COO and later President for Cypress Care—one of the nation's leading workers compensation PBM firms.

Vroman holds an MBA in Finance from Boston College and B.S. in Accounting from Bryant College.

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Mr. David Wanless  
VP of Technical Operations & Development

David Wanless joined RxStrategies 14 years ago with an extensive knowledge of sales, operations, pharmaceuticals and technology. Throughout his 14-year tenure with RxStrategies, Wanless has focused on design, development and management for the following projects: 340B inventory processing and management system, Prescription Benefit Manager (PBM) and Customer Relationship Manager (CRM). As Vice President of Technical Operations and Development, Wanless oversees technical operations and system development. Previously, Wanless served as Senior Business Analyst for ABB Optical where he played a key role in growing the company into the largest optical distributor in the US.

Wanless holds a Bachelors of Arts in Biology from Boston University.

## OUR CLIENTS

who we serve

**“With RxStrategies as your 340B partner your organization can take the worry out of 340B”**

### Hospitals

Our range of services offered ensure 340B compliance and access to competitively priced prescriptions. Our hospital services include:

Contract Pharmacy 340B Administration	Split Billing Software Solution
In-House Pharmacy 340B Administration	Formulary Management
P&T Committee Participation	340B Optimization Strategies
Pharmacy Management Consulting	Educational Initiatives

### Health Centers

With RxStrategies health centers can gain dramatic drug discounts for patients which can lead to better health outcomes and a greater quality of care. Our health center services include:

Contract Pharmacy 340B Administration	Split Billing Software Solution
In-House Pharmacy 340B Administration	Formulary Management
Management/Tracking of Grant Subsidies	340B Optimization Strategies
Pharmacy Management Consulting	Educational Initiatives

### Pharmacies

RxStrategies works with pharmacies in a variety of ways including providing:

340B Participation Opportunities	340B Training
High-Touch Account Management	Financial Transparency
Back-end Support Inventory Management	Innovative Strategies
Back-end Financial Management	Client Satisfaction

### Managed Care / ACOs

RxStrategies is solution oriented. We take the questions and difficulty out of applying 340B. Our **340BPlus™** program is specifically designed to ensure patient eligibility, prescription tracking, inventory management, inventory replenishment, billing and program management. Our pharmacy network is focused to bring savings to millions of patients eligible under the 340B program.



## OUR 340B SOLUTIONS

overview of our core 340B administrative services

RxStrategies programs are proven to provide accountability, transparency and value-based solutions for the 340B Drug Pricing Program. RxS has been successfully serving the 340B community for more than a decade with over 500 sites participating.



### Contract Pharmacy

340B contract pharmacy administration program solution **340BPlus™** is tailored to the specific needs of the covered entity and its patients.

Fully automated virtual inventory and replenishment process.

Sophisticated pricing management, GPO exclusion and Orphan Drug identification.

Client drives the rules for establishing eligible patients.

Fully compliant with the 340B rules and regulations.

Detailed reporting to manage all aspects of your 340B program.

Industry leading real-time processing options.

### Split Billing

Full service split billing program for in-house usage and reporting on the activity.

Daily Wholesaler Split Ordering manages GPO, WAC and 340B accounts.

Inventory is managed on a virtual basis.

System is web based and produces reports and information based on pre-defined data fields.

The **340BPlus™** system reacts to the purchasing of the hospital by the specific CDM or NDC as purchased originally on the WAC account.

The **340BPlus™** system audits the wholesaler pricing on invoices by comparing the purchase price against the RxStrategies national pricing network to highlight anomalies.

### In-house Pharmacy

340B contract pharmacy administration program solution **340BPlus™** is tailored to the specific needs of the covered entity and its patients.

Fully automated virtual inventory and replenishment process.

Sophisticated pricing management, GPO exclusion and Orphan Drug identification.

Client drives the rules for establishing eligible patients.

Fully compliant with the 340B rules and regulations.

Detailed reporting to manage all aspects of your 340B program.

# CONTRACT PHARMACY

fully compliant contract pharmacy administration



The proprietary and integrated system of RxStrategies system is web based and name **340BPlus<sup>™</sup>**

## Contract Pharmacy

RxStrategies will administer all aspects of your 340B contract pharmacy program. Our **340BPlus<sup>™</sup>** solution is fully automated with data connectivity and integration as the cornerstone. Additionally, the **340BPlus<sup>™</sup>** virtual inventory and replenishment system provides total 340B program control.

## Key 340BPlus<sup>™</sup> Features

RxSClaim	Fully Tailored 340B Program to the Specific Needs of the Covered Entity and its Patients
RxSInventory	Fully Automated Inventory Process, with Pricing Management and Orphan Drug Identification
RxSReporting	Detailed Reporting to Manage All Aspects of Your 340B Program (Accounting - Patient Activity)
RxSAudit	Insures Full 340B Compliance
RxSFormulary	Formulary Management; Special Billing; Anything That You Need
RxSConsulting	Have Us Perform an Outside Review of Your Current 340B Program. Free Program Analysis.
RxSPortal	Real-Time Access to All of Your 340B Data and Information

# RXSTRATEGIES RFP RESPONSE

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## SECTION 5 PROPOSAL CONTENTS

### 5.1. Vendors must observe submission instructions and be advised as follows:

#### 5.1.1.

Complete Proposals may be mailed to the below address or emailed to Procurement@clackamas.us. The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal. If the Proposal is mailed, an original copy and an electronic copy (on compact disk or jump drive) must be included. The Proposal (hardcopy or email) must be received by the Closing Date and time indicated in Section 1 of the RFP.

#### 5.1.2. Mailing address including Hand Delivery, UPS and FEDEX:

Clackamas County Procurement Division – Attention George Marlton, Director Clackamas County  
Public Services Building  
2051 Kaen Road Oregon City, OR 97045

#### 5.1.3.

County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

### **Provide the following information in the order in which it appears below:**

#### 5.2. Proposer's General Background and Qualifications:

- Description of the firm.

### **RxStrategies Response**

Established in 2002 and headquartered in Boca Raton, Florida, RxStrategies, Inc. provides accountability, transparency and value-based solutions for the Federal 340B Drug Pricing Programs. RxStrategies is the knowledgeable leader for removing the challenges 340B covered entities face when implementing 340B Drug Pricing Programs and making 340B application possible.

RxStrategies 340B service lines including split billing software, contract pharmacy administration and in-house pharmacy solutions. Today, RxStrategies administers compliant 340B solutions including contract pharmacy administration for more than 500 340B covered entities sites. RxStrategies has been working to ease the implementation burden and optimize 340B compliance for 15 years. As a leading expert, our company offers 340B solutions to covered entities for them to best serve patients.

These distinguishing factors are woven into the framework of RxStrategies:



- 340B Program Integrity
- Service Excellence
- Enhanced Transparency
- Innovation
- Positive Client Experience
- User Friendly Solutions

RxStrategies provides the 340B covered entities and their pharmacy partners with a full turn-key solution for the implementation and on-going management of the 340B discount prescription drug program. The 340B program is a proven vehicle to provide the much-needed prescription drugs to your patients at the lowest cost possible under the law and increases the value and quality of care that your healthcare system provides.

RxStrategies is solution oriented. We take the questions and difficulty out of applying 340B. Our **340BPlus<sup>™</sup>** system is specifically designed to ensure patient eligibility, prescription tracking, inventory management, inventory replenishment, billing and program management. Our pharmacy network is focused to bring savings to millions of patients eligible under the 340B program.

As a 340B program administrator, RxStrategies understands that one of your top priorities is to provide safe and cost-effective care, and ensure regulatory compliance. We have developed integrated solutions to streamline 340B program management, technology, and excellence in customer support through a team armed with up-to-date industry knowledge and resources. RxStrategies key service differentiators include:

- Dedicated account management
- Real-time cash claims capture
- AICPA SOC 2 Security Certification
- Performance guarantees
- Errors and Omissions Indemnification
- Enhanced client customized reporting
- Daily order confirmation and discrepancy emails
- Daily account manager order intervention for drug shortages, EDI, or data feed issues
- Integration with State MCO Medicaid reporting requirements
- Only online 340B self-audit workflow **CompliancePlus<sup>™</sup>**
- Exclusive business intelligence tools

RxStrategies customer interface model is “high-touch”. Clackamas County Health Centers Division (CCHCD) will be assigned a dedicated RxStrategies account manager and a RxStrategies executive level sponsor. Additionally, as a client of RxStrategies CCHCD will receive active high-touch participation from our various integrated teams including IT, account management and executive leadership team. Utilizing our team model approach across our robust customer base allows us to identify and gather “best practices” to share with all clients which enhances success for all.

RxStrategies strives for an “always audit ready” 340B program, which is built around compliance being

the keystone to an effective 340B program. RxStrategies' **CompliancePlus™** solution is unique in the industry as the only online audit workflow that allows clients to perform self-audits in a secure portal.

This tool handles the self-audit requirements aspect of the HRSA guidelines which require you to perform audits on all contract pharmacy, as well as "in house" scripts to make sure that all prescription activity directly back to the patient definition. Furthermore, RxStrategies provides clients indemnification against errors and omissions if the **CompliancePlus™** self-audits are maintained.

RxStrategies dedicated account management perform daily routine tasks that make sure all data feeds, EDI feeds, accumulators, cross references, as well as multipliers remain in compliance with the program.

RxStrategies provides audit readiness reports on demand, and in the event of an audit handles all data gathering, and is on-site for the audit.

- On-site audit support
- Audit ready reporting packages
- Online portal with tools to actively manage and marry data for quarterly and annual mock audits
- HRSA audit ready reporting packages provided
- HRSA registration checks and updates
- Policies and procedures formulation with perpetual updates

RxStrategies offers very straightforward transparent pricing. Our top goal is to help CCHCD be successful by ensuring:

- Program integrity
- Program compliance
- Service excellence with dedicated account managers and executive sponsors
- Credentials/experience of key individuals that would be assigned to this project.

## **RxStrategies Response**

RxStrategies Team Assigned to CCHCD:

Jon Braff: Sales, RFP, Contracting, Legal, Ongoing Account Management

TBD: Dedicated Ongoing Account Management

Skip Devanny: Executive Sponsor, Sales, RFP, Contracting, Legal, Account Management

David Wanless: Consultation Lead, Data Feeds, EDI, Implementation

Emilia Casser: Implementation Engineer

Tim Vroman: Executive Sponsor

Fenton Markevich: CEO, Executive Sponsor

RxStrategies staff is highly 340B knowledgeable and provides great service. RxStrategies utilizes pharmacy technicians as account managers that are knowledgeable about retail pharmacy and 340B.

---

RxStrategies will provide complete contact information and resumes of the management team assigned to CCHCD upon the execution of an agreement.

- Description of providing similar services to public entities of similar size within the past five (5) years.

### **RxStrategies Response**

The following organizations represent examples of RxStrategies clients that are public institution FQHCs and estimated to be similar in size to CCHCD.

Lane County (Oregon) Department of Health & Human Services  
Southern Illinois University School of Medicine - Center of Family Medicine  
County of Santa Cruz (California) Health Services Agency

- Description of the firm's ability to meet the requirements in Section 3.

### **RxStrategies Response**

## SECTION 3 SCOPE OF WORK

### 3.1. INTRODUCTION

Clackamas County is seeking Proposals for Third Party Administration for 340B Claims Management of Pharmacy Services under guideline and participation of 42USC253b(a)(5)(A)(i) of The Public Health and Welfare Act.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.

### 3.2 BACKGROUND

Clackamas County, on behalf of the Clackamas County Health Centers Division (CCHCD) is seeking proposals from eligible applicants able to provide 340B Third Party Administration including claims management of pharmacy services and administrative support functions, including diversion avoidance for the constituent clinics of the CCHCD.

The County reserves the right to make multiple awards. The County also reserves the right to reject any and all proposals, when it is in the public interest to do so.

Proposers must be qualified to administrate 340B covered medications in accordance with all applicable Federal and State statutes and regulations.

Proposer must also be able to identify and arrange direct Clackamas County – contract pharmacy agreements with appropriate retail outlets located in proximity to Clinic locations and to facilitate ongoing relations with existing contract pharmacies.

PLEASE NOTE:

- The CCHCD currently use Cardinal and McKesson as their 340B Wholesalers. Proposers must be able to utilize these companies as Wholesalers or be a registered 340B wholesaler.
- The CCHCD is a safety-net clinic and seeks low-cost options for its clients, including the use of generic pharmaceuticals and low dispensing fees.
- The CCHCD uses OCHIN EPIC, and Anasazi Cerner as their electronic health records database.

### 3.3. SCOPE OF WORK

1. The proposer must be qualified to order and administrate 340B covered medications in accordance with all applicable Federal and State, statutes and regulations.

#### **RxStrategies Response**

RxStrategies acknowledges and agrees.

2. The proposer will provide third party administration and management services for County’s eligible patients, via jointly Administrator-County selected “contract pharmacy or pharmacies”. The proposer must be able to directly administer “a bill to/ship to” 340B virtual inventory replenishment model on behalf of all Clackamas County HRSA parent and child site locations and contract pharmacies.

#### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #1.

3. The proposer must independently negotiate agreements with contract pharmacies willing to contract with Clackamas County for local dispensing. Clackamas County’s current 340B network pharmacies to include but not limited to Safeway, Kroger (Fred Meyer), Rite-Aid, Genoa, and Geneva Woods pharmacies. The proposer will register and certify the contract pharmacies, with the Office of Pharmacy Affairs.

#### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.3 #2. Based upon recent fall 2017 HRSA/OPA changes only an authorized official can register 340B contract pharmacies for a covered entity. So RxStrategies will not be able to register the 340B contract pharmacies directly which was our previous standard but now coordinates all the information for the authorizing official to easily complete the registration.



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- The proposer must have the ability to independently establish a contractual relationship with the County-selected 340B wholesaler(s).

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.3 #3.

- The proposer must maintain all records and reports required under the resultant contract with Clackamas County and/or those required by the 340B or other applicable Federal and State statutes and regulations, for both the County and the contract pharmacy or pharmacies (to include mail order). Such records and reports shall be retained in accordance with the applicable Federal and State documentation regulations.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. RxStrategies will maintain all records and reports within the RxStrategies 340BPlus™ system. All data will be readily available to CCHCD via RxStrategies robust client data portal. Please see the attachments section of this RFP response for a visual of RxStrategies data portal and examples of sample standard reports.

- The proposer must maintain client/patient medication profiles.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. All prescription claims data received by RxStrategies is securely maintained by RxStrategies and reportable.

- The proposer shall manage the remittance of the revenue due Clackamas County based on the 340B prescriptions issued by CCHCD.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #2.

- The proposer must establish and maintain a prescription dispensing tracking system to ensure there is no diversion of 340B medications and no Medicaid duplicate- discounts.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #4.

- The proposer must establish and retain financial records in accordance with GAAP and must
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open such reports to Clackamas County, the State of Oregon and the Comptroller General of the United States, during normal business hours.

### **RxStrategies Response**

RxStrategies acknowledges and agrees.

10. The proposer must establish and maintain ordering/dispensing reports that meet the requirements of the County and the 340B Wholesaler.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #3.

11. The proposer should have the capabilities to provide 340B pharmacy benefits management or consolidation of benefits (COB) for both uninsured and insured patients.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #4.

12. The proposer will be required to send regular scheduled Managed Medicaid Retroactive Claims File to the State of Oregon with a copy to Clackamas County to ensure duplicate discounts are avoided.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.3 #4.

13. The proposer will have a method to allow Clackamas County to manage and selectively carve in referral prescriptions.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #5.

14. The proposer must have the capability to give Clackamas County the option to select real-time or retrospective 340B prescription eligibility.

### **RxStrategies Response**

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RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #6.

15. The proposer must provide Clackamas County with self-auditing tools for all pharmacies in its network, to assist Clackamas County in maintaining a compliant 340B program.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. Please refer to the details in RxStrategies response to question 5.4 #7.

16. The proposer must provide face to face account review with a representative of Clackamas County annually, bi-annually would be preferred.

### **RxStrategies Response**

RxStrategies acknowledges and agrees to provide face to face account review with a representative(s) of CCHCD annually or bi-annually based upon CCHCD's availability.

17. The proposer must have a method, such as a software filter, to determine and administer a 340B “Winners only” program.

### **RxStrategies Response**

RxStrategies acknowledges and agrees. RxStrategies standard dispensing fee model is “all-inclusive” but RxStrategies can accommodate any model (brand only, winners only, etc.) preferred by the client. We can provide or assist the client with transparent data modeling to truly understand the dispensing fee impacts.

RxStrategies believes that including all prescriptions in the 340B contract pharmacy program best aligns with the intent of the 340B program and may alleviate some of the negative political pressure on the 340B program by opponents that claim 340B is only a revenue generator for 340B covered entities.

Additionally, RxStrategies has experience with all model types (i.e. all-inclusive, winners only and brand only) and knows that the all-inclusive model if designed properly can provide the client and its’ patients the greatest benefit. The concept is simple, design the dispensing fee structure to be “break-even” to the client on generics which are approximately 85% of all prescriptions (large volume for pharmacy) and use the generic volume to keep the brand dispensing fee as low as possible because the brands are where the client generates the most revenue. For some national chains, all-inclusive is not an option. For cash and sliding fee patients the dispensing fee will be paid by the patient.

RxStrategies can accurately accommodate a "winners only" methodology, but please note that such methodology may change the RxStrategies administrative fee structure.

#### 3.3.2. Term of Contract:

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The term of the contract shall be from the effective date through December 31, 2020 with two, one year options to renew for a maximum contract term of 5 years.

### **RxStrategies Response**

RxStrategies acknowledges and agrees.

3.3.3. Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Professional Services Contract for this RFP can be found at <http://www.clackamas.us/bids/terms.html>.

### **RxStrategies Response**

RxStrategies acknowledges and has no objections to the sample contract.

- Description of what distinguishes the firm from other firms performing a similar service.

### **RxStrategies Response**

RxStrategies key service differentiators include:

- Dedicated account management
- Real-time cash claims capture
- AICPA SOC 2 Security Certification
- Performance guarantees
- Errors and Omissions Indemnification
- Enhanced client customized reporting
- Daily order confirmation and discrepancy emails
- Daily account manager order intervention for drug shortages, EDI, or data feed issues
- Integration with State MCO Medicaid reporting requirements
- Only online 340B self-audit workflow **CompliancePlus™**
- Exclusive business intelligence tools

## 5.2. Scope of Work

### Questions

In each response, as applicable, please indicate the number of years of experience that proposer has in



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providing each type of service and if these services have been provided for Clackamas County Health Centers. Complete answers to each question will determine point values.

Proposer's General Background and Qualifications 0 – 30 points

1. Describe your experience and qualifications providing 340B Third Party Administration.

**RxStrategies Response to 5.3 Proposer's General Background and Qualifications #1.**

RxStrategies was incorporated in 2002 in Delaware for the sole purpose of developing and providing 340B program administration and management systems. RxStrategies has not been part of any other organization during its history. RxStrategies 340B service lines including split billing, contract pharmacy and in-house pharmacy. Today, RxStrategies administers complaint 340B solutions including contract pharmacy administration for more than 500 340B covered entities sites. Please also refer to RxStrategies response to 5.2 Proposer's General Background and Qualifications (Description of the firm) for additional details.

2. Describe your experience negotiating 340B agreements with contract pharmacies. Do you have current agreements with any of Clackamas County's contract pharmacies? (Kroger, Safeway, Rite-Aid, Genoa, and Geneva Woods).

**RxStrategies Response to 5.3 Proposer's General Background and Qualifications #2.**

RxStrategies has tremendous experience managing contract pharmacy networks. RxStrategies has been managing multiple 340B pharmacy locations since its inception including an approved Demonstration Project in New York City before Health Resources and Services Administration (HRSA) published the Federal Register (Vol. 75, No. 43 / Friday, March 5, 2010) notice finalizing proposed changes to the 340B contract pharmacy services guidelines first issued in 1996 (61 FR 43549, August 23, 1996). These 2010 guidelines (current) expanded the 340B contract pharmacy program by allowing covered entities to enter multiple contract pharmacy arrangements. Today, RxStrategies administers 340B contract pharmacy programs for greater than 500 340B covered entity sites.

CCHCD can be assured with RxStrategies they have a partner with vast experience working with Federal Qualified Health Centers (FQHC's). RxStrategies is the industry leader in the appropriate application of 340B pricing for the FQCH cash and sliding fee populations.

RxStrategies has a strong history of quickly and successfully transitioning clients and contract pharmacy networks from a competing 340B administrators. RxStrategies will quickly and efficiently transition CCHCD's current 340B contract pharmacies under RxStrategies administration and management.

RxStrategies will build and manage all aspects of CCHCD's 340B contract pharmacy network. RxStrategies will work with CCHCD to determine which potential "new" 340B contract pharmacies are the best targets for the 340B contract pharmacy network and quickly work to build the network. RxStrategies assists with pharmacy dispensing fee negotiations, contracting and assist with pharmacy registrations.

RxStrategies will serve as a valuable resource in helping CCHCD negotiate 340B dispensing fees. Some national chains (i.e. Walmart and CVS) utilize their own Pharmacy Services Agreement (PSA) and have standard non-negotiable fee structures. For others, RxStrategies will assist CCHCD negotiation dispensing fees with contract pharmacies. Since RxStrategies works with hundreds of 340B contract pharmacies across the country we can provide insight to reasonable dispensing fees and provide fee structure modeling.

RxStrategies has provided CCHCD with a template PSA in the attachments section of this RFP. RxStrategies template PSA covers all twelve contract pharmacy guidelines elements as defined in the Federal Register which covered entities must address in their 340B contract pharmacy arrangements.

RxStrategies works with hundreds of pharmacies across the country including key national chains such as CVS, Walmart, Genoa, Safeway, Kmart and Kroger, regional chains, local independents, mail order and specialty pharmacies to provide 340B pharmacy services. Please note: RxStrategies can not work with Rite-aid but because Rite-aid only works with one 340B administrator, so our ability to work with Rite-aid is limited. RxStrategies can integrate Rite-aid data into RxStrategies robust reporting portal.

3. Describe your agencies experience working with 340B wholesalers. Do you currently work with any of the 340B wholesalers Clackamas County contracts with? (McKesson, Cardinal)

### **RxStrategies Response to 5.3 Proposer's General Background and Qualifications #3.**

RxStrategies maintains excellent relationships with all major drug wholesalers including the Big 3 Wholesalers (Cardinal, McKesson, Amerisource Bergan) and smaller or regional wholesalers. RxStrategies supports fully automated EDI 850, 855, 810 order management via secure file messenger (Cyclone).

RxStrategies 340BPlus<sup>™</sup> system automatically generates the Purchase Order (PO) on the appropriate wholesaler account automatically when the full package NDC-11 package size is achieved.

The web based 340BPlus<sup>™</sup> system is tailored to the specific needs of the covered entity and its patients. The management of the virtual inventory and replenishment is the cornerstone of the 340BPlus<sup>™</sup> system.

RxStrategies maintains the NDC-11 inventory virtually based upon the eligible prescriptions. Once the NDC-11 drug product accumulates to full package size the 340BPlus<sup>™</sup> system automatically generates a replenishment purchase order on the appropriate ship-to-bill-to account and the drug is shipped to the 340B contract pharmacy. The drug product is the pharmacies drug product once received by the pharmacy because of the retrospective replenishment nature of the transaction.

Please refer to the visual below (Figure 2) of how RxStrategies automates the process.

**Figure 1. Overview of RxStrategies Virtual Inventory and Replenishment**



4. Do you have experience sending regularly scheduled Managed Medicaid rebate exclusion files to the State of Oregon to ensure duplicate discounts are avoided? If so, please describe your process.

#### **RxStrategies Response to 5.3 Proposer's General Background and Qualifications #4.**

RxStrategies does have experience sending Managed Medicaid rebate exclusion files to the State of Oregon with our client Lane County Department of Health & Human Services. RxStrategies considers each covered entity 340B program to be a custom build. RxStrategies will build the Managed Medicaid rebate exclusion file exchange process to the State of Oregon for CCHCD specific to CCHCD's operations and specifications.

5. References: Please submit complete contact information for at least two Federally Qualified Health Centers you have provided Third Party Administration services for, preferably in Oregon.

#### **RxStrategies Response to 5.3 Proposer's General Background and Qualifications #5.**

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Consultant Pharmacist  
Lane County  
2073 Olympic St.  
Springfield, OR 97477  
Phone: (808) 499-5491  
Email: torey.lam@co.lane.or.us

Tina R. Harris, CPA  
Controller and Interim CFO  
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2303 Village Drive  
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Phone: (816) 271-8213  
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Brian McIndoe  
Chief Executive Officer  
William F. Ryan Community Health Center  
110 West 97th Street  
New York, NY 10025  
Phone: (212) 316-7923  
Email: bmcindoe@ryancenter.org

#### **5.4 Scope of Work 0 – 45 points**

1. Describe your ability to directly administer a bill to/ship to 340B virtual inventory replenishment model.

#### **RxStrategies Response to 5.4 Scope of Work #1.**

RxStrategies as a full-service pharmaceutical services organization, RxStrategies provides a diverse range of 340B services to 340B covered entities, including the administration and management of 340B contract pharmacy networks. RxStrategies provides comprehensive solutions to meet the challenges of regulatory compliance, patient eligibility, pharmacy replenishment, program tracking and reporting for the Federal 340B Drug Pricing Program. The proprietary and integrated system of RxStrategies system is web based and named **340BPlus™**. The **340BPlus™** system is tailored to the specific needs of the covered entity and its patients.

RxStrategies offers:

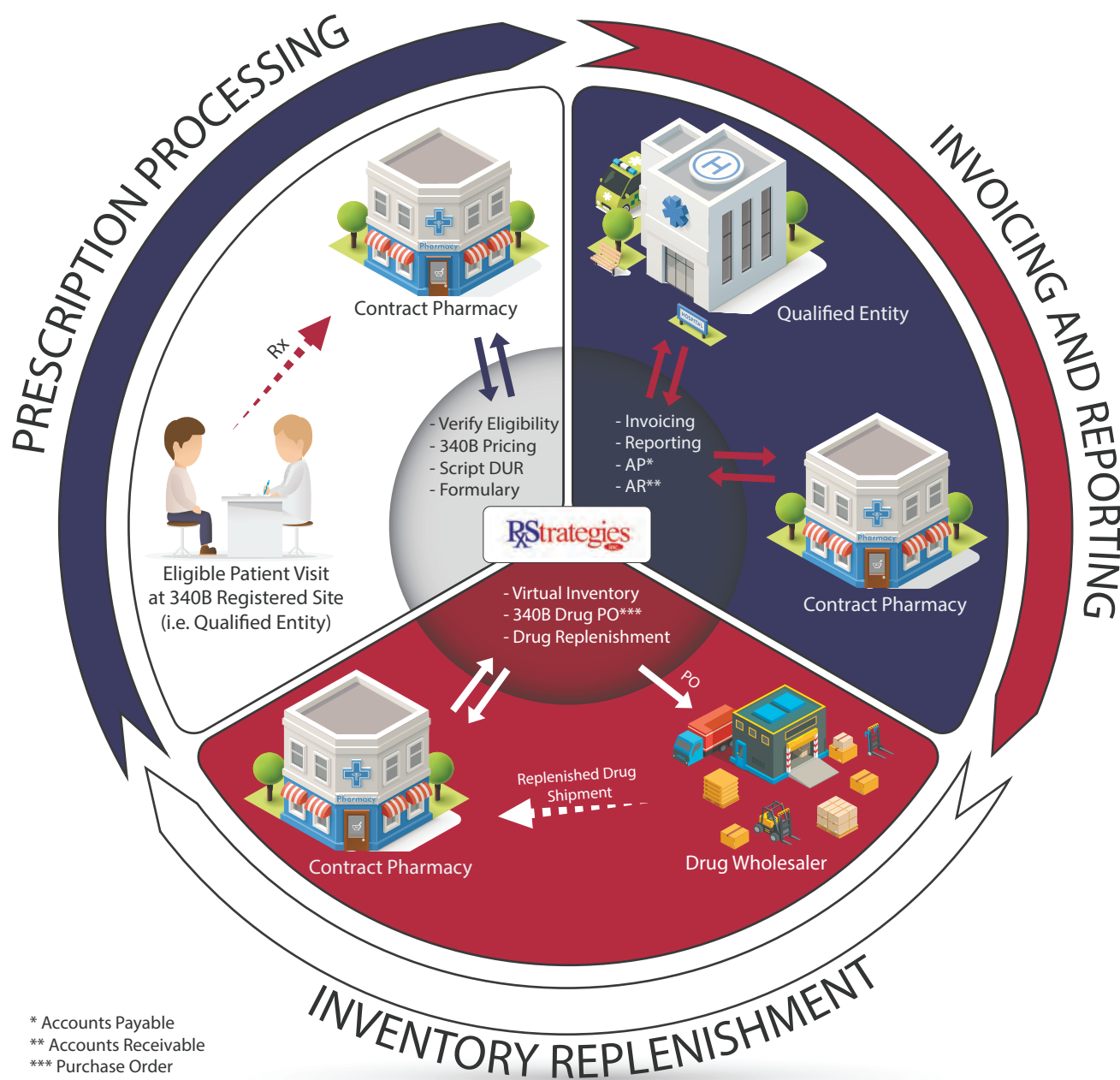
- Fully automated virtual inventory and replenishment process
- Complete program monitoring
- Sophisticated pricing management and invoice vouching



- Flexible pricing strategies
- Client drives the rules for establishing eligible patients
- Fully compliant with the 340B rules and regulations
- Detailed reporting to manage all aspects of your 340B program

Please see Figure 2., below for a visual overview of RxStrategies 340BPlus<sup>™</sup> system.

**Figure 2. Overview of RxStrategies 340BPlus<sup>™</sup> system.**



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The 340BPlus<sup>™</sup> system is fully automated with data connectivity and integration as the cornerstone. Please also refer to RxStrategies response in question 5.3 #3.

2. Describe your process for managing the remittance of the revenue including payment frequency and remittance method due to CCHCD based on the 340B prescriptions issued by the CCHCD.

### **RxStrategies Response to 5.4 Scope of Work #2.**

RxStrategies standard is to invoice the 340B contract pharmacy on all 340B eligible claims.

The pharmacy is invoiced bi-monthly:

- Invoice on the 1st for all 340B eligible claims from (16th day - last day) previous month.
- Invoice on the 16th for all 340B eligible claims from (1st day - 15th day).

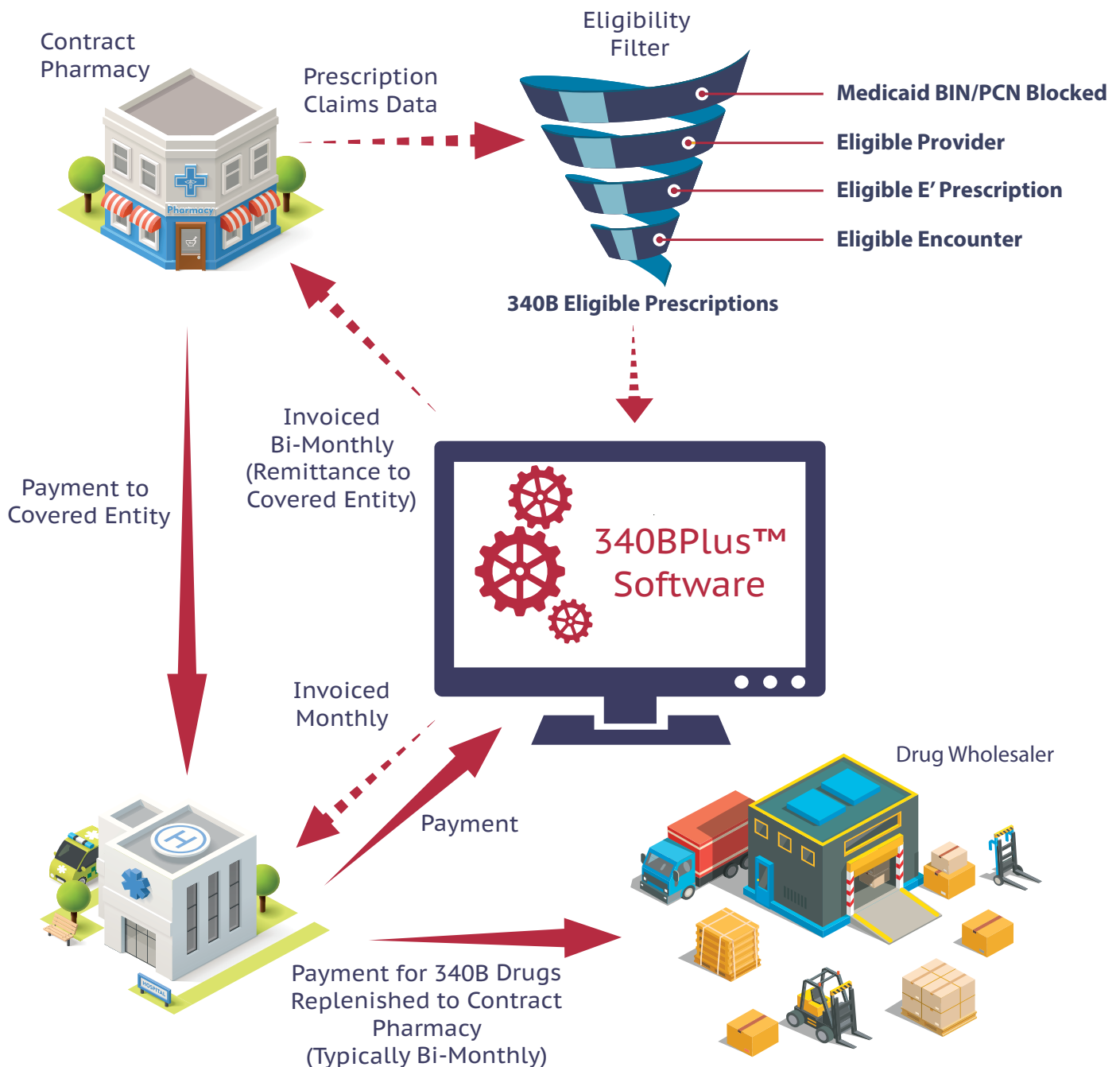
The 340Bplus<sup>™</sup> system automates virtual inventory tracking, invoicing, and reporting. RxStrategies will provide CCHCD a bi-monthly reporting package which includes electronic copies of all pharmacy invoices, and reports. Additionally, CCHCD will receive a detailed dispensing schedule that shows all detailed prescription information captured from the 340B eligible prescriptions which CCHCD can easily reconcile with all receivable amounts minus fees due from the pharmacies to CCHCD. CCHCD will be invoiced for RxStrategies administrative fees monthly. Please see client report examples in the Attachments: RxStrategies section of this RFP for examples of invoices.

Additionally, the client will receive a detailed dispensing schedule that shows all the detailed prescription information captured from the 340B eligible prescriptions which is can be used by CCHCD to easily reconcile all receivable amounts minus fees due from the pharmacies to CCHCD.

RxStrategies standard process is to invoice the client (CCHCD) monthly for RxStrategies administrative fee. Please see client report examples in the attachments section of this RFP. Please refer Figure 3., below for details on RxStrategies standard invoicing process.

**Figure 3. Overview of RxStrategies Invoicing and Payment Process.**

## Invoicing and Payment Process



- Describe the ordering/dispensing reports that you provide to CCHCD and to 340B Wholesalers. Please provide sample reports and/or screen shots of the portal.

### RxStrategies Response to 5.4 Scope of Work #3.

RxStrategies will provide CCHCD, at no additional cost, purchasing reconciliation reports that will aid CCHCD to accurately reconcile purchase order amounts to the final invoice produced by the wholesaler.

The reconciliation reports will indicate if CCHCD's wholesaler invoices are in accordance with purchase order amounts from the wholesaler ship-to-bill-to account and confirm 340B pricing is accurate. Please refer to the RxStrategies sample reports in the attachments section of this RFP response.

4. Describe your capability to provide 340B pharmacy benefits management or consolidation of benefits (COB) for both uninsured and insured patients.

#### **RxStrategies Response to 5.4 Scope of Work #4.**

RxStrategies offers a full-range of 340B administrative and support services in the integrated "340BPlus<sup>™</sup>" system. RxStrategies 340BPlus<sup>™</sup> system prevents "diversion" and "duplicate discounts" before introduction into the 340B system via a series of filters.

The 340BPlus<sup>™</sup> system tracks and replenishes drug usage virtually at full package (i.e. bottle) usage.

- Claims are linked to 340B invoices down to the pill level
- Replenishment system is not just a NDC11 accumulator
- Transparent Audit reports linking claims to orders and orders to claims

CCHCD can be assured with RxStrategies they have a partner with vast experience working with Federal Qualified Health Centers (FQHC's). RxStrategies is the industry leader in the appropriate application of 340B pricing for the FQCH cash and sliding fee populations.

RxStrategies effectively manages many FQHC 340B programs and is the market leader for appropriately applying 340B for sliding fee patients at the point-of-sale.

RxStrategies system accurately and efficiently determines the correct prescription eligibility. RxStrategies will correctly configure the system with CCHCD input so only prescriptions associated with CCHCD 340B registered facilities are selected as eligible.

RxStrategies will define and build the 340B eligibility criteria based upon CCHCD's data and specifications. The patient and provider eligibility verification system will be implemented at the point of service.

RxStrategies offers industry leading "real-time" claims adjudication processing and "retrospective" (i.e. pharmacy switch data) claims processing solutions. RxStrategies provides prescription processing for insured and un-insured.

Please see RxStrategies insured, uninsured and sliding fee claim models in Figure 4, 5, and 6.

#### **Figure 4. RxStrategies Insured Patient Model**



## RxStrategies Claims Example Insured Patient Example

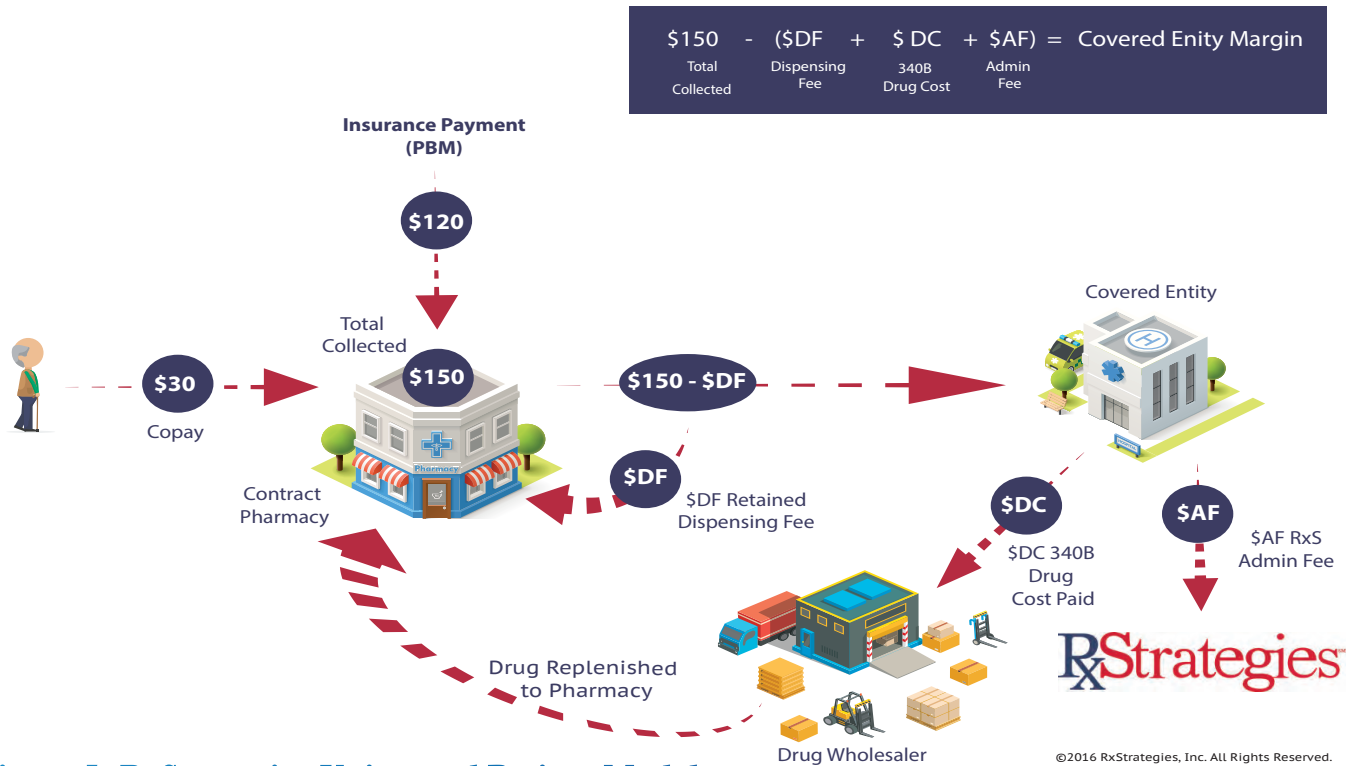
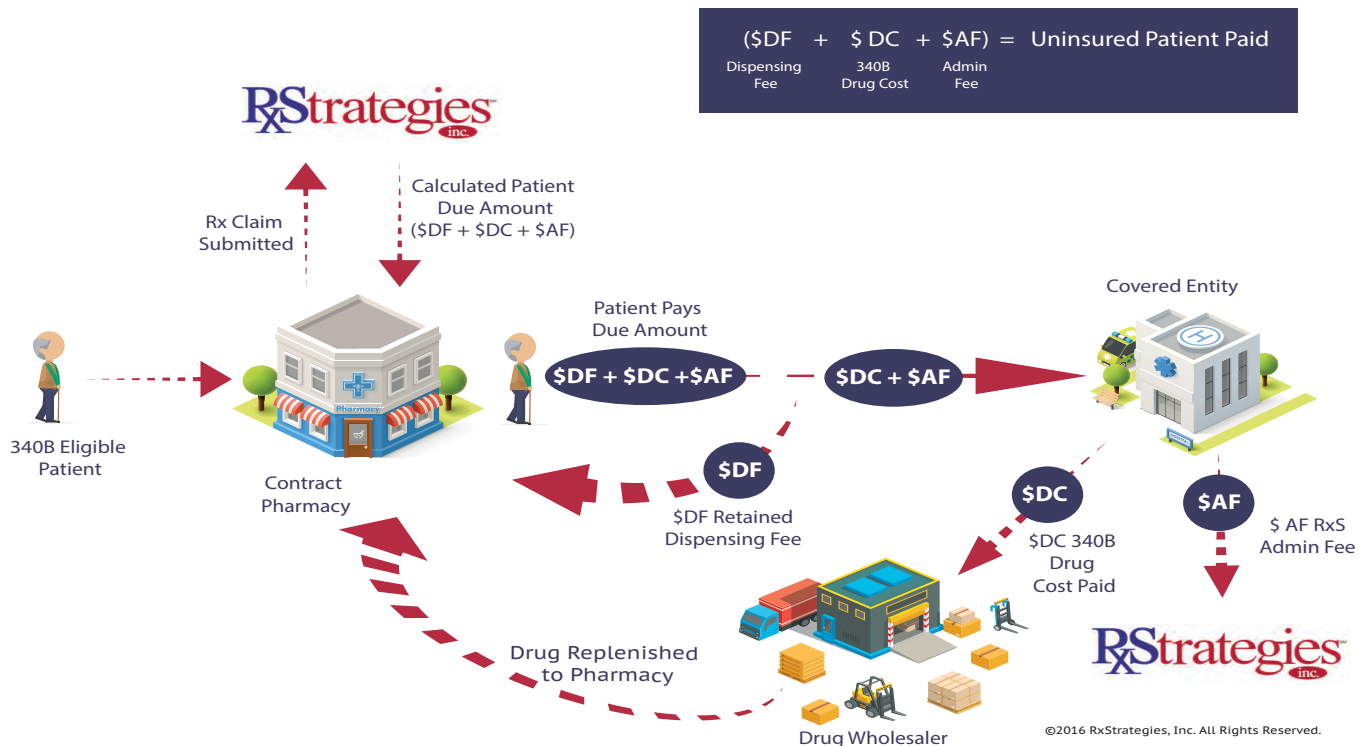


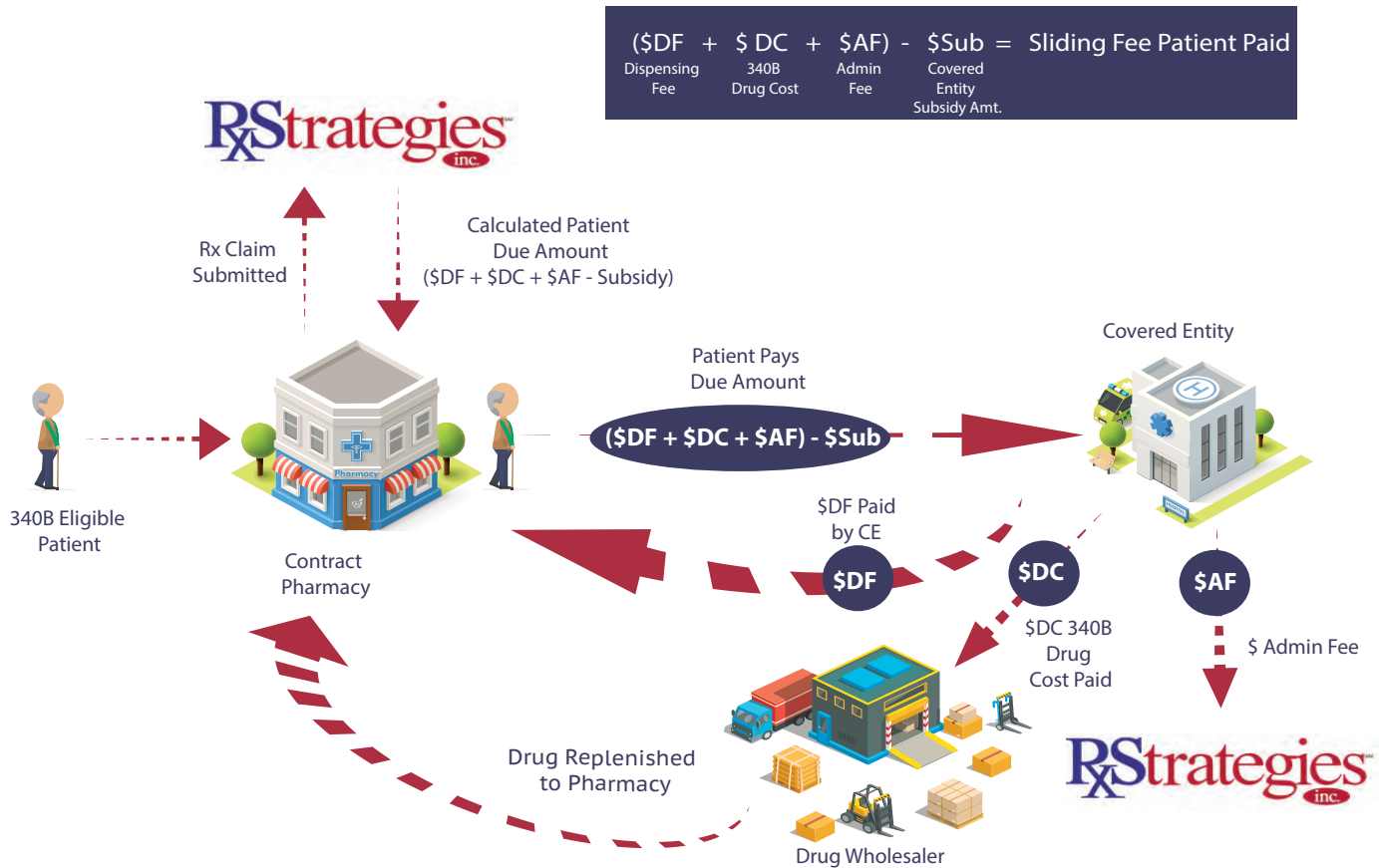
Figure 5. RxStrategies Uninsured Patient Model

## RxStrategies Claims Examples Uninsured Patient Example



**Figure 6. RxStrategies Uninsured Patient Model**

## 340B Contract Pharmacy - Uninsured Patient Example (Sliding Fee)



RxStrategies effectively manages many FQHC 340B programs and is the market leader for appropriately applying 340B for sliding fee patients at the point-of-sale.

RxStrategies is the industry leader in the appropriate application of 340B pricing for the FQCH cash and sliding fee populations. RxStrategies can apply different pricing (i.e. full 340B drug cost vs. % 340B discount) and cost methodologies (i.e. dispensing fee and/or subsidy amounts) for “cash” and “sliding fee” claims. A lessor-of-logic can be applied as the client desires. CCHCD will decide how they would like the patient pay model set-up.

5. Describe your method to allow CCHCD to manage and selectively carve in referral prescriptions.

### **RxStrategies Response to 5.4 Scope of Work #5.**

RxStrategies will work with CCHCD to customize the process for referral prescription 340B capture based upon CCHCD’s operations and data. Referral prescription processes generally involved referral provide files and a verification process at the covered entity. In RxStrategies experience the process must be customized for each client based upon the data, operations and resources of the specific covered entity.

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6. Do you have the capability to give CCHCD the option to select real-time or retrospective 340B prescription eligibility? If so, please describe your process.

**RxStrategies Response to 5.4 Scope of Work #6.**

Yes, RxStrategies offers industry leading “real-time” claims adjudication processing and “retrospective” (i.e. pharmacy switch data) claims processing solutions. RxStrategies does not interact directly with the 340B pharmacies prescription systems via data feed, etc. The pharmacy either submits claims directly to RxStrategies via real-time process or RxStrategies obtains the pharmacy’s claims data via retrospective “switch” process. . Each process is further defined below.

Real-time “Point-of-Sale” Processing Defined: The 340B contract pharmacy submits claims to RxStrategies directly via defined BIN/PCN. All claims including insured and uninsured claims that meet 340B eligibility criteria as defined in pharmacy training sessions are sent to RxStrategies. If a claim is submitted by the pharmacy that does not meet eligibility requirements, the pharmacy receives a real-time message to submit to the payer directly rather than RxStrategies and the claim is not 340B. Claims that meet eligibility criteria enter the 340BPlus™ system and will ultimately produce an administrative fee when fully adjudicated. Please refer to the pricing section for further details. CCHCD will generate revenue on insured claims and allow their patients to experience significant drug costs savings on cash and sliding fee claims. Please note: with RxStrategies real-time processing uninsured (cash pay) patients can will benefit from 340B. Most 340B administrators and not able to offer cash patients actual 340B cost and only offer cash patients “drug discount card” type savings not 340B. The lack of 340B uninsured patient savings is a 340B area that is under scrutiny from the federal government. RxStrategies has clients that are saving their uninsured patients multi-millions per year. Please note that some of RxStrategies competitors claim to have real-time processing but consider their retrospective batch process real-time. Only a claim submitted (via BIN/PCN) by the pharmacy at the point-of-sale (pharmacy counter) is truly real-time time processing. RxStrategies platform is actually real-time at the pharmacy counter.

Retrospective Processing Defined: The 340B contract pharmacy conducts business as usual submitting claims directly to payers. All 3rd party claims are submitted via the pharmacy to the contracted “switch” (i.e. Emdeon, Relay Health). The “switch” receives the pharmacy data transmission and routes the claims to payers. The “switch” data has all the NCPDP transactional data submitted from the pharmacy including the claim elements to determine eligibility, financials, etc. In a retrospective process pharmacy “switch” data is pulled into the 340BPlus™ system at which time 340B eligibility criteria is applied to identify which claims are 340B eligible. Claims that are not 340B eligible are disregarded and 340B eligible claims continue through the 340BPlus™ system. RxStrategies must receive a “release” from the pharmacy to access the “switch” data and pay for the data acquisition. Most pharmacies chains (i.e. Walmart, CVS) only allow the retrospective process for insured patients.

7. Do you have the ability to provide CCHCD with self-auditing tools to assist Clackamas County in maintaining a compliant 340B program? Please describe your process(s) utilized and support provided to ensure contracted CCHCD are in compliance with the 340B program.

## RxStrategies Response to 5.4 Scope of Work #7.

RxStrategies 340BPlus<sup>TM</sup> system is the internal audit software CompliancePlus<sup>TM</sup>, that give the covered entity the ability to audit the 340B activity for full compliance and satisfy self-audit requirements. RxStrategies 340B CompliancePlus<sup>TM</sup> assists clients to proactively prepare for the additional oversight and responsibilities associated with a transparent 340B program.

RxStrategies' CompliancePlus<sup>TM</sup> solution is unique in the industry as the only online audit workflow that allows clients to perform self-audits in a secure portal. This satisfies the self-audit requirement aspect of the HRSA guidelines which requires covered entities to perform audits on all contract pharmacy, as well as "in house" scripts to make sure that prescription claims tie directly back to the patient definition.

Furthermore, RxStrategies provides clients indemnification against errors and omissions if the CompliancePlus<sup>TM</sup> self-audits are maintained. RxStrategies is offering CompliancePlus<sup>TM</sup> to CCHCD for no charge.

Please refer to Figure 7., for a visual of RxStrategies CompliancePlus<sup>TM</sup>.

**Figure 7. RxStrategies CompliancePlus<sup>TM</sup> Portal**

The screenshot shows the RxStrategies CompliancePlus portal interface. At the top, there is a navigation bar with tabs for Home, Compliance, SplitBilling, 340B Entity, and 340B Pharmacy. Below the navigation bar, the page title is 'Compliance Plus > Validate Claims'. The main heading reads 'Validate claim details against your medical encounter records.' There is a 'Quit to Main Menu' button and a row of action buttons: Help, Export to Excel, Show More, and Show Filter. Below this is a table with columns: Progress, Date Written, Product Info, Dispensed Qty, Prescriber Info, and Patient Info. The table contains four rows of data. At the bottom of the table, there are pagination controls showing 'Page size: 20' and navigation arrows.

Progress	Date Written	Product Info	Dispensed Qty	Prescriber Info	Patient Info
	6/1/2016	ATORVASTATIN TAB 40MG / 60505258008	30.000	SOLIS , EDWARD / 1558569335	FOMBELLIDA , PEDRO /
	6/10/2016	SIMVASTATIN TAB 10MG / 16714068203	30.000	LYMAN , ANDREA / 1639196595	DAVIS , JAMES / 1951-C
	6/2/2016	METFORMIN TAB 1000MG / 23155010410	60.000	LEVATINO , JESSICA / 1285924944	MULL , VIRGINIA / 196C
	6/1/2016	LATANOPROST SOL 0.005% / 61314054701	2.500	LEE , JI / 1033559745	COAXUM , VERONICA /



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8. Describe the support you will provide to CCHCD staff including onsite visits if applicable, including HRSA audits.

**RxStrategies Response to 5.4 Scope of Work #8.**

RxStrategies will provide 24/7/365 Pharmacy Help Line support and RxStrategies customer interface model is “high-touch”. CCHCD will be assigned a dedicated RxStrategies account manager and a RxStrategies executive level sponsor. Additionally, as a client of RxStrategies CCHCD will receive active high-touch participation from our various integrated teams including IT, account management and executive leadership team. Utilizing our team model approach across our robust customer base allows us to identify and gather “best practices” to share with all clients which enhances success for all.

9. The CCHCD uses OCHIN EPIC and Anasazi Cerner for their Electronic Health Record. Describe your methods of access to patient and prescriber information including but not limited to interfacing with OCHIN EPIC and Anasazi Cerner and/or other electronic health records databases. Please provide an overview of your implementation strategy, number of years of experience, and an estimated time to implement.

**RxStrategies Response to 5.4 Scope of Work #9.**

RxStrategies proprietary and integrated 340BPlus™ system is web based and no direct interfaces with CCHCD systems are required.

RxStrategies regularly successfully integrates with electronic health record (EHR) systems such as EPIC, Cerner and many other systems. RxStrategies will work with CCHCD to develop the required interfaces to CCHCD’s EHR system with any cost borne by RxStrategies.

Please note: RxStrategies uses a batch file data feeds so no direct interfaces setups are required. RxStrategies will set up an automated query to run data out of the EHR system to capture all the previous days dispense activity.

RxStrategies will work with CCHCD to establish provide files, encounter data and electronic prescribing data file feeds. Please refer to “RxStrategies 340Bplus™ Covered Entity Data Specifications” attached to this RFP response in the Attachments: RxStrategies section for additional details. RxStrategies will build the 340B eligibility rules to CCHCD’s specifications including patient validation based upon EHR visit location.

The 340BPlus™ system interfaces via EDI with the hospital drug wholesaler, as well as integrating the data file of the hospital pharmacy system.

The RxStrategies secure web portal contains all reports including HRSA ready audit reports. CCHCD will also have 24/7/365 access to RxStrategies secure client web portal.

RxStrategies will actively manage CCHCD’s 340B program by verifying the dispensing records from

the 340B contract pharmacies versus CCHCD's provider, encounter and prescribing data. Please refer to Figure 8., below.

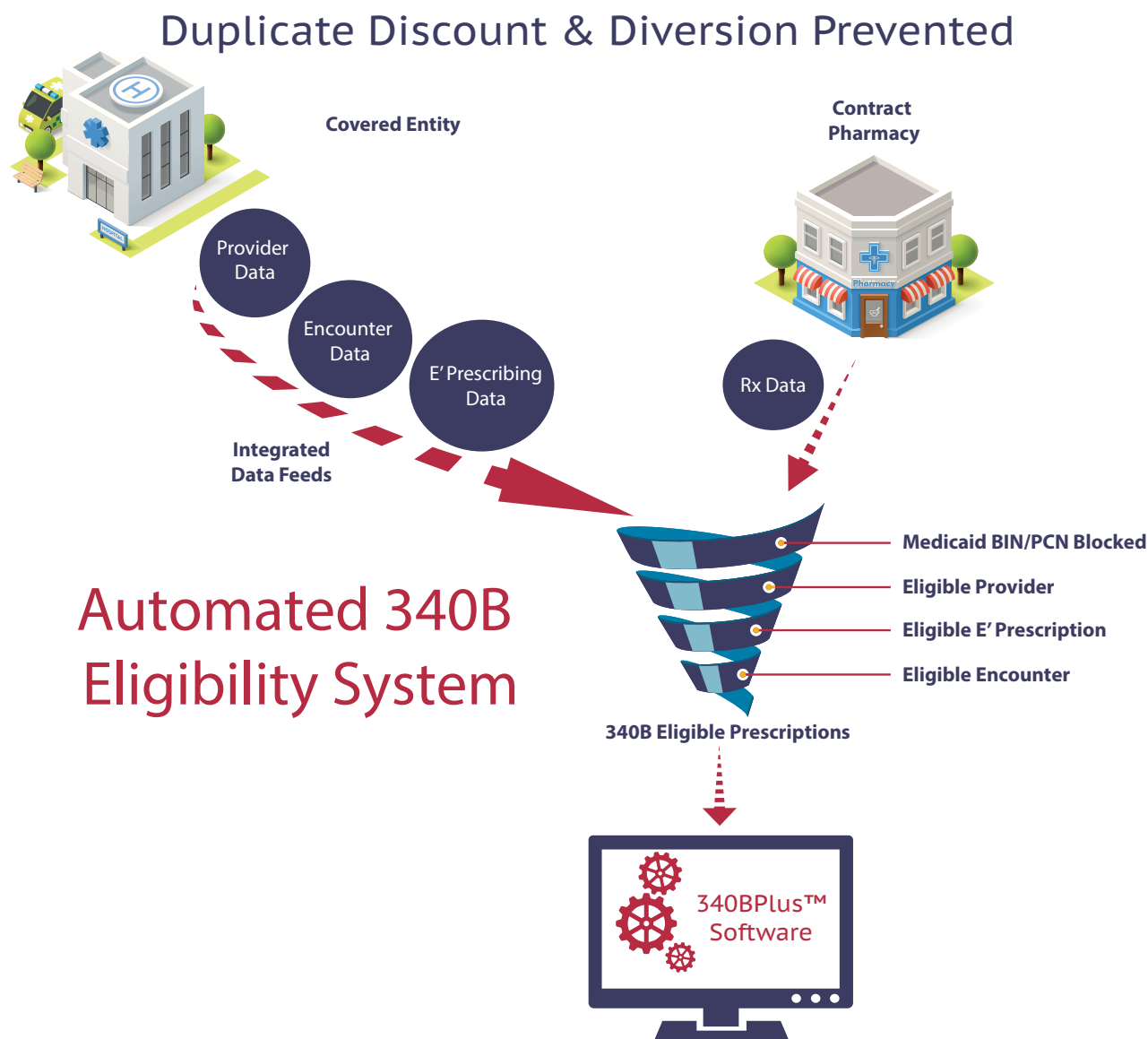
**Figure 8. RxStrategies Prescription Verification Process**

## 340BPlus<sup>™</sup> Prescription Verification



RxStrategies will work with CCHCD and/or CCHCD’s vendors (i.e. EHR) to establish the data feeds necessary to appropriately administer a fully compliant 340B contract pharmacy program. RxStrategies can easily block all fee-for-service (FFS) Medicaid claims and either block or allow managed Medicaid organization (MCO) depending on the clients, states or MCO’s standards. Please refer to Figure 9., below for a visual of how duplicate discounts and diversion are prevented.

**Figure 9. Overview of RxStrategies Duplicate Discount and Diversion Prevention**



- Please describe your remediation or true up process to maintain a compliant virtual inventory model.

**RxStrategies Response to 5.4 Scope of Work #10.**

A “True-Up” or “Buyout” occurs for claims that cannot be replenished. RxStrategies standard true-up cycle is 120-days. The covered entity will reimburse the pharmacy for the units dispensed (not the bottle

size; unit doses are fully replenished) at the pharmacy’s cost for the item. This is tracked on the “Buyout” report. This is part of the twice monthly invoice cycle to the pharmacy.

- Please describe your experience fulfilling Uniform Data System (UDS) report requests from other Federal Qualified Health Centers.

**RxStrategies Response to 5.4 Scope of Work #11.**

RxStrategies supports UDS data gathering and reporting requirements.

**5.5 Fees 0 – 25 points**

- Please provide the quotation for services, including all charges, such as fees per prescription and any other miscellaneous charges to CCHCD.
- Please provide a detailed description of your administrative fees and a line item breakdown. Please describe your method for determining distribution of revenue funds received from the contract pharmacy.

**RxStrategies to 5.5 Fees #1 and #2.**

<b>Service</b>	<b>Cash &amp; Sliding Fee Rx’s</b>	<b>Insured Rx’s</b>
Contract Pharmacy Administrative Fee	\$4.00 per Eligible Prescription	\$4.00 per Eligible Prescription
Prescription Data Acquisition Fee <sup>#</sup>	N/A	\$0.03 per Line Item of Switch Data <sup>#</sup>
Reporting Fee	Included	Included
CompliancePlus™	Included	Included
Implementation Fees	Included	Included
Installation Fees	Included	Included
Pharmacy Replenishment	Included	Included
Interface with Wholesalers	Included	Included
Purchase Order Reconciliation	Included	Included
Secure Web Portal	Included	Included
Customized Reports	Included	Included
Audit Support	Included	Included
<sup>#</sup> Only Applies to Retrospective Processed Claims.		

**RxStrategies Fee’s by Claims Processing Type**

Please refer to the table below for further information on RxStrategies pricing by patient type and claims processing type.



<b>Fee's by Claims Processing Type</b>			
<b>Patient Type</b>	<b>Claims Processing Type</b>	<b>Fee Type</b>	<b>Fee</b>
<b>Un-Insured Non-Sliding Fee</b>	<b>Real-Time Only*</b>	<b>Cash / Sliding Fee</b>	<b>\$4.00</b>
<b>Un-Insured Sliding Fee</b>	<b>Real-Time Only*</b>	<b>Cash / Sliding Fee</b>	<b>\$4.00</b>
<b>Insured (3rd Party)</b>	<b>Real-Time*</b>	<b>Insured</b>	<b>\$4.00</b>
<b>Insured (3rd Party)</b>	<b>Retrospective**</b>	<b>Insured</b>	<b>\$4.00 + \$0.03 per Line Item of Data</b>

\* Real-time Processing: Pharmacy submits claim directly to RxStrategies BIN/PCN. All un-insured claims must be submitted "real-time" so the appropriate patient paid amount is available at the point-of-sale. CCHCD could allow pharmacies the option of processing "insured" claims real-time as well.

\*\* Retrospective: RxStrategies requires Pharmacy to sign a release for "switch" (i.e. Emdeon, Relay Health) data. All data from pharmacy is received, filtered and enters the 340BPlus™ system. Please note chain pharmacies generally only will allow "retrospective" processing.

**5.6. References**

Provide three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references.

**RxStrategies 5.6 References**

Torey Lam  
 Consultant Pharmacist  
 Lane County  
 2073 Olympic St.  
 Springfield, OR 97477  
 Phone: (808) 499-5491  
 Email: torey.lam@co.lane.or.us

Tina R. Harris, CPA  
 Controller and Interim CFO  
 Northwest Health Services, Inc.  
 2303 Village Drive  
 St. Joseph, MO 64506  
 Phone: (816) 271-8213  
 Email: tinaharris@nwhealth-services.org

Brian McIndoe  
 Chief Executive Officer  
 William F. Ryan Community Health Center  
 110 West 97th Street  
 New York, NY 10025  
 Phone: (212) 316-7923  
 Email: bmcindoe@ryancenter.org

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5.7. Completed Proposal Certification (see the below form)

**RxStrategies 5.7 Completed Proposal Certification**

**PROPOSAL CERTIFICATION**  
**Third Party Administration**

Submitted by: RxStrategies, Inc./Delaware  
**(Must be entity's full legal name, and State of Formation)**

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agent or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
  3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer fully understands and submits its Proposal with the specific knowledge that:
1. The selected Proposal must be approved by the Board of Commissioners.
  2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i) That the Proposer is legally qualified to contract with the County.
- (j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

(k) The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

[ ] Resident Bidder, as defined in ORS 279A.120

[x] Non-Resident, Resident State Florida (incorporated in Delaware)

Oregon Business Registry Number \_\_\_\_\_

Contractor's Authorized Representative

Signature:  Date: 11/27/2017

Name: Fenton Markevich Title: President and CEO

Firm: RxStrategies, Inc.

Address: 1900 Glades Road #350

City/State/Zip: Boca Raton, FL 33431 Phone: ( 954 ) 602-0050

e-mail: fmarkevich@340BPlus.com Fax: 561-416-2011

Contract Manager: See Above

Name \_\_\_\_\_ Title: \_\_\_\_\_

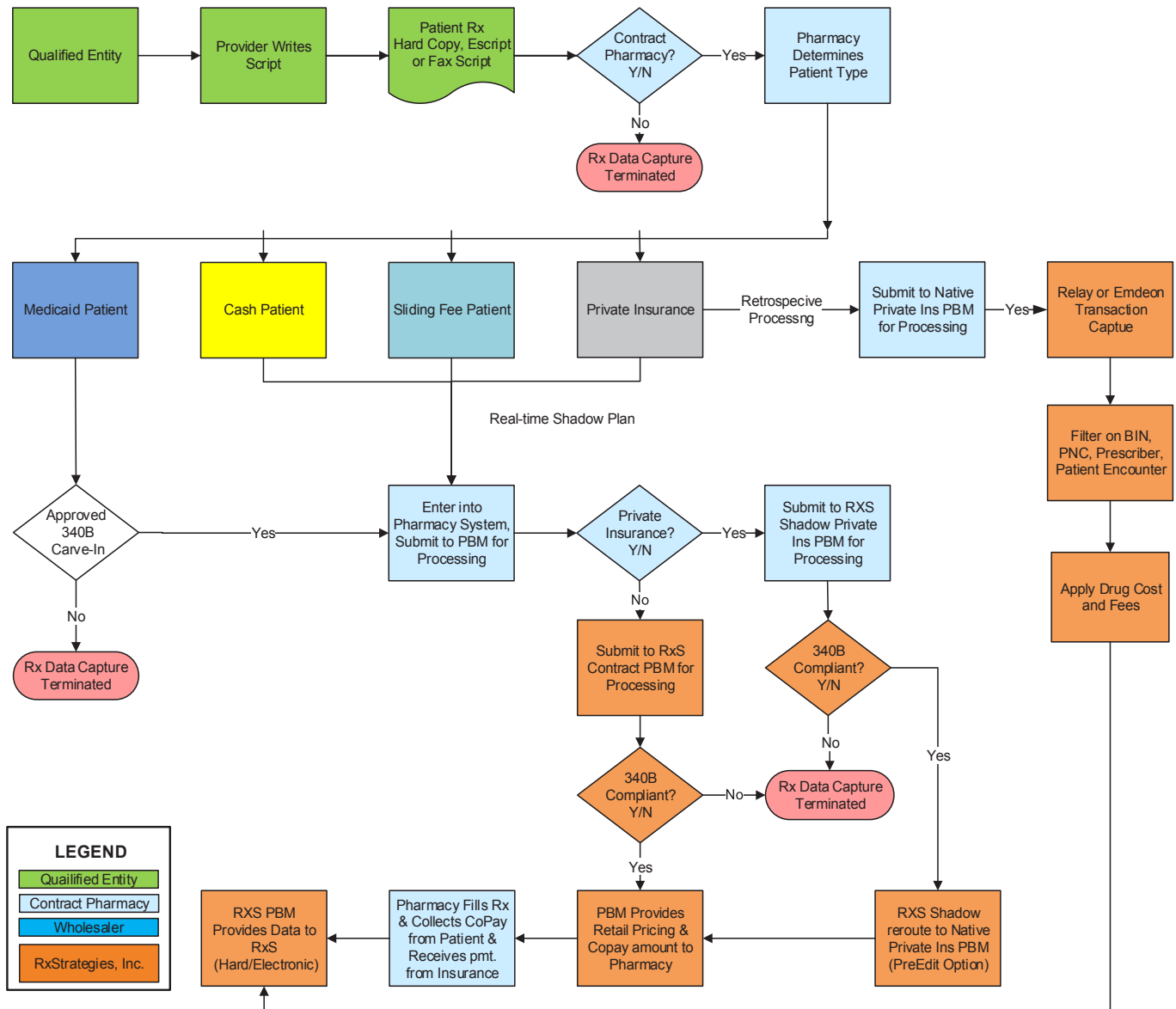
Phone number: \_\_\_\_\_

Email Address: \_\_\_\_\_

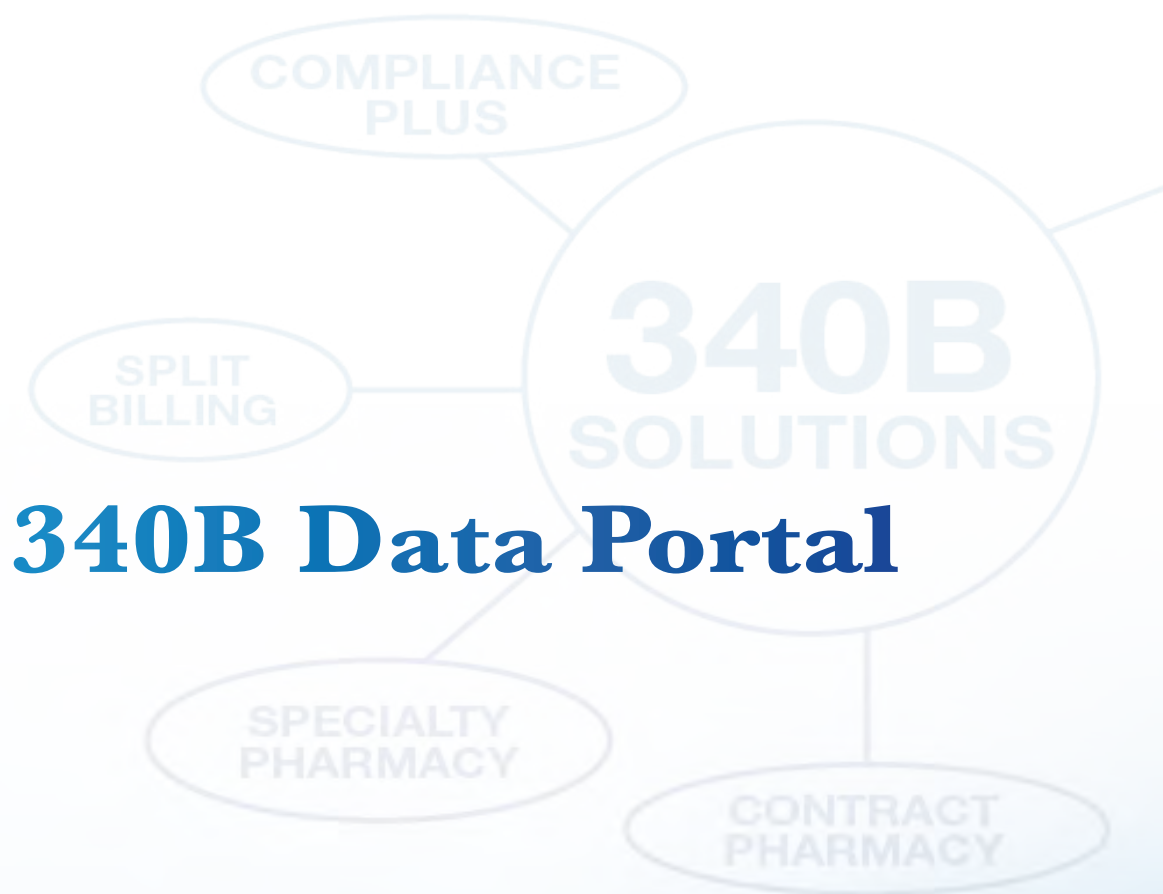


## ATTACHMENTS: RXSTRATEGIES

## CONTRACT PHARMACY PRESCRIPTION FLOW



## DATA PORTAL



# 340B Data Portal



## Contract Pharmacy

Dashboard



Home Compliance Split Billing 340B Entry 340B Pharmacy

Contract Pharmacy

Overview Monthly Program Summary Provider Breakdown Pharmacy Breakdown

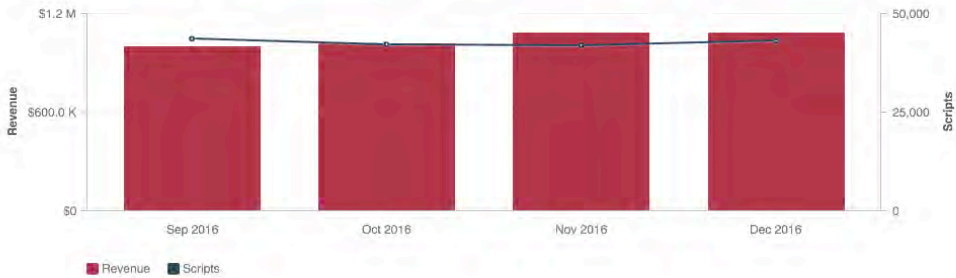
### 340B Program Overview



GRANTEE NAME: All PHARMACY NAME: All PROVIDER NAME: All CLAIM SUBMITTED DATE: Feb 2017

<b>NET REVENUE</b> No data No data No	<b>VOLUME</b> No data No data No	<b>REVENUE/SCRIPT</b> No data No data No	<b>EMR SCRIPTS FROM CE</b> 2,577,806	<b>BRAND %</b> No data No data
---	--	--	---	--------------------------------------

### 6-Month 340B Trends



### 340B Snapshot

Total Paid Claims	No data
Pharmacy Collections	No data
Drug Costs + Fees	No data
Net 340B Revenue	No data

### 6-Month 340B Revenue and Total Collected Trends 340B Revenue and Rev/Scripts Trends





## RxStrategies<sup>™</sup> inc.

### Split Billing

Dashboard



Home Compliance SplitBilling 340B Entity 340B Pharmacy

SplitBilling

Program Overview Monthly Program Summary Provider Breakdown Pharmacy Breakdown

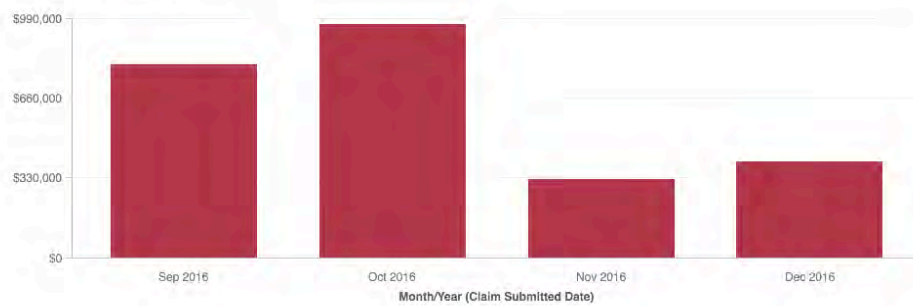
#### SB Program Overview



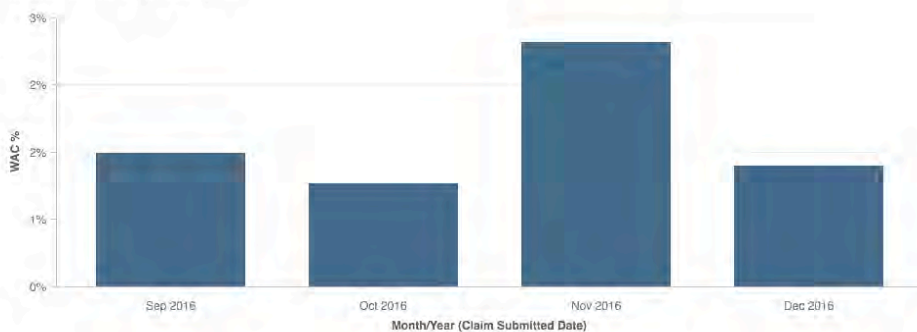
GRANTEE NAME: All PHARMACY NAME: All PROVIDER NAME: All CLAIM SUBMITTED DATE: Feb 2017

SB SAVINGS	SB VOLUME	SB SAVINGS/SCRIPT	BRAND %
No data	No data	No data	No data

#### 6-Month SB Savings Trends



#### 6-Month WAC % Over time



## EMR

Dashboard

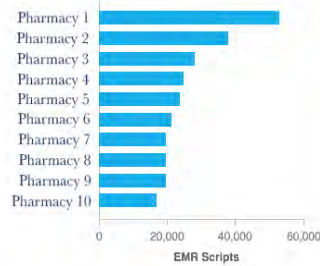


### EMR-Claims Gap Analysis

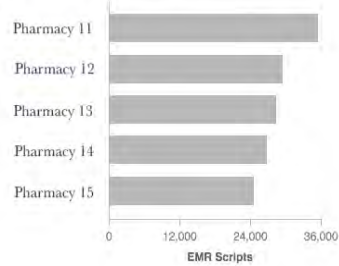


GRANTEE NAME: All PHARMACY NAME: All PROVIDER NAME: All CLAIM SUBMITTED DATE: Feb 2017

Script Opportunity by CP-In Network



Script Opportunity by CP-Out of Network



EMR Actual Script Capture by Pharmacy

No data

EMR Actual Script Capture by Provider

No data

EMR Missings Scripts by Pharmacy

No data

Top 10 EMR Missing Scripts by Provider

No data



## Compliance

**CompliancePlus<sup>™</sup>  
Self-Audit Tool**

**Tools**  
[Start New Audit](#)  
[Continue With Audit](#)  
[Browse Completed Audits](#)

Continue With Audit

Select an in-progress audit to continue working on.

	AuditID	StartDate	LastUsedDate	GenseeID	Question Percent Complete	Action Percent Complete
<a href="#">Edit</a>	10774	3/22/2017 2:37:59 PM		1744	0	0
<a href="#">Edit</a>	10773	3/1/2017 4:44:48 PM		1744	0	0
<a href="#">Edit</a>	10772	2/29/2017 11:58:17 AM		1744	20	15
<a href="#">Edit</a>	10771	2/27/2017 4:18:38 PM		1744	0	0
<a href="#">Edit</a>	10770	2/27/2017 11:31:45 AM		1744	7	7
<a href="#">Edit</a>	10768	2/23/2017 3:38:43 PM		1744	0	0
<a href="#">Edit</a>	10750	2/15/2017 11:30:20 AM		1744	43	42
<a href="#">Edit</a>	10749	2/14/2017 9:39:45 AM		1744	6	3
<a href="#">Edit</a>	10747	2/8/2017 11:42:08 AM		1744	8	8
<a href="#">Edit</a>	10746	2/2/2017 5:58:29 PM		1744	0	0

Page size: 10

**RxStrategies<sup>™</sup>**

Home | Compliance | Spelling | 340B Entry | 340B Pharmacy

### Split Billing Reporting

Reporting

The screenshot displays the RxStrategies web application interface. At the top, there is a navigation menu with the following items: Home, Compliance, SplitBilling (highlighted in red), 340B Entity, and 340B Pharmacy. The RxStrategies logo is positioned to the right of the navigation menu. Below the navigation menu, there is a sidebar menu with the following categories and items:

- Reports
  - Savings
  - Inventory
  - Dispenses
- Replenishment
  - PreOrder Schedule
  - Order Schedule (highlighted)
  - Order Summary
  - Order Invoice
- Tools
  - Confirm Claim
  - Prescriber Mgmt
  - Location Mgmt
  - CDM Crosswalk Mgmt
  - Custom

The main content area is titled "Order Schedule" and contains the following form fields:

- Pick Pharmacy Parent: <Select a Value> (dropdown menu)
- Start Date: (text input field)
- Pick Pharm ID: (dropdown menu)
- End Date: (text input field)

In the background, there is a faint graphic of a lightbulb with the text "OPTIONS" and "CONTRACT PHARMACY" inside it.

### 340B Entity Reporting

Reporting

Home | Compliance | Spillbilling | 340B Entity | 340B Pharmacy

**Claims**

Choose Grantee ID: <Select a Value>

Submitted Period End Date: [Calendar]

Submitted Period Start Date: [Calendar]

Patient Names within submitted period: [Dropdown]

Show patient sensitive information?: [Checkbox]

NDCs within submitted period. If you choose to display patient sensitive information on this document should be handled with care according to HIPAA guidelines.

Hide Report Header?



## Contract Pharmacy Reporting

Reporting

The screenshot shows the RxStrategies web application interface. At the top right, there is a navigation menu with the following items: Home, Compliance, SplitBilling, 340B Entity, and 340B Pharmacy. The '340B Pharmacy' item is currently selected. Below the navigation menu is the RxStrategies logo. On the left side, there is a 'Reports' dropdown menu with options for Inventory/Due, Overstock, Order Status, and Claims. The 'Order Status' option is selected. The main content area is titled 'Order Status' and contains a form with the following fields: 'Choose a Pharmacy' with a dropdown menu showing '<Select a Value>', 'Show Order Status since' with a date picker set to 'Today', and two blue arrow buttons for navigation. In the background, there is a large, faint watermark that reads '40B SOLUTIONS' and 'CONTRACT PHARMACY'.

### Comprehensive Reporting

Reporting

#### Reports

- All (86)
- Favorites (0)
- My Reports (0)
- Unsorted (1)
- Data Validation (13)
- Drill-In (3)
- EMR (6)
- Monthly Program Summary (8)
- Pharmacy Breakdown (11)
- Program Overview (18)
- Provider Breakdown (7)
- Split Billing (19)

+ Add Folder

#### Filter by Tags

lcm\_managed\_object

Deselect all Show as List

#### All

This folder contains all reports within the project.

Show hidden reports

Select: All None Move... Delete... Permissions...

Group by: Time

Yesterday

- PC - Brand Drug Utilization (1 version) By rsx prod
- SB - Wac % over Time (1 version) By rsx prod
- SB Savings Trends (1 version) By rsx prod
- [Drill in] YTD Brand Drug Utilization (1 version) By rsx prod
- Volume - Summary by In-house & Contract Pharmacy (1 version) By rsx prod
- Top 5 YTD Brand Drug Breakdown (1 version) By rsx prod
- Top 5 YTD Brand Drug Utilization (1 version) By rsx prod
- Rev/Claims Trends (1 version) By rsx prod
- SB Summary - Savings by Inventory Type (1 version) By rsx prod
- Avg Rev/Script (Arrow) (1 version) By rsx prod
- Claim Count (Arrow) (1 version) By rsx prod
- SB - Top Pharmacies by % Brand (1 version) By rsx prod
- SB - Top 5 Pharmacies by Avg Sav/Script (1 version) By rsx prod
- SB - Top 5 Pharmacies by MoM Savings (1 version) By rsx prod
- SB - Top 5 Providers by Avg Svgs/Script (1 version) By rsx prod
- SB - [Drill in] Providers by % Brand (1 version) By rsx prod
- SB - MoM Revenue by Top 5 Providers (1 version) By rsx prod
- Revenue (Arrow) (1 version) By rsx prod
- [Drill in] Claims Details (Prev Month) (1 version) By rsx prod
- [Drill in] Claims Details (2 Months Back) (1 version) By rsx prod
- Prev Month Revenue/Script (1 version) By rsx prod
- Prev Month Claims (1 version) By rsx prod
- Prev Month Net Revenue (1 version) By rsx prod
- [Drill in] All Pharmacies by % Brand (1 version) By rsx prod
- [Drill in] All Pharmacies by Avg Rev/Script (1 version) By rsx prod
- [Drill in] All Pharmacies by MoM Revenue (1 version) By rsx prod
- [Drill in] All Providers by Avg Rev/Script (1 version) By rsx prod
- [Drill in] Providers by % Brand (1 version) By rsx prod

### Comprehensive Reporting

- ★   [Drill in] Providers by % Brand (1 version) By rsx prod
- ★   [Drill in] MoM Revenue by Providers (1 version) By rsx prod
- ★   Revenue - Summary by In-house & Contract Pharmacy (1 version) By rsx prod
- ★   Top Providers by Claim Count (1 version) By rsx prod
- ★   Top Pharmacies by % Brand (1 version) By rsx prod
- ★   Top 5 Pharmacies by Avg Rev/Script (1 version) By rsx prod
- ★   Top 5 Pharmacies by MoM Revenue (1 version) By rsx prod
- ★   Top 5 Providers by Avg Rev/Script (1 version) By rsx prod
- ★   MoM Revenue by Top 5 Providers (1 version) By rsx prod
- ★   Volume - Summary by Brand and Generic (1 version) By rsx prod
- ★   Revenue - Summary by Brand and Generic (1 version) By rsx prod
- ★   340B Rev & Rev/Script Trends (1 version) By rsx prod
- ★   340b Snapshot [Bar Chart] (1 version) By rsx prod
- ★   SB Monthly Summary - Accumulator Table (1 version) By rsx prod
- ★   SB - Top 5 Drugs by Savings (1 version) By rsx prod
- ★   SB - Monthly Program Summary Details - Pharmacy B... (1 version) By rsx prod
- ★   SB Qty - % Brand (#Claims) (1 version) By rsx prod
- ★   SB - Monthly Program Summary Details - Provider Br... (1 version) By rsx prod
- ★   SB Monthly Summary - Savings by Therapeutic Cat (1 version) By rsx prod
- ★   Script opportunity by CP - Out of Network (1 version) By rsx prod
- ★   Script opportunity by CP - In-Network (1 version) By rsx prod
- ★   Missing EMR Scripts - Pharmacy (1 version) By rsx prod
- ★   Top 10 Missing EMR Scripts - Provider (1 version) By rsx prod
- ★   EMR vs Actual Script Capture - Pharmacy (1 version) By rsx prod
- ★   EMR vs Actual Script Capture - Provider (1 version) By rsx prod
- ★   SB Summary - Savings by Inpatient / Outpatient (1 version) By rsx prod
- ★   SB Overview - SB Savings/Script (1 version) By rsx prod
- ★   [Drill in] Claims Details (This Month) (1 version) By rsx prod
- ★   [Drill in] Drugs by Revenue (1 version) By rsx prod
- ★   [Drill in] CHC Dispensing Schedule (1 version) By rsx prod
- ★   Top 5 Drugs by Revenue (1 version) By rsx prod
- ★   CHC Dispensing Schedule (1 version) By rsx prod
- ★   Monthly Program Summary Details - Pharmacy Breakdown (1 version) By rsx prod
- ★   Monthly Program Summary Details - Provider Breakdown (1 version) By rsx prod
- ★   % Brand [Pie Chart] (1 version) By rsx prod
- ★   % Brand (#Claims) (1 version) By rsx prod
- ★   # EMR Scripts (1 version) By rsx prod





RxStrategies<sup>™</sup>  
inc.

## Data Query Tool

The screenshot displays the 'Data Query Tool' interface. On the left, under 'Production data', there is a search bar and a list of data fields categorized under 'all data', 'measures', and 'attributes'. The 'PROJECT DATA' section includes fields like '# of Lines', '# of Packages to Order', '# of Prescriptions', '% Brand', '340B Eligible', 'Account ID', 'Admin Fee', 'BIN PCN', 'CE User Access ID', 'CHC Fee', 'Child Site Name', 'Claim Count', 'Department', 'Disp Fee', 'Dispensing Fee', 'Drug Cost', and their respective historical versions (2 Months Back, Prev Month). The main area, titled 'Untitled insight', features a visualization toolbar with icons for grid, bar chart, table, and line chart. Below this are three sections: 'MEASURES' with a 'DRAG 123 OR ABC HERE' placeholder, 'VIEW BY' with a 'DRAG ABC OR HERE' placeholder, and 'STACK BY' with a 'DRAG ABC HERE' placeholder. A 'FILTERS' section at the top right contains a 'DRAG ABC OR HERE' placeholder.



## Analyze Tools

### Customized Report Writer In Portal

Create reports by selecting metrics, parameters and filters with a tool used by 40% of Fortune 500 Companies

What How Filter

View by Folders Metrics Detail

All Metrics  
Claims  
EMR  
Split Billing  
UseAvailable

Search Metrics...  
Add New Metric (advanced)  
Global Metrics  
 % Brand  
 Admin Fee (2 Months Back)  
 Admin Fee (Prev Month)  
 Admin Fee  
 Avg Rev/Script (Arrow)  
 Avg Rev/Script (Prev Month)  
 Avg Rev/Script  
 CHC Fee (2 Months Back)  
 CHC Fee (Prev Month)

Cancel Done

### Customized Report Writer In Portal

Create reports by selecting metrics, parameters and filters with a tool used by 40% of Fortune 500 Companies

What How Filter

Select one of the filter types below:

**Select from a List of Values (including date ranges)**  
Pick values from a list. (Example: Year is 2006, 2007 or "Last 4 Qtrs")

**Ranking Filter**  
Rank your results. (Example: Top 10 Stores by Sales, Bottom 20 Outlets by Expenses).

**Numeric Range Filter**  
Specify a range for your numbers. (Example: Stores where Sales is less than 10000 in 2008)

**Variable Filter**  
Look for a variable. (Variables display dynamic data based on values stored in a specific user's profile.)

Add Filter Hide Filters

The screenshot displays a dashboard with a dark sidebar on the left containing a '+ Add dashboard' button. The main content area is titled 'Dashboards' and shows a 'Claim Count' KPI card. The card displays a value of 195,841 for the 'prev. month' and a change of -100% for the 'change' period. A configuration modal is open, titled 'Email me when this KPI is...', with a dropdown set to 'above' and a text input field containing '200'. The modal also includes 'Update', 'Cancel', and 'Delete' buttons. A 'Date range' dropdown is set to 'This month'.

**Claim Count**

195,841  
prev. month

-100%  
change

in  current month

above

Update

Cancel

Delete

Date range: This month

Production data

all data measures attributes

Search data...

PROJECT DATA

- 123 # of Lines
- 123 # of Packages to Order
- 123 # of Prescriptions
- 123 % Brand
- ABC 340B Eligible
- ABC Account ID
- 123 Admin Fee
- 123 Admin Fee
- 123 Admin Fee (2 Months Back)
- 123 Admin Fee (Prev Month)
- 123 Avg Rev/Script
- 123 Avg Rev/Script (Arrow)
- 123 Avg Rev/Script (Prev Month)

+ Add data

### Untitled insight

MEASURES

DRAG 123 OR ABC HERE

VIEW BY

DRAG ABC OR HERE

STACK BY

DRAG ABC HERE

FILTERS

DRAG ABC OR HERE

**Get started**

Drag data here to begin.

←

→

Clear

Open

Save

Open as Report



[www.340BPlus.com](http://www.340BPlus.com) | 877- GOGETRX (464-3879)

1900 Glades Road, Suite 350, Boca Raton, FL 33431

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**RxStrategies, Inc.** Is proven to provide accountability, transparency and value-based 340B Drug Pricing Program solutions.

# REPORT EXAMPLES

\_\_\_\_\_, Inc Corporate Summary -  
**One Page By In-house and Contract Pharmacy**  
**8/1/2016 thru 8/31/2016**

	Claim Count (A)	Percent Brand (B)	Savings	Avg Savings Per Script (O)
Pharmacy 1	189	18.0%	8,902.75	47.10
Pharmacy 2	750	12.3%	6,293.46	8.39
Pharmacy 3	426	13.1%	4,196.57	9.85
Pharmacy 4	710	12.5%	11,660.87	16.42
Pharmacy 5	1,465	18.0%	29,039.86	19.82
Pharmacy 6	56	8.9%	156.28	2.79
Pharmacy 7	789	11.9%	7,532.96	9.55
Pharmacy 8	929	18.9%	18,493.73	19.91
Pharmacy 9	1,427	22.4%	25,044.70	17.55
Pharmacy 10	115	11.3%	2,691.60	23.41
Pharmacy 11	39	53.8%	257.03	6.59
Pharmacy 12	49	100.0%	9,643.06	196.80
Pharmacy 13	61	100.0%	14,616.38	239.61
Pharmacy 14	11	100.0%	834.69	75.88
Pharmacy 15	29	100.0%	4,312.15	148.69
Pharmacy 16	130	100.0%	24,462.38	188.17
Pharmacy 17	17	100.0%	1,904.79	112.05
Pharmacy 18	12	100.0%	841.94	70.16
<b>Total</b>	<b>7,204</b>	<b>20.4%</b>	<b>170,885.20</b>	<b>\$23.72</b>

Date Loaded Max

	DATESBM	CLAIM_POST
EMDEON	8/31/2016	9/1/2016
RELAY	8/31/2016	9/1/2016
SxC	8/31/2016	9/1/2016
<b>Total</b>	<b>8/31/2016</b>	<b>9/1/2016</b>



**\_\_\_\_\_, Inc Corporate Summary By Pharmacy  
8/1/2016 thru 8/31/2016**

	Claim Count (A)	Percent Brand (B)	Patient Count (C)	Admin Fee (D)	Disp Fee (E)	Drug Cost (F)	Drug Cost Plus Fees (G)	AWP (H)	Total Collected (K)	Savings (L)	Avg Savings Per Script (O)
Pharmacy 1	G		3	7.50	20.00	2.07	29.57	108.65	88.53	58.96	29.48
	<b>Total</b>		3	7.50	20.00	2.07	29.57	108.65	88.53	58.96	29.48
	B	0.0%	1	3.75	10.00	34.88	48.63	117.00	48.63	0.00	0.00
	G		18	101.25	270.00	92.11	463.36	2,506.20	463.36	0.00	0.00
	<b>Total</b>		19	105.00	280.00	126.99	511.99	2,623.20	511.99	0.00	0.00
	B	3.6%	18	123.75	759.00	6,256.09	7,138.84	20,445.44	16,756.91	9,618.07	291.46
	G		32	472.50	1,512.00	1,152.39	3,136.89	14,312.48	2,362.61	-774.28	-6.15
	<b>Total</b>		37	596.25	2,271.00	7,408.48	10,275.73	34,757.92	19,119.52	8,843.79	55.62
	B	18.0%	59	708.75	2,571.00	7,537.54	10,817.29	37,489.77	19,720.04	8,902.75	47.10
	G		32	138.75	370.00	329.67	838.42	15,463.25	838.42	0.00	0.00
Pharmacy 2	G		63	315.00	840.00	372.70	1,527.70	10,905.31	1,527.70	0.00	0.00
	<b>Total</b>		86	453.75	1,210.00	702.37	2,366.12	26,368.56	2,366.12	0.00	0.00
	B	30.6%	36	206.25	1,265.00	1,621.91	3,093.16	15,152.85	12,871.90	9,778.74	177.80
	G		174	2,152.50	6,888.00	2,730.97	11,771.47	55,874.01	8,286.19	-3,485.28	-6.07
	<b>Total</b>		181	2,388.75	8,153.00	4,352.88	14,864.63	71,026.87	21,158.09	6,293.46	10.01
	B	8.7%	267	2,812.50	9,363.00	5,055.25	17,230.75	97,395.43	23,524.21	6,293.46	8.39
	G		33	105.00	280.00	1,404.40	1,789.40	19,806.30	1,789.40	0.00	0.00
	<b>Total</b>		53	157.50	420.00	241.83	819.33	8,126.47	819.33	0.00	0.00
	B	40.0%	77	262.50	700.00	1,646.23	2,608.73	27,932.78	2,608.73	0.00	0.00
	G		27	105.00	644.00	2,026.67	2,775.67	9,959.75	8,305.51	5,529.84	197.49
Pharmacy 3	G		145	1,230.00	3,936.00	1,350.00	6,516.00	40,028.16	5,182.73	-1,333.27	-4.06
	<b>Total</b>		153	1,335.00	4,580.00	3,376.67	9,291.67	49,987.91	13,488.24	4,196.57	11.79
	B	7.9%	218	1,597.50	5,280.00	5,022.90	11,900.40	77,920.68	16,096.97	4,196.57	9.85
	G		17	63.75	170.00	198.79	432.54	3,825.99	432.54	0.00	0.00
	<b>Total</b>		9	30.00	80.00	55.63	165.63	740.70	165.63	0.00	0.00
	B	68.0%	25	93.75	250.00	254.42	598.17	4,566.69	598.17	0.00	0.00
	G		46	270.00	1,656.00	3,548.61	5,474.61	24,164.72	21,091.31	15,616.70	216.90
	<b>Total</b>		212	2,298.75	7,367.00	2,180.73	11,846.48	41,483.31	7,890.65	-3,955.83	-6.45
	B	10.5%	222	2,568.75	9,023.00	5,729.34	17,321.09	65,648.03	28,981.96	11,660.87	17.02
	G		710	2,662.50	9,273.00	5,983.76	17,919.26	70,214.73	29,580.13	11,660.87	16.42
Pharmacy 4	B	12.5%	247	3.75	10.00	71.00	84.75	470.09	373.17	288.42	288.42
	G		5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	<b>Total</b>		1	3.75	10.00	71.00	84.75	470.09	373.17	288.42	288.42
	B	100.0%	7	3.75	10.00	71.00	84.75	470.09	373.17	288.42	288.42
	G		0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	<b>Total</b>		1	3.75	10.00	71.00	84.75	470.09	373.17	288.42	288.42



Pharmacy	Claim Count (A)	Percent Brand (B)	Patient Count (C)	Admin Fee (D)	Disp Fee (E)	Drug Cost (F)	Drug Cost Plus Fees (G)	AWP (H)	Total Collected (K)	Savings (L)	Avg Savings Per Script (O)
Pharmacy 5	B		129	416.25	1,110.00	2,779.84	4,306.09	66,151.15	4,306.09	0.00	0.00
	G		112	412.50	1,100.00	1,026.74	2,539.24	14,560.20	2,539.24	0.00	0.00
	<b>Total</b>		241	828.75	2,210.00	3,806.58	6,845.33	80,711.35	6,845.33	0.00	0.00
	B	50.2%	112	570.00	3,496.00	9,740.49	13,806.49	58,859.16	49,748.22	35,941.73	236.46
	G		129	4,091.25	13,114.00	3,870.87	21,076.12	97,694.27	13,885.83	-7,190.29	-6.59
<b>Total</b>		1,465	5,493.75	18,830.00	17,488.94	41,812.69	237,734.87	70,852.55	29,039.86	19.82	
Pharmacy 6	B		1	3.75	10.00	0.15	13.90	170.78	13.90	0.00	0.00
	G		5	18.75	50.00	27.52	96.27	429.91	96.27	0.00	0.00
	<b>Total</b>		6	22.50	60.00	27.67	110.17	600.69	110.17	0.00	0.00
	B	16.7%	4	15.00	92.00	150.11	257.11	973.05	841.87	584.76	146.19
	G		20	172.50	552.00	71.00	795.50	2,933.48	367.02	-428.48	-9.31
<b>Total</b>		56	210.00	704.00	248.78	1,162.78	4,507.23	1,319.06	156.28	2.79	
Pharmacy 7	G		1	3.75	10.00	0.51	14.26	23.31	20.19	5.93	5.93
	<b>Total</b>		1	3.75	10.00	0.51	14.26	23.31	20.19	5.93	5.93
	B		37	142.50	380.00	616.49	1,138.99	16,357.99	1,138.99	0.00	0.00
	G		80	345.00	920.00	655.29	1,920.29	11,970.29	1,920.29	0.00	0.00
	<b>Total</b>		130	487.50	1,300.00	1,271.78	3,059.28	28,328.27	3,059.28	0.00	0.00
Pharmacy 8	B		43	210.00	1,288.00	2,906.70	4,404.70	17,908.78	15,124.01	10,719.31	191.42
	G		274	2,257.50	7,224.00	2,640.42	12,121.92	66,469.76	8,929.64	-3,192.28	-5.30
	<b>Total</b>		668	2,467.50	8,512.00	5,547.12	16,526.62	84,378.54	24,053.65	7,527.03	11.44
	B	8.5%	377	2,958.75	9,822.00	6,819.41	19,600.16	112,730.13	27,133.12	7,532.96	9.55
	G		68	333.75	890.00	1,510.09	2,733.84	39,766.98	2,733.84	0.00	0.00
Pharmacy 9	G		129	791.25	2,110.00	1,041.82	3,943.07	26,813.43	3,943.07	0.00	0.00
	<b>Total</b>		300	1,125.00	3,000.00	2,551.91	6,676.91	66,580.41	6,676.91	0.00	0.00
	B	29.7%	52	326.25	2,001.00	5,212.86	7,540.11	34,929.24	29,078.10	21,537.99	247.56
	G		162	2,032.50	7,046.00	4,358.38	13,436.88	61,283.45	10,392.62	-3,044.26	-5.62
	<b>Total</b>		629	2,358.75	9,047.00	9,571.24	20,976.99	96,212.69	39,470.72	18,493.73	29.40
Pharmacy 9	B	18.9%	341	3,483.75	12,047.00	12,123.15	27,653.90	162,793.10	46,147.63	18,493.73	19.91
	G		136	555.00	1,776.00	1,160.98	3,491.98	102,732.89	3,491.98	0.00	0.00
	<b>Total</b>		139	521.25	1,668.00	952.69	3,141.94	20,861.93	3,141.94	0.00	0.00
	B	51.6%	237	1,076.25	3,444.00	2,113.67	6,633.92	123,594.82	6,633.92	0.00	0.00
	G		115	641.25	3,933.00	11,248.94	15,823.19	55,612.97	45,599.17	29,775.98	174.13
Pharmacy 9	B		277	3,633.75	12,597.00	7,677.81	23,908.56	116,859.41	19,177.28	-4,731.28	-4.88
	G		302	4,275.00	16,530.00	18,926.75	39,731.75	172,472.38	64,776.45	25,044.70	21.97
	<b>Total</b>		1,427	5,351.25	19,974.00	21,040.42	46,365.67	296,067.20	71,410.37	25,044.70	17.55



	Claim Count (A)	Percent Brand (B)	Patient Count (C)	Admin Fee (D)	Disp Fee (E)	Drug Cost (F)	Drug Cost Plus Fees (G)	AWP (H)	Total Collected (K)	Savings (L)	Avg Savings Per Script (O)
Pharmacy 10	SF										
	B		3	7.50	20.00	58.25	85.75	669.71	85.75	0.00	0.00
	G		1	15.00	40.00	4.86	59.86	834.23	59.86	0.00	0.00
	Total		4	22.50	60.00	63.11	145.61	1,503.94	145.61	0.00	0.00
	THIRD PARTY		6	41.25	253.00	503.28	797.53	4,620.23	3,878.00	3,080.47	280.04
Pharmacy 11	G		50	367.50	1,176.00	901.26	2,444.76	11,261.52	2,055.89	-388.87	-3.97
	Total		52	408.75	1,429.00	1,404.54	3,242.29	15,881.75	5,933.89	2,691.60	24.69
	FP		55	431.25	1,489.00	1,467.65	3,387.90	17,385.70	6,079.50	2,691.60	23.41
	G		1	3.75	10.00	0.61	14.36	235.55	23.08	8.72	8.72
	Total		1	3.75	10.00	0.61	14.36	235.55	23.08	8.72	8.72
Pharmacy 12	B		17	75.00	200.00	772.67	1,047.67	10,874.00	1,087.67	40.00	2.00
	G		16	48.75	130.00	134.73	313.48	2,273.68	339.48	26.00	2.00
	Total		29	123.75	330.00	907.40	1,361.15	13,147.68	1,427.15	66.00	2.00
	B		1	3.75	23.00	81.30	108.05	357.49	322.75	214.70	214.70
	G		7	15.00	48.00	18.34	81.34	863.69	48.95	-32.39	-8.10
Pharmacy 13	Total		8	18.75	71.00	99.64	189.39	1,221.18	371.70	182.31	36.46
	THIRD PARTY		38	146.25	411.00	1,007.65	1,564.90	14,604.41	1,821.93	257.03	6.59
	Total		2	3.75	25.00	0.74	29.49	436.08	29.49	0.00	0.00
	SF		2	3.75	25.00	0.74	29.49	436.08	29.49	0.00	0.00
	B		41	180.00	1,200.00	2,721.86	4,101.86	16,124.41	13,744.92	9,643.06	200.90
Pharmacy 14	Total		41	180.00	1,200.00	2,721.86	4,101.86	16,124.41	13,744.92	9,643.06	200.90
	THIRD PARTY		43	183.75	1,225.00	2,722.60	4,131.35	16,560.49	13,774.41	9,643.06	196.80
	Total		15	33.75	225.00	232.95	491.70	4,330.59	491.70	0.00	0.00
	SF		15	33.75	225.00	232.95	491.70	4,330.59	491.70	0.00	0.00
	B		58	195.00	1,300.00	2,559.21	4,054.21	22,181.94	18,670.59	14,616.38	281.08
Pharmacy 15	Total		58	195.00	1,300.00	2,559.21	4,054.21	22,181.94	18,670.59	14,616.38	281.08
	THIRD PARTY		73	228.75	1,525.00	2,792.16	4,545.91	26,512.53	19,162.29	14,616.38	239.61
	Total		2	7.50	28.00	0.80	36.30	386.42	58.30	22.00	11.00
	SF		2	7.50	28.00	0.80	36.30	386.42	58.30	22.00	11.00
	B		6	33.75	216.00	218.02	467.77	1,526.95	1,280.46	812.69	90.30
Pharmacy 16	Total		6	33.75	216.00	218.02	467.77	1,526.95	1,280.46	812.69	90.30
	THIRD PARTY		8	41.25	244.00	218.82	504.07	1,913.37	1,338.76	834.69	75.88
	Total		13	22.50	150.00	175.04	347.54	1,995.20	347.54	0.00	0.00
	SF		13	22.50	150.00	175.04	347.54	1,995.20	347.54	0.00	0.00
	B		22	86.25	575.00	1,162.55	1,823.80	7,368.96	6,135.95	4,312.15	187.48
Pharmacy 17	Total		22	86.25	575.00	1,162.55	1,823.80	7,368.96	6,135.95	4,312.15	187.48
	THIRD PARTY		35	108.75	725.00	1,337.59	2,171.34	9,364.16	6,483.49	4,312.15	148.69
	Total		1	3.75	25.00	5.26	34.01	81.89	52.37	18.36	18.36
	FP		1	3.75	25.00	5.26	34.01	81.89	52.37	18.36	18.36
	B		1	3.75	25.00	5.26	34.01	81.89	52.37	18.36	18.36

Claim Count (A)	Percent Brand (B)	Patient Count (C)	Admin Fee (D)	Disp Fee (E)	Drug Cost (F)	Drug Cost Plus Fees (G)	AWP (H)	Total Collected (K)	Savings (L)	Avg Savings Per Script (O)
Pharmacy 16										
	B	11	41.25	275.00	259.14	575.39	5,276.36	575.39	0.00	0.00
	Total	11	41.25	275.00	259.14	575.39	5,276.36	575.39	0.00	0.00
THIRD PARTY										
	B	118	442.50	2,950.00	3,966.74	7,359.24	38,395.55	31,803.26	24,444.02	207.15
	Total	118	442.50	2,950.00	3,966.74	7,359.24	38,395.55	31,803.26	24,444.02	207.15
Pharmacy 17										
	B	130	487.50	3,250.00	4,231.14	7,968.64	43,753.81	32,431.02	24,462.38	188.17
	Total	17	63.75	425.00	267.04	755.79	3,185.60	2,660.58	1,904.79	112.05
Pharmacy 18										
	B	17	63.75	425.00	267.04	755.79	3,185.60	2,660.58	1,904.79	112.05
	Total	17	63.75	425.00	267.04	755.79	3,185.60	2,660.58	1,904.79	112.05
THIRD PARTY										
	B	6	22.50	150.00	290.77	463.27	4,439.81	463.27	0.00	0.00
	Total	6	22.50	150.00	290.77	463.27	4,439.81	463.27	0.00	0.00
THIRD PARTY										
	B	6	22.50	150.00	210.41	382.91	1,485.78	1,224.85	841.94	140.32
	Total	6	22.50	150.00	210.41	382.91	1,485.78	1,224.85	841.94	140.32
Total		7,204	20.4%	27,015.00	97,458.00	\$95,865.98	\$220,338.98	1,236,058.78	\$170,885.20	\$23.72

### Legend

(A) Claim Count - Net Total of Paid and reversed claims for period. Source:ERXS Claim Data  
 (B) Percent Brand - The percent of scripts that were brand for that grouping. Source:Medispan  
 (C) Patient Count - Total number of unique patients. Source:ERXS Claim Data  
 (D) Admin Fee - Envision/Rx-Strategies (ERXS) Fee Source:ERXS Claim Data  
 (E) Dispensing Fee - Fee Paid to Pharmacy Source:ERXS Claim Data  
 (F) Drug Cost - 340B Drug Cost from Cardinal. Source:Cardinal Health  
 (G) Drug Cost Plus Fees - 340B Drug Cost Plus All Fees Source: (D) + (E) + (F)

(H) AWP - Average Wholesaler Cost. Source:Medispan  
 (I) Patient Co-Pay - Patient Copay to the pharmacy. Source:ESI Plan design  
 (J) Third Party Payment - Rate sent to Pharmacy per agreement with EDI. Source: EDI Plan design  
 (K) Total Collected - Source: (I) + (J)  
 (L) Savings - Credit back to Health Plan. Profit (+); Loss (-) Source: (K) - (G)  
 (M) Capture Benchmark Source:Advertiser at 25%  
 (O) Average Savings Per Script - Source: (L)/(A)

■ < \$5 Average Profit Per Script and/or < 15% Brand Scripts

■ Between \$5 and \$20 Average Profit Per Script

■ > \$20 Average Profit Per Script



## PHARMACY INVOICE

Invoice **32882** for **10/01/2011**

Statement Cycle **01**

**Remit To:**

COVERED ENTITY NAME  
CONTACT  
ADDRESS 1  
ADDRESS 2  
CITY, ST ZIP

**Bill To:**

PHARMACY NAME  
PHARMACY CONTACT  
ADDRESS 1  
ADDRESS 2  
CITY, ST ZIP

Customer	Payment Terms	Due Date
PHARMACY NAME	Payable by Pharmacy	10/10/2011
<b>Actual Buyout Drug Cost</b>		(200.67)
<b>Gross Pharmacy Collections</b>		5,433.13
<b>Pharmacy Dispensing Fee</b>		(852.00)
		<b>4,380.46</b>

Subtotal	<b>4,380.46</b>
Sales Tax	
COVERED ENTITY NAME	<b>4,380.46</b>

PHARMACY NAME  
PHARMACY CONTACT  
ADDRESS 1  
ADDRESS 2  
CITY, ST ZIP

Invoice **32882** for **10/01/2011**

**Remit To:**

COVERED ENTITY NAME  
CONTACT  
ADDRESS 1  
ADDRESS 2  
CITY, ST ZIP

**Due Date:** 10/10/2011  
**COVERED ENTITY NAME:** 4,380.46

**Amount Paid:** \$

*Make check payable to: COVERED ENTITY NAME*



PHARMACY NAME  
**Pharmacy Dispensing Schedule**  
 Invoice **32882** for **10/1/2011**  
 Statement Cycle **01**

Pharm Claim#	PCN	Date Submitted	Original Date	NDC	Description	B/G	Qty	Pharm Coll	Disp Fee	Total
COVERED ENTITY NAME Pharmacy: PHARMACY NAME										
<b>Group: RXS0001</b>				<b>Script Count: 6</b>						
1	6392594	ADTA UYS	09/16/2011	53489011902	DOXYCYCL HYC CAP 100MG	G	28	14.26	(9.00)	5.26
2	6392592	ADTA UYS	09/16/2011	65162062711	TRAMADOL HCL TAB 50MG	G	120	17.00	(9.00)	8.00
3	6385799	ADTA UYS	09/16/2011	00378474501	BENZAEP/HCTZ TAB 20-12.5	G	30	15.10	(9.00)	6.10
4	6392867	ADTA UYS	09/21/2011	64679096105	AZITHROMYCIN TAB 250MG	G	6	16.12	(9.00)	7.12
5	6381757	ADTA UYS	09/26/2011	55111014810	FLUOXETINE CAP 20MG	G	30	13.55	(9.00)	4.55
6	6385026	ADTA UYS	09/30/2011	00603385521	HYDROCHLOROT CAP 12.5MG	G	30	13.98	(9.00)	4.98
<b>Group: RXS0002</b>				<b>Script Count: 13</b>						
7	6392641	ADTA UYS	09/16/2011	49884040501	METOPROLOL TAB 50MG ER	G	30	22.68	(9.00)	13.68
8	6391908	ADTA UYS	09/20/2011	55111023090	PRAVASTATIN TAB 20MG	G	(30)	(16.84)	9.00	(7.84)
9	4044565	ADTA UYS	09/21/2011	00228202750	ALPRAZOLAM TAB 0.25MG	G	120	16.47	(9.00)	7.47
10	6378887	ADTA UYS	09/21/2011	59762491001	SERTRALINE TAB 100MG	G	180	21.75	(9.00)	12.75
11	6390174	ADTA UYS	09/21/2011	64764015104	ACTOS TAB 15MG	B	30	20.25	(9.00)	11.25
12	6381672	ADTA UYS	09/23/2011	00603254421	BUT/APAP/CAF TAB	G	30	16.57	(9.00)	7.57
13	6387437	ADTA UYS	09/27/2011	00228257709	DILTIAZEM CAP 180MG CD	G	60	21.20	(9.00)	12.20
14	6393054	ADTA UYS	09/27/2011	55111023090	PRAVASTATIN TAB 20MG	G	30	16.84	(9.00)	7.84
15	6393055	ADTA UYS	09/27/2011	62175011843	OMEPRAZOLE CAP 20MG	G	30	18.90	(9.00)	9.90
16	6393157	ADTA UYS	09/28/2011	67405067150	HYDROXYZ HCL TAB 25MG	G	120	20.91	(9.00)	11.91
17	6393159	ADTA UYS	09/28/2011	00006027731	JANUVIA TAB 100MG	B	30	135.48	(9.00)	126.48
18	6388982	ADTA UYS	09/28/2011	59762503302	GLIPIZIDE XL TAB 10MG	G	60	20.87	(9.00)	11.87
19	6388979	ADTA UYS	09/28/2011	00228267311	SPIRONOLACT TAB 100MG	G	30	22.00	(9.00)	13.00
20	6388974	ADTA UYS	09/28/2011	65162075410	BENZAEP/CAF TAB 40MG	G	30	18.15	(9.00)	9.15
21	6393159	ADTA UYS	09/28/2011	00006027731	JANUVIA TAB 100MG	B	(30)	(135.48)	9.00	(126.48)
22	6393168	ADTA UYS	09/28/2011	00143995101	AMOXICILLIN TAB 875MG	G	20	18.10	(9.00)	9.10
23	6384615	ADTA UYS	09/29/2011	61314022705	TIMOLOL MAL SOL 0.5% OP	G	5	17.78	(9.00)	8.78
24	6393291	ADTA UYS	09/30/2011	00555901258	NORTREL7/7/7 TAB 28 DAYS	G	28	23.68	(9.00)	14.68
25	6393291	ADTA UYS	09/30/2011	00555901258	NORTREL7/7/7 TAB 28 DAYS	G	(28)	(23.68)	9.00	(14.68)
<b>Group: RXS0004</b>				<b>Script Count: 44</b>						
26	6379365	2054 UYS	09/16/2011	00173069600	ADVAIR DISKU AER 250/50	B	60	227.94	(12.00)	215.94
27	6392034	2027 UYS	09/16/2011	68180051901	LISINOP/HCTZ TAB 20-12.5	G	60	10.00	(12.00)	(2.00)
28	6382968	2054 UYS	09/19/2011	63653117101	PLAVIX TAB 75MG	B	30	190.76	(12.00)	178.76
29	6385719	2404 UYS	09/19/2011	59762024602	DONEPEZIL TAB 10MG	G	30	14.39	(12.00)	2.39
30	6386848	2404 UYS	09/19/2011	00074612390	TRICOR TAB 145MG	B	30	151.01	(12.00)	139.01
31	6386196	2054 UYS	09/19/2011	00378180501	LEVOTHYROXIN TAB 75MCG	G	30	7.10	(12.00)	(4.90)
32	6391911	2038 UYS	09/20/2011	00603254421	BUT/APAP/CAF TAB	G	(60)	(10.49)	12.00	1.51
33	6385925	2002 UYS	09/20/2011	59310057920	PROAIR HFA AER	B	9	40.66	(12.00)	28.66
34	4044572	2002 UYS	09/21/2011	00228207610	TEMAZEPAM CAP 15MG	G	30	12.00	(12.00)	0.00
35	6386774	2054 UYS	09/21/2011	68382003005	METFORMIN TAB 1000MG	G	60	2.70	(12.00)	(9.30)
36	6386775	2054 UYS	09/21/2011	68382002805	METFORMIN TAB 500MG	G	30	4.45	(12.00)	(7.55)
37	6386777	2054 UYS	09/21/2011	00006027731	JANUVIA TAB 100MG	B	30	212.12	(12.00)	200.12
38	6386773	2054 UYS	09/21/2011	00078035934	DIOVAN TAB 160MG	B	30	91.65	(12.00)	79.65
39	6391656	2054 UYS	09/21/2011	55111023090	PRAVASTATIN TAB 20MG	G	30	12.47	(12.00)	0.47
40	4044572	2002 UYS	09/22/2011	00228207610	TEMAZEPAM CAP 15MG	G	(30)	(12.00)	12.00	0.00
41	6385703	2054 UYS	09/23/2011	00173052100	SEREVENT DIS AER 50MCG	B	60	170.65	(12.00)	158.65
42	6391654	2054 UYS	09/24/2011	00603385632	HYDROCHLOROT TAB 25MG	G	30	3.92	(12.00)	(8.08)
43	6391649	2054 UYS	09/24/2011	59762503302	GLIPIZIDE XL TAB 10MG	G	60	30.69	(12.00)	18.69
44	6387739	2054 UYS	09/24/2011	00054327099	FLUTICASONE SPR 50MCG	G	16	23.48	(12.00)	11.48
45	6387736	2054 UYS	09/24/2011	00781112301	TRIAMT/HCTZ TAB 37.5-25	G	90	14.67	(12.00)	2.67
46	6387738	2054 UYS	09/24/2011	65862005399	SIMVASTATIN TAB 40MG	G	90	27.27	(12.00)	15.27
47	6387737	2054 UYS	09/24/2011	59762502701	GABAPENTIN CAP 300MG	G	270	62.85	(12.00)	50.85
48	6387824	2054 UYS	09/26/2011	00003421411	ONGLYZA TAB 2.5MG	B	30	212.10	(12.00)	200.10
49	6387819	2054 UYS	09/26/2011	00378182301	LEVOTHYROXIN TAB 137MCG	G	30	7.80	(12.00)	(4.20)
50	6387823	2054 UYS	09/26/2011	00378474501	BENZAEP/HCTZ TAB 20-12.5	G	60	18.90	(12.00)	6.90
51	6387826	2054 UYS	09/26/2011	68382003005	METFORMIN TAB 1000MG	G	60	2.70	(12.00)	(9.30)
52	6392439	2054 UYS	09/26/2011	59762503202	GLIPIZIDE XL TAB 5MG	G	60	18.45	(12.00)	6.45
53	6392986	2404 UYS	09/26/2011	00071015723	LIPITOR TAB 40MG	B	30	164.07	(12.00)	152.07
54	6380517	2048 UYS	09/26/2011	00006027731	JANUVIA TAB 100MG	B	30	216.22	(12.00)	204.22
55	6380531	2048 UYS	09/26/2011	00310075190	CRESTOR TAB 10MG	B	30	139.88	(12.00)	127.88
56	6392761	2002 UYS	09/26/2011	59762669003	NIFEDIPINE TAB 30MG ER	G	30	26.88	(12.00)	14.88
57	6378122	2404 UYS	09/26/2011	64764045124	ACTOS TAB 45MG	B	90	824.08	(12.00)	812.08
58	6390088	2054 UYS	09/27/2011	00093726701	METFORMIN TAB 500MG ER	G	30	7.80	(12.00)	(4.20)
59	6390347	2054 UYS	09/27/2011	00456321060	NAMENDA TAB 10MG	B	60	200.41	(12.00)	188.41
60	6385833	2054 UYS	09/27/2011	00071015723	LIPITOR TAB 40MG	B	30	159.97	(12.00)	147.97
61	6393067	2054 UYS	09/27/2011	00071015823	LIPITOR TAB 80MG	B	30	159.97	(12.00)	147.97
62	6393071	2054 UYS	09/27/2011	62175011843	OMEPRAZOLE CAP 20MG	G	30	12.30	(12.00)	0.30
63	6393086	2002 UYS	09/27/2011	00006011231	JANUVIA TAB 50MG	B	30	211.33	(12.00)	199.33
64	6387975	2054 UYS	09/28/2011	00597007541	SPIRIVA CAP HANDIHLR	B	30	230.77	(12.00)	218.77

PHARMACY NAME  
**Pharmacy Dispensing Schedule**  
 Invoice **32882** for **10/1/2011**  
 Statement Cycle **01**

Pharm Claim#	PCN	Date Submitted	Original Date	NDC	Description	B/G	Qty	Pharm Coll	Disp Fee	Total
65	6386525	2054 UYS	09/28/2011	00006011731	SINGULAIR TAB 10MG	B	30	149.85	(12.00)	137.85
66	6385668	2004 UYS	09/28/2011	51672404501	ENALAPR/HCTZ TAB 5-12.5MG	G	30	10.00	(12.00)	(2.00)
67	6385664	2004 UYS	09/28/2011	62175011843	OMEPRAZOLE CAP 20MG	G	60	10.00	(12.00)	(2.00)
68	6389174	2002 UYS	09/28/2011	64764030115	ACTOS TAB 30MG	B	30	256.40	(12.00)	244.40
69	6393223	2038 UYS	09/29/2011	55111034401	CITALOPRAM TAB 40MG	G	90	30.00	(12.00)	18.00
70	6393224	2038 UYS	09/29/2011	55111023090	PRAVASTATIN TAB 20MG	G	90	31.14	(12.00)	19.14
71	6386158	2054 UYS	09/30/2011	59310057920	PROAIR HFA AER	B	9	41.22	(12.00)	29.22
72	6386147	2054 UYS	09/30/2011	00173069600	ADVAIR DISKU AER 250/50	B	60	227.94	(12.00)	215.94
73	6380784	2021 UYS	09/30/2011	13310011907	COLCRYS TAB 0.6MG	B	60	300.07	(12.00)	288.07
<b>Group: RXS0005</b>				<b>Script Count: 17</b>						
74	6391335	ADTA UYS	09/19/2011	62175011843	OMEPRAZOLE CAP 20MG	G	60	10.06	(9.00)	1.06
75	6392737	ADTA UYS	09/19/2011	00555087402	WARFARIN TAB 4MG	G	30	4.76	(9.00)	(4.24)
76	6390524	ADTA UYS	09/20/2011	00591320413	PODOFILOX SOL 0.5%	G	(4)	(18.85)	9.00	(9.85)
77	6389118	ADTA UYS	09/20/2011	00781580692	LOSARTAN POT TAB 50MG	G	30	59.41	(9.00)	50.41
78	6389118	ADTA UYS	09/20/2011	00781580692	LOSARTAN POT TAB 50MG	G	(30)	(59.41)	9.00	(50.41)
79	6389118	ADTA UYS	09/20/2011	60505316109	LOSARTAN POT TAB 50MG	G	30	4.80	(9.00)	(4.20)
80	6391537	ADTA UYS	09/22/2011	00054327099	FLUTICASONE SPR 50MCG	G	16	10.77	(9.00)	1.77
81	4044454	ADTA UYS	09/22/2011	00228300350	CLONAZEPAM TAB 0.5MG	G	90	4.51	(9.00)	(4.49)
82	6392940	ADTA UYS	09/23/2011	00591078001	SUCRALFATE TAB 1GM	G	120	11.81	(9.00)	2.81
83	6392948	ADTA UYS	09/23/2011	55111012701	CIPROFLOXACN TAB 500MG	G	20	5.17	(9.00)	(3.83)
84	6387553	ADTA UYS	09/23/2011	00378181301	LEVOTHYROXIN TAB 125MCG	G	30	5.95	(9.00)	(3.05)
85	6385740	ADTA UYS	09/24/2011	68382009401	CARVEDILOL TAB 12.5MG	G	60	5.15	(9.00)	(3.85)
86	6386721	ADTA UYS	09/24/2011	00378207601	LISINAPRIL TAB 40MG	G	60	6.64	(9.00)	(2.36)
87	6385960	ADTA UYS	09/26/2011	00093084030	KETOCONAZOLE CRE 2%	G	30	26.46	(9.00)	17.46
88	6385960	ADTA UYS	09/26/2011	00093084030	KETOCONAZOLE CRE 2%	G	(30)	(26.46)	9.00	(17.46)
89	6393001	ADTA UYS	09/26/2011	00378047201	DIVALPROEX TAB 250MG ER	G	90	15.54	(9.00)	6.54
90	6393003	ADTA UYS	09/26/2011	59762501701	FLUCONAZOLE TAB 150MG	G	3	4.17	(9.00)	(4.83)
91	6391036	ADTA UYS	09/26/2011	00603254421	BUT/APAP/CAF TAB	G	60	5.39	(9.00)	(3.61)
92	6388589	ADTA UYS	09/26/2011	00591071860	BUSPIRONE TAB 15MG	G	180	10.53	(9.00)	1.53
93	6393158	ADTA UYS	09/28/2011	00006496300	ZOSTAVAX INJ	B	1	171.71	(9.00)	162.71
94	6393158	ADTA UYS	09/28/2011	00006496300	ZOSTAVAX INJ	B	(1)	(171.71)	9.00	(162.71)
95	6385841	ADTA UYS	09/28/2011	62175011843	OMEPRAZOLE CAP 20MG	G	30	6.90	(9.00)	(2.10)
96	6393261	ADTA UYS	09/30/2011	59762502701	GABAPENTIN CAP 300MG	G	90	5.36	(9.00)	(3.64)
97	6393262	ADTA UYS	09/30/2011	51672411103	PHENYTOIN EX CAP 100MG	G	150	25.53	(9.00)	16.53
98	4044624	ADTA UYS	09/30/2011	00228300350	CLONAZEPAM TAB 0.5MG	G	120	4.76	(9.00)	(4.24)
<b>Script Count Total: 80</b>								<b>5,433.13</b>	<b>(852.00)</b>	<b>4,581.13</b>

	Totals by Group		
	Claim Count	Pharm Coll	Disp Fee
<b>RXS0001</b>	6	90.01	54.00
<b>RXS0002</b>	13	255.63	117.00
<b>RXS0004</b>	44	4,958.54	528.00
<b>RXS0005</b>	17	128.95	153.00
<b>Total</b>	<b>80</b>	<b>5,433.13</b>	<b>852.00</b>

RxStrategies, Inc.

**BUY-OUT DETAIL**

Invoice **32882** on **10/1/2011**  
Statement Cycle **01**

<u>NDC</u>	<u>Labelname</u>	<u>B/G</u>	<u>Claims</u>	<u>Qty Disp</u>	<u>Qty Bough</u>	<u>Avg Unit Cost</u>	<u>Buyout Amt</u>
<b>Billing Group: PHARMACY BILLING NAME</b>							
<b>Pharmacy: PHARMACY NAME</b>							
1 64679096104	AZITHROMYCIN TAB 250MG	G	1.00	6.00	6.00	1.5533	9.32
2 51991046701	CYCLOBENZAPR TAB 5MG	G	1.00	30.00	30.00	0.3367	10.10
3 51672404501	ENALAPR/HCTZ TAB 5-12.5MG	G	1.00	20.00	20.00	0.2190	4.38
4 00093113001	FEXOFEN/PSE TAB 60-120MG	B	1.00	60.00	60.00	1.6798	100.79
5 00603385634	HYDROCHLOROT TAB 25MG	G	1.00	30.00	30.00	0.0150	0.45
6 53746046500	IBUPROFEN TAB 600MG	G	1.00	50.00	50.00	0.0264	1.32
7 49884040501	METOPROLOL TAB 50MG ER	G	1.00	30.00	30.00	0.2107	6.32
8 00062125115	ORTHO TRI- TAB CYCLN LO	B	1.00	28.00	28.00	2.4282	67.99
						8.00	\$200.67
						8.00	\$200.67
						8.00	\$200.67

		<b>Total</b>
<b>Total</b>	<b>Claims Buyout</b>	8.00 \$200.67
<b>PHAMRACY NAME</b>	<b>Claims Buyout</b>	8.00 \$200.67

**PURCHASE ORDER**

08C Replenishment Pharmacy

2/15/2012

Purchase Number: 27686-08C

Date Created: 2/13/12 Date Posted: 2/13/12

Date Fulfilled: 2/14/12

2/13/2012

021162842

NDC	LABEL NAME	B/G	PK SZ	QTY	ORDER	EST PRICE
62856024330	ACIPHEX TAB 20MG	N	30.00	30.00	1	0.30
00173069500	ADVAIR DISKU AER 100/50	N	60.00	60.00	1	68.60
00173069600	ADVAIR DISKU AER 250/50	N	60.00	60.00	1	86.66
59762372001	ALPRAZOLAM TAB 0.5MG	Y	100.00	100.00	1	0.68
00781183120	AMOX/K CLAV TAB 500MG	Y	20.00	40.00	2	6.32
00186003254	ATACAND TAB 32MG	N	90.00	90.00	1	80.14
00591377619	ATORVASTATIN TAB 40MG	Y	90.00	90.00	1	304.45
08290320119	BD PEN NEEDL MIS 31GX3/16	N	100.00	100.00	1	28.90
65162057310	BETHANECHOL TAB 25MG	Y	100.00	100.00	1	14.49
00591354060	BUPROPION TAB 100MG SR	Y	60.00	60.00	1	5.79
00603107558	CHERATUSSIN SYP AC	Y	473.00	473.00	1	2.29
00378021001	CHLORPROPAM TAB 250MG	Y	100.00	100.00	1	35.47
00002324030	CYMBALTA CAP 30MG	N	30.00	90.00	3	65.69
00078047234	DIOVAN HCT TAB 320/25MG	N	90.00	90.00	1	120.75
00378047301	DIVALPROEX TAB 500MG ER	Y	100.00	100.00	1	14.19
00085461001	DULERA AER 200-5MCG	N	13.00	13.00	1	79.95
00002475930	EFFIENT TAB 10MG	N	30.00	30.00	1	128.47
00172541211	FLUCONAZOLE TAB 150MG	Y	12.00	12.00	1	1.27
00054327099	FLUTICASONONE SPR 50MCG	Y	16.00	16.00	1	10.28
00002871501	HUMULIN INJ 70/30	N	10.00	10.00	1	42.14
00603388732	HYDROCO/APAP TAB 10-325MG	Y	1,000.00	1,000.00	1	40.89
00591038801	HYDROCO/APAP TAB 2.5-500	Y	100.00	100.00	1	5.29
00406035705	HYDROCO/APAP TAB 5-500MG	Y	500.00	500.00	1	7.12
00781169501	ISOSORB DIN TAB 20MG	Y	100.00	200.00	2	1.45
00006027731	JANUVIA TAB 100MG	N	30.00	30.00	1	115.79
00185011701	LABETALOL TAB 200MG	Y	100.00	100.00	1	5.23
59762033302	LATANOPROST SOL 0.005%	Y	2.50	2.50	1	1.50
63481068706	LIDODERM DIS 5%	N	30.00	30.00	1	83.03
50742010705	METOPROL TAR TAB 25MG	Y	500.00	500.00	1	8.10
00591569550	MINOCYCLINE CAP 100MG	Y	50.00	50.00	1	6.16
00186504031	NEXIUM CAP 40MG	N	30.00	30.00	1	3.92
00378342201	NITROFURANTN CAP 100MG	Y	100.00	100.00	1	84.04
00169633910	NOVOLOG INJ FLEXPEN	N	3.00	30.00	10	0.15
59310057920	PROAIR HFA AER	N	8.50	17.00	2	7.82
68382006816	SIMVASTATIN TAB 40MG	Y	90.00	270.00	3	2.97
00006011731	SINGULAIR TAB 10MG	N	30.00	30.00	1	44.41
00172241660	TETRACYCLINE CAP 250MG	Y	100.00	300.00	3	1.41
68382003616	VENLAFAXINE CAP 150MG ER	Y	90.00	90.00	1	9.46
63402051001	XOPENEX HFA AER	N	15.00	15.00	1	16.99
						<b>3,681.38</b>



(800) 255-6940

CARDINAL HEALTH  
7601 N E GARDNER AVENUE  
KANSAS CITY, MO 64120

PAGE 1 OF 2 ROUTE/STOP 054 / 025

RO



DEA [REDACTED] FED ID [REDACTED]  
S [REDACTED]  
H [REDACTED]  
I [REDACTED]  
P [REDACTED]  
T [REDACTED]  
O [REDACTED]

CUST. NO.	DATE	ORIGINAL INVOICE	
[REDACTED]	5/11/12	1933392	
REG NO.	CUST. DEA NO.	ORDER NO.	CUSTOMER P.O. NUMBER
005814	[REDACTED]	8118304	31302-08V
DEPT.	ORDER DATE	CONF. NO.	
[REDACTED]	5/10/12	01181	

PAGE 02/02  
BILL TO

ITEM NUMBER	NDC/UPC	QTY ORDERED	QTY SHIPPED	UNIT	DESCRIPTION	SIZE	FORM	CUST. DEPT. #	CUST. DEPT. #	EXTENSION	UNIT CASE
TOTAL# 1											
3672391	68382-0022-01	1	1	EA	ASN# 27-870-3132 ATENOLOL 25MG 100	100TB					CT
2420305	00093-0319-01	1	1	EA	DILTIAZEM 60MG 100	100TB					CT
4357612	55111-0399-90	1	1	EA	LANSOPRAZOLE 30MG 90 DR	90CP					CT
3695541	68382-0028-01	1	1	EA	METFORMIN 500MG 100	100TB					CT
4045571	00074-3078-90	1	1	EA	NIASPAN 750MG 90 ER	90TB					CT
4370292	00378-6689-77	1	1	EA	PANTOPRAZOLE SOD DR 40MG 90	90TB					CT
2785715	63652-1271-08	1	1	EA	PLAVIX 75MG 30	30TB					CT
3737673	59762-4910-01	1	1	EA	SERTRALINE HCL 100MG 30	30TB					CT
TOTAL# 2											
4034997	00002-8797-59	1	1	CT	ASN# 27-870-3322 INS HUMALOG MX75/25 5X3KWIKPEN	5SY					CT
TOTAL# 3											
3764586	68180-0501-01	1	1	EA	ASN# 27-870-3550 MELOXICAM 7.5MG 100	100TB					CT
3979079	59746-0001-03	1	1	EA	METHYLPRED 4MG 210G DSPK	21TB					CT
2850550	63304-0504-01	1	1	EA	ACYCLOVIR 400MG 100	100TB					CT
3990850	00591-3332-30	1	1	EA	BUPROPION XL 300MG 30	30TB					CT
3938787	00093-0054-01	2	2	EA	BUSPIRONE HCL 10MG 100	100TB					CT
4132809	68382-0094-01	3	3	EA	CARVEDILOL 12.5MG 100	100TB					CT
4162483	53746-0466-90	1	1	EA	IBUPROFEN 800MG 90 CPLT	90TB					CT
4359832	00781-5204-31	1	1	EA	LOSARTAN/HCTZ 100-12.5MG 30	30TB					CT
11 TOTAL PIECES SHIPPED											
SUMMARY											
NET AMOUNT											
INVOICE SHIP DATE: 5/11/2012											

*These items we received*

*These are the items we did not get for these reasons*

11:33  
05/14/2012

Note Codes:		Unit Codes:	
T Taxable	CT Control	1 Mfg. S. O.	4 Not stocked
G Generic Sub	SN Special Nat	2 When. cat	5 Mfg. clm.
PP PharmPak Discout	SP Special Pricing	3 Mfg. cus	6 When. dis.
			7 Drug. recd
			8 Non-Zenitack. avail.
			9 Restricted item

Customer is a final dispenser that does not and will not redistribute prescription pharmaceuticals into to the secondary market

This invoice reflects any discounted prices, credits, or rebates or if price reductions are subsequently issued and paid with respect to the merchandise/services described herein, then federal law may require disclosure on the price reduction on your claim or cost report for Medicare or Medicaid reimbursement under 42 U.S.C. 1395a(a)-7b.



054 / 025

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EXPERIENCED | INNOVATIVE | ACCOUNTABLE



## RxStrategies, Inc. Tri Color Report

Grantee: Qualified Entity (1797)  
Pharmacy: Contract Pharmacy (1234567)

**Unfulfilled Claim**  
Claims Older than 2 Days  
Dated 02/23/2012

### Replenishment Group 08H

NDC(9)	LABELNAME	Whlslr	Unit of		Brand / Generic	Status	DEA Class	Minimum AWP	Order PPU	Buyout Quantity	Purchase Size	Buyout Cost	Total Order Cost
			Dose/UsePackage (U/X)	Size									
<b>RED - Products that should have been bought already</b>													
00591333130	BUPROPN HCL TAB 150MG XL	MK			G	A		5.22000	0.22400	30.00	30	156.60	6.72
57664050988	CITALOPRAM TAB 40MG	MK			G	A		2.52225	0.02860	120.00	100	302.67	3.43
00406114401	METHYLPHENID TAB 10MG	MK			G	A	2	0.47720	0.11730	120.00	100	57.26	14.08
												516.53	24.23
<b>YELLOW - Products unavailable for purchase, and sufficient funds may have been collected</b>													
007815238	ONDANSETRON TAB 4MG ODT		X		G	A		22.29000		6.00		133.74	
493480101	SM MULTIPLE TAB VITAMINS		U	100.000	G	A		0.05070		30.00		1.52	
												135.26	
<b>GREEN - Products that have not reached the minimum replenishment size</b>													
633040504	ACYCLOVIR TAB 400MG				G	A		2.16970		25.00	100	54.24	
167140041	ALLOPURINOL TAB 100MG				G	A		0.21278		60.00	100	12.77	
167140042	ALLOPURINOL TAB 300MG				G	A		0.57772		60.00	100	34.66	
007811506	ATENOLOL TAB 50MG				G	A		0.79249		30.00	100	23.77	
167140271	CETIRIZINE TAB 10MG		U	300.000	G	A		2.49750		60.00	300	149.85	
000024462	CIALIS TAB 5MG				B	A		4.51200		6.00	30	27.07	
576640507	CITALOPRAM TAB 10MG				G	A		2.32275		60.00	100	139.37	
576640508	CITALOPRAM TAB 20MG				G	A		2.42725		90.00	100	218.45	
003780751	CYCLOBENZAPR TAB 10MG				G	A		1.09150		90.00	100	98.24	
001431241	DIGOXIN TAB 0.25MG				G	A		0.14616		60.00	100	8.77	
000938121	DOXAZOSIN TAB 2MG				G	A		0.92440		90.00	100	83.20	
243380106	ERYTHROCIN TAB 250MG				B	A		1.68600		40.00	100	67.44	
005550899	ESTRADIOL TAB 0.5MG				G	A		0.24350		90.00	100	21.92	
167140352	FLUOXETINE CAP 20MG				G	A		2.61474		90.00	100	235.33	
005550323	HYDROXYZ PAM CAP 25MG				G	A		0.29040		60.00	100	17.42	
537460466	IBUPROFEN TAB 800MG				G	A		0.16674		60.00	100	10.00	
504740596	KEPPRA TAB 750MG				B	A		8.48466		60.00	120	509.08	
658620537	LEVOFLOXACIN TAB 500MG				G	A		19.26600		10.00	50	192.66	
003781805	LEVOTHYROXIN TAB 75MCG				G	A		0.37080		60.00	100	22.25	
646790929	LISINOPRIL TAB 10MG				G	A		0.91568		20.00	100	18.31	
001723760	LISINOPRIL TAB 20MG				G	A		1.04260		60.00	100	62.56	
646790928	LISINOPRIL TAB 5MG				G	A		0.94000		60.00	100	56.40	
007815077	LORATADINE TAB 10MG		U	100.000	G	A		0.82500		90.00	100	74.25	
005912717	METHYLPHENID TAB 36MG ER				B	A	2	6.57860		60.00	100	394.72	
005912718	METHYLPHENID TAB 54MG ER				B	A	2	7.15830		30.00	100	214.75	
655800643	METOLAZONE TAB 2.5MG				G	A		1.32770		15.00	100	19.92	
620370830	METOPROLOL TAB 25MG ER				G	A		1.05380		60.00	100	63.23	
000540235	MORPHINE SUL TAB 15MG				B	A	2	0.20150		20.00	100	4.03	
004068315	MORPHINE SUL TAB 15MG ER				G	A	2	0.89370		90.00	100	80.43	
609510653	MORPHINE SUL TAB 30MG ER				G	A	2	1.69460		90.00	100	152.51	
664900691	MYSOLINE TAB 250MG				B	A		7.32790		80.00	100	586.23	
000710418	NITROSTAT SUB 0.4MG		U	25.000	B	A		0.38680		25.00	100	9.67	
001431477	PREDNISON TAB 20MG				G	A		0.08360		87.00	100	7.27	
002282780	PROPRANOLOL CAP 120MG ER				G	A		2.00590		30.00	100	60.18	
537460272	SMZ/TMP DS TAB 800-160				G	A		0.90920		40.00	100	36.37	
000780409	STALEVO 150 TAB				B	A		4.16780		50.00	100	208.39	
005559018	TRI-SPRINTEC TAB		U	28.000	G	A		1.40440		84.00	168	117.97	
519910604	VITAMIN D CAP 50000UNT				G	A		1.97190		20.00	100	39.44	
516724032	WARFARIN TAB 5MG				G	A		0.64059		60.00	100	38.44	
												4,171.54	

Inventory and Overstock

RPG	Pharmacy Name	NDC	GPI	Label Name	B/G	QTY	Clm Qty	Order Qty	Buyout Qty	Inventory Due	Est Cost
08C	Replenishment Pharmacy	59148000713	59250015000310	ABILIFY TAB 5MG	B	30.00	120.00	150.00	0.00	30.0	131.31
08C	Replenishment Pharmacy	64764015860	27998002400340	ACTOPLUS MET TAB 15/850MG	B	60.00	240.00	180.00	0.00	-60.0	-242.42
08C	Replenishment Pharmacy	64764030114	27607050100330	ACTOS TAB 30MG	B	30.00	480.00	450.00	0.00	-30.0	-243.82
08C	Replenishment Pharmacy	00093894001	12405010000110	ACYCLOVIR CAP 200MG	G	100.00	524.00	500.00	0.00	-24.0	-4.67
08C	Replenishment Pharmacy	63304050401	12405010000320	ACYCLOVIR TAB 400MG	G	100.00	60.00	0.00	0.00	-60.0	-26.04
08C	Replenishment Pharmacy	00093894705	12405010000330	ACYCLOVIR TAB 800MG	G	500.00	35.00	0.00	0.00	-35.0	-24.52
08C	Replenishment Pharmacy	00597000160	85159902206920	AGGRENOX CAP 25-200MG	B	60.00	1,050.00	1,020.00	0.00	-30.0	-100.26
08C	Replenishment Pharmacy	00487950160	44201010102515	ALBUTEROL NEB 0.083%	G	180.00	3,600.00	3,555.00	0.00	-45.0	-2.40
08C	Replenishment Pharmacy	13668002101	56852010107530	ALFUZOSIN TAB 10MG	G	100.00	120.00	100.00	0.00	-20.0	-14.14
08C	Replenishment Pharmacy	00591554310	68000010000305	ALLOPURINOL TAB 100MG	G	1,000.00	1,980.00	1,300.00	0.00	-680.0	-33.99
08C	Replenishment Pharmacy	00591554405	68000010000310	ALLOPURINOL TAB 300MG	G	500.00	1,470.00	1,410.00	0.00	-60.0	-7.94
08C	Replenishment Pharmacy	59762371904	57100010000305	ALPRAZOLAM TAB 0.25MG	G	1,000.00	610.00	400.00	0.00	-210.0	-22.43
08C	Replenishment Pharmacy	59762372004	57100010000310	ALPRAZOLAM TAB 0.5MG	G	1,000.00	890.00	870.00	0.00	-20.0	-2.86
08C	Replenishment Pharmacy	59762372104	57100010000315	ALPRAZOLAM TAB 1MG	G	1,000.00	340.00	35.00	0.00	-305.0	-54.15
08C	Replenishment Pharmacy	00024552131	60204080100420	AMBIEN CR TAB 12.5MG	B	100.00	120.00	100.00	0.00	-20.0	-11.24
08C	Replenishment Pharmacy	68382022705	35400005000305	AMIODARONE TAB 200MG	G	500.00	1,215.00	756.00	0.00	-459.0	-296.58
08C	Replenishment Pharmacy	00603221621	58200010100325	AMITRIPTYLIN TAB 100MG	G	100.00	180.00	100.00	0.00	-80.0	-17.78
08C	Replenishment Pharmacy	00603221232	58200010100305	AMITRIPTYLIN TAB 10MG	G	1,000.00	180.00	100.00	0.00	-80.0	-2.84
08C	Replenishment Pharmacy	00781149101	58200010100330	AMITRIPTYLIN TAB 150MG	G	100.00	60.00	0.00	0.00	-60.0	-13.94
08C	Replenishment Pharmacy	00603221332	58200010100310	AMITRIPTYLIN TAB 25MG	G	1,000.00	1,350.00	800.00	0.00	-550.0	-37.28
08C	Replenishment Pharmacy	00603221432	58200010100315	AMITRIPTYLIN TAB 50MG	G	1,000.00	1,080.00	600.00	0.00	-480.0	-57.79
08C	Replenishment Pharmacy	00603221521	58200010100320	AMITRIPTYLIN TAB 75MG	G	100.00	120.00	100.00	0.00	-20.0	-3.53
08C	Replenishment Pharmacy	68180075801	36991502200150	AMLOD/BENAZP CAP 10-20MG	G	100.00	150.00	100.00	0.00	-50.0	-33.21
08C	Replenishment Pharmacy	00781227901	36991502200160	AMLOD/BENAZP CAP 10-40MG	G	100.00	150.00	100.00	0.00	-50.0	-48.97
08C	Replenishment Pharmacy	68180075701	36991502200140	AMLOD/BENAZP CAP 5-20MG	G	100.00	660.00	600.00	0.00	-60.0	-34.30
08C	Replenishment Pharmacy	59762154002	34000003100340	AMLODIPINE TAB 10MG	G	300.00	1,440.00	1,260.00	0.00	-180.0	-85.46
08C	Replenishment Pharmacy	59762152001	34000003100320	AMLODIPINE TAB 2.5MG	G	90.00	390.00	360.00	0.00	-30.0	-10.38
08C	Replenishment Pharmacy	59762153002	34000003100330	AMLODIPINE TAB 5MG	G	300.00	1,680.00	1,650.00	0.00	-30.0	-10.38
08C	Replenishment Pharmacy	00781183120	01990002200320	AMOX/CLAV TAB 500MG	G	20.00	194.00	100.00	0.00	-94.0	-71.15
08C	Replenishment Pharmacy	66685100101	01990002200340	AMOX/CLAV TAB 875MG	G	100.00	912.00	846.00	0.00	-66.0	-64.68
08C	Replenishment Pharmacy	00781202005	01200010100105	AMOXICILLIN CAP 250MG	G	500.00	30.00	0.00	0.00	-30.0	-1.42
08C	Replenishment Pharmacy	00781261301	01200010100110	AMOXICILLIN CAP 500MG	G	100.00	615.00	600.00	0.00	-15.0	-1.30
08C	Replenishment Pharmacy	00781261305	01200010100110	AMOXICILLIN CAP 500MG	G	500.00	235.00	0.00	0.00	-235.0	-17.89
08C	Replenishment Pharmacy	00781506101	01200010100315	AMOXICILLIN TAB 875MG	G	100.00	100.00	40.00	0.00	-60.0	-10.47
08C	Replenishment Pharmacy	00406048401	65991002050315	APAP/CODEINE TAB 300-30MG	G	100.00	137.00	100.00	0.00	-37.0	-4.54
08C	Replenishment Pharmacy	62856024530	62051025100310	ARICEPT TAB 5MG	B	30.00	30.00	0.00	0.00	-30.0	-254.66
08C	Replenishment Pharmacy	62856024590	62051025100310	ARICEPT TAB 5MG	B	90.00	150.00	120.00	0.00	-30.0	-254.69
08C	Replenishment Pharmacy	00456048201	28100050000330	ARMOUR THYR TAB 180MG	B	100.00	30.00	0.00	0.00	-30.0	-10.62
08C	Replenishment Pharmacy	00430075227	52500030000620	ASACOL TAB 400MG DR	B	180.00	60.00	0.00	0.00	-60.0	-98.07
08C	Replenishment Pharmacy	00591578301	36992002100320	ATENOL/CHLOR TAB 100-25MG	G	100.00	180.00	100.00	0.00	-80.0	-20.79
08C	Replenishment Pharmacy	00591578201	36992002100310	ATENOL/CHLOR TAB 50-25MG	G	100.00	180.00	100.00	0.00	-80.0	-14.80
08C	Replenishment Pharmacy	00781150701	33200020000310	ATENOLOL TAB 100MG	G	100.00	90.00	0.00	0.00	-90.0	-22.53
08C	Replenishment Pharmacy	50742010301	33200020000310	ATENOLOL TAB 100MG	G	100.00	750.00	700.00	0.00	-50.0	-12.51
08C	Replenishment Pharmacy	00781107810	33200020000303	ATENOLOL TAB 25MG	G	1,000.00	630.00	300.00	0.00	-330.0	-51.26
08C	Replenishment Pharmacy	50742010210	33200020000305	ATENOLOL TAB 50MG	G	1,000.00	760.00	250.00	0.00	-510.0	-84.85
08C	Replenishment Pharmacy	00591377419	39400010100310	ATORVASTATIN TAB 10MG	G	90.00	210.00	180.00	0.00	-30.0	-23.13
08C	Replenishment Pharmacy	00591377519	39400010100320	ATORVASTATIN TAB 20MG	G	90.00	480.00	450.00	0.00	-30.0	-32.99
08C	Replenishment Pharmacy	00591377619	39400010100330	ATORVASTATIN TAB 40MG	G	90.00	405.00	360.00	0.00	-45.0	-49.49
08C	Replenishment Pharmacy	00591377719	39400010100350	ATORVASTATIN TAB 80MG	G	90.00	225.00	180.00	0.00	-45.0	-49.49
08C	Replenishment Pharmacy	00087277331	36150030000340	AVAPRO TAB 300MG	B	30.00	690.00	660.00	0.00	-30.0	-92.33
08C	Replenishment Pharmacy	00085173301	05000037100320	AVELOX TAB 400MG	B	30.00	5.00	0.00	0.00	-5.0	-73.43
08C	Replenishment Pharmacy	00559804558	25990002400305	AVIANE TAB	G	168.00	168.00	0.00	28.00	-140.0	-35.16
08C	Replenishment Pharmacy	00173071215	56851020000120	AVODART CAP 0.5MG	B	30.00	660.00	630.00	0.00	-30.0	-102.77
08C	Replenishment Pharmacy	00781149631	03400010000320	AZITHROMYCIN TAB 250MG	G	30.00	6.00	0.00	0.00	-6.0	-9.34
08C	Replenishment Pharmacy	00781149668	03400010000320	AZITHROMYCIN TAB 250MG	G	18.00	636.00	630.00	0.00	-6.0	-9.34
08C	Replenishment Pharmacy	00781194133	03400010000334	AZITHROMYCIN TAB 500MG	G	9.00	49.00	45.00	0.00	-4.0	-12.45
08C	Replenishment Pharmacy	00832102410	75100010000305	BACLOFEN TAB 10MG	G	1,000.00	1,260.00	1,220.00	0.00	-40.0	-4.02
08C	Replenishment Pharmacy	00193146621	94100030009800	BAYER BREEZE MIS 2 TEST	B	100.00	450.00	400.00	0.00	-50.0	-43.09
08C	Replenishment Pharmacy	00193709021	94100030006100	BAYER CONTOR TES BLD GLUC	B	100.00	500.00	300.00	0.00	-200.0	-175.50
08C	Replenishment Pharmacy	00185020401	36991802150320	BENAZEP/HCTZ TAB 10-12.5	G	100.00	210.00	200.00	0.00	-10.0	-2.02
08C	Replenishment Pharmacy	00185005305	36100005100320	BENAZEP/PRIL TAB 10MG	G	500.00	60.00	0.00	0.00	-60.0	-11.75
08C	Replenishment Pharmacy	65162075210	36100005100320	BENAZEP/PRIL TAB 10MG	G	100.00	30.00	0.00	0.00	-30.0	-8.31
08C	Replenishment Pharmacy	65162075450	36100005100340	BENAZEP/PRIL TAB 40MG	G	500.00	810.00	780.00	0.00	-30.0	-6.31
08C	Replenishment Pharmacy	68382024705	43102010000105	BENZONATATE CAP 100MG	G	500.00	555.00	300.00	12.00	-243.0	-49.03
08C	Replenishment Pharmacy	00832108100	73100010100310	BENZTROPINE TAB 1MG	G	100.00	60.00	0.00	0.00	-60.0	-2.34
08C	Replenishment Pharmacy	65162057310	54000010100315	BETHANECHOL TAB 25MG	G	100.00	360.00	300.00	0.00	-60.0	-21.41
08C	Replenishment Pharmacy	00603248321	46200010000610	BISACODYL TAB 5MG EC	G	100.00	3.00	0.00	0.00	-3.0	-0.04
08C	Replenishment Pharmacy	00004018682	30042048100360	BONIVA TAB 150MG	B	3.00	10.00	9.00	0.00	-1.0	-115.74
08C	Replenishment Pharmacy	00093423301	37200010000310	BUMETANIDE TAB 1MG	G	100.00	180.00	100.00	0.00	-80.0	-7.99
08C	Replenishment Pharmacy	00591354060	58300040107420	BUPROPION TAB 100MG SR	G	60.00	352.00	300.00	0.00	-52.0	-17.55
08C	Replenishment Pharmacy	00591354125	58300040107430	BUPROPION TAB 150MG SR	G	250.00	930.00	910.00	0.00	-20.0	-7.51
08C	Replenishment Pharmacy	00591058505	57200005100320	BUSPIRONE TAB 10MG	G	500.00	1,058.00	600.00	0.00	-458.0	-119.51
08C	Replenishment Pharmacy	00093100305	57200005100330	BUSPIRONE TAB 15MG	G	500.00	390.00	200.00	0.00	-190.0	-75.64
08C	Replenishment Pharmacy	00591085705	57200005100310	BUSPIRONE TAB 5MG	G	500.00	616.00	400.00	0.00	-216.0	-32.32
08C	Replenishment Pharmacy	00591336905	64991003100310	BUT/APAP/CAF TAB	G	500.00	180.00	100.00	0.00	-80.0	-8.42
08C	Replenishment Pharmacy	00527155201	64991003300120	BUT/ASA/CAF CAP	G	100.00	60.00	0.00	0.00	-60.0	-10.68
08C	Replenishment Pharmacy	59011075204	65200010008840	BUTRANS DIS 20MCG/HR	B	4.00	8.00	4.00	0.00	-4.0	-319.22
08C	Replenishment Pharmacy	00093065701	30905030000105	CALCITRIOL CAP 0.25MCG	G	100.00	450.00	400.00	0.00	-50.0	-12.10
08C	Replenishment Pharmacy	58914017014	49300010001820	CARAFATE SUS 1GM/10ML	B	400.00	1,200.00	840.00	0.00	-360.0	-62.25
08C	Replenishment Pharmacy	00228253910	73209902100320	CARB/LEVO TAB 25-100MG	G	120.00	1,301.00	1,300.00	0.00	-1.0	





**Label Summary All Drugs**  
Invoice 336 for 7/15/2005

CHC:

Label Name	Utilizing Members	Rx Count	Avg Quantity	Total Rx Cost	Pharmacy Collected	Plan Cost	Plan Cost Per Rx
ACCU-CHEK TES COMFORT	1	1	50.0	\$53.50	\$5.00	\$48.50	\$48.50
ACYCLOVIR CAP 200MG	3	3	73.3	\$43.20	\$15.00	\$28.20	\$9.40
ACYCLOVIR TAB 400MG	3	1	75.0	\$15.01	\$5.00	\$10.01	\$10.01
ALBUTEROL AER 90MCG	6	6	17.0	\$70.02	\$30.00	\$40.02	\$6.67
ALDARA CRE 5%	1	1	12.0	\$82.28	\$5.00	\$77.28	\$77.28
ALPHAGAN P SOL 0.15%	1	1	5.0	\$37.68	\$5.00	\$32.68	\$32.68
AMARYL TAB 4MG	1	1	60.0	\$47.65	\$5.00	\$42.65	\$42.65
AMITRIPTYLIN TAB 10MG	1	1	30.0	\$10.37	\$5.00	\$5.37	\$5.37
AMITRIPTYLIN TAB 25MG	1	1	30.0	\$10.66	\$5.00	\$5.66	\$5.66
AMITRIPTYLIN TAB 75MG	1	1	30.0	\$10.75	\$5.00	\$5.75	\$5.75
AMOX/K CLAV TAB 500MG	1	1	20.0	\$39.86	\$5.00	\$34.86	\$34.86
AMOX/K CLAV TAB 875MG	2	2	24.0	\$91.96	\$10.00	\$81.96	\$40.98
ANTIPY/BENZO SOL OTIC	1	1	10.0	\$10.86	\$5.00	\$5.86	\$5.86
APAP/CODEINE TAB 300-30MG	3	3	20.0	\$32.79	\$15.00	\$17.79	\$5.93
APRI TAB	2	2	28.0	\$72.31	\$10.00	\$62.31	\$31.16
ATENOLOL TAB 100MG	2	2	30.0	\$22.50	\$10.00	\$12.50	\$6.25
ATENOLOL TAB 25MG	4	4	30.0	\$42.76	\$20.00	\$22.76	\$5.69
ATENOLOL TAB 50MG	8	8	33.8	\$85.91	\$40.00	\$45.91	\$5.74
AVIANE TAB	7	7	28.0	\$200.91	\$35.00	\$165.91	\$23.70
BACTROBAN CRE 2%	1	1	15.0	\$33.26	\$5.00	\$28.26	\$28.26
BUDEPRION TAB 150MG SR	1	1	60.0	\$48.03	\$5.00	\$43.03	\$43.03
BUPROPION TAB 100MG	1	1	60.0	\$21.39	\$5.00	\$16.39	\$16.39
BUPROPION TAB 150MG SR	1	1	60.0	\$34.98	\$5.00	\$29.98	\$29.98
BUSPIRONE TAB 10MG	1	1	60.0	\$11.68	\$5.00	\$6.68	\$6.68
BUT/APAP/CAF TAB	1	1	120.0	\$20.51	\$5.00	\$15.51	\$15.51
CARBAMAZEPIN TAB 200MG	1	1	180.0	\$24.69	\$5.00	\$19.69	\$19.69
CEPHALEXIN CAP 500MG	2	2	25.0	\$22.64	\$10.00	\$12.64	\$6.32
CIPROFLOXACN TAB 500MG	2	2	21.0	\$108.50	\$10.00	\$98.50	\$49.25
CIPROFLOXACN TAB 750MG	1	1	28.0	\$169.92	\$5.00	\$164.92	\$164.92
CLINDAMAX CRE 2%	1	1	40.0	\$55.48	\$5.00	\$50.48	\$50.48
CLINDAMYCIN LOT 10MG/ML	2	2	60.0	\$31.60	\$10.00	\$21.60	\$10.80
CLINDAMYCIN SOL 1%	1	1	30.0	\$10.49	\$5.00	\$5.49	\$5.49
CLONAZEPAM TAB 0.5MG	2	2	45.0	\$21.18	\$10.00	\$11.18	\$5.59
CLOTTRIMAZOLE CRE 1%	2	2	60.0	\$33.91	\$10.00	\$23.91	\$11.96
COLCHICINE TAB 0.6MG	1	1	60.0	\$11.36	\$5.00	\$6.36	\$6.36
COSOPT SOL 2-0.5%OP	1	1	5.0	\$45.38	\$5.00	\$40.38	\$40.38
COZAAR TAB 50MG	1	1	30.0	\$40.03	\$5.00	\$35.03	\$35.03
CRYSSELLE-28 TAB 28 TABS	4	4	28.0	\$94.76	\$20.00	\$74.76	\$18.69
CYCLOBENZAPR TAB 10MG	2	2	17.5	\$22.67	\$10.00	\$12.67	\$6.34
CYPROHEPTAD TAB 4MG	1	1	90.0	\$19.24	\$5.00	\$14.24	\$14.24
DILANTIN CAP 100MG	1	1	120.0	\$42.23	\$5.00	\$37.23	\$37.23
DOXAZOSIN TAB 2MG	1	1	30.0	\$11.08	\$5.00	\$6.08	\$6.08
DOXYCYCL HYC CAP 100MG	5	5	19.6	\$54.58	\$25.00	\$29.58	\$5.92
ENALAPRIL TAB 10MG	3	3	30.0	\$33.51	\$15.00	\$18.51	\$6.17
ENALAPRIL TAB 2.5MG	7	7	30.0	\$73.10	\$35.00	\$38.10	\$5.44
ENALAPRIL TAB 20MG	4	4	45.0	\$46.00	\$20.00	\$26.00	\$6.50
ERYGEL GEL 2%	1	1	60.0	\$97.42	\$5.00	\$92.42	\$92.42
ERYTHROMYCIN TAB BS 500MG	1	1	14.0	\$16.05	\$5.00	\$11.05	\$11.05
FERROUS SULF TAB 325MG	2	2	100.0	\$21.71	\$10.00	\$11.71	\$5.86
FLOXANOLONE SPR 0.05%	4	4	16.0	\$141.79	\$20.00	\$121.79	\$30.45
FLOVENT AER 110MCG/A	1	1	13.0	\$45.97	\$5.00	\$40.97	\$40.97
FLOVENT HFA AER 110MCG	2	2	12.0	\$160.50	\$10.00	\$150.50	\$75.25
FLOVENT HFA AER 220MCG	2	2	12.0	\$233.82	\$10.00	\$223.82	\$111.91
FLUCONAZOLE TAB 150MG	6	6	1.5	\$179.14	\$30.00	\$149.14	\$24.86
FLUOXETINE CAP 10MG	1	1	90.0	\$18.04	\$5.00	\$13.04	\$13.04
FLUOXETINE CAP 20MG	1	1	30.0	\$13.07	\$5.00	\$8.07	\$8.07

## Order Report with Claim Detail

**Pharmacy Name**

Purchase Number: 1873-02K

Invoice Number: 44150488

Date Shipped: 10/5/2005

Date Posted: 11/04/2005

NDC	DRUG NAME	RXS INVOICE	RXNUMBER	CLAIM QTY	QTY SHIPPED	
						SHIPPED QTY
00169183711	NOVOLIN INJ 70/30					30.0
		9069	395411	10.0		10.0
		9069	397707	10.0		10.0
		9069	398525	10.0		10.0
		9069	400029	10.0		10.0
		9069	403565	10.0		10.0
		9069	403564	-10.0		-10.0
		9069	410208	-10.0		-10.0
50924047550	ACCU-CHEK TES ACTIVE					50.0
		9069	393909	50.0		50.0
		9069	411866	50.0		50.0
		9069	411868	50.0		50.0
		9069	411869	50.0		50.0
		9069	411865	-100.0		-100.0
		9069	411867	-50.0		-50.0
00087277231	AVAPRO TAB 150MG					30.0
		9069	394243	30.0		30.0
00597001314	COMBIVENT AER					14.7
		9069	393026	14.7		14.7
00149047201	ACTONEL TAB 35MG					4.0
		9069	394157	4.0		4.0
66582031231	VYTORIN TAB 10-20MG					30.0
		9069	393678	15.0		15.0
		9069	393842	15.0		15.0
		9069	394181	15.0		15.0
		9069	405011	15.0		15.0
		9069	393843	-15.0		-15.0
		9069	408998	-15.0		-15.0
00088222033	LANTUS INJ 100/ML					20.0
		9069	393973	10.0		10.0
		9069	394164	10.0		10.0
		9069	395410	10.0		10.0
		9069	400026	20.0		20.0
		9069	400025	-20.0		-20.0
		9069	393974	-10.0		-10.0
99073012101	FREESTYLE TES					100.0
		9069	394165	100.0		100.0
		9069	411885	100.0		100.0
		9069	411887	100.0		100.0
		9069	411884	-100.0		-100.0
		9069	411886	-100.0		-100.0
00300370201	PREVPAC MIS					14.0
		9069	394258	14.0		14.0

RxStrategies, Inc.

**BUY-OUT DETAIL**

Invoice **32882** on **10/1/2011**  
Statement Cycle **01**

<u>NDC</u>	<u>Labelname</u>	<u>B/G</u>	<u>Claims</u>	<u>Qty Disp</u>	<u>Qty Bough</u>	<u>Avg Unit Cost</u>	<u>Buyout Amt</u>
<b>Billing Group: PHARMACY BILLING NAME</b>							
<b>Pharmacy: PHARMACY NAME</b>							
1 64679096104	AZITHROMYCIN TAB 250MG	G	1.00	6.00	6.00	1.5533	9.32
2 51991046701	CYCLOBENZAPR TAB 5MG	G	1.00	30.00	30.00	0.3367	10.10
3 51672404501	ENALAPR/HCTZ TAB 5-12.5MG	G	1.00	20.00	20.00	0.2190	4.38
4 00093113001	FEXOFEN/PSE TAB 60-120MG	B	1.00	60.00	60.00	1.6798	100.79
5 00603385634	HYDROCHLOROT TAB 25MG	G	1.00	30.00	30.00	0.0150	0.45
6 53746046500	IBUPROFEN TAB 600MG	G	1.00	50.00	50.00	0.0264	1.32
7 49884040501	METOPROLOL TAB 50MG ER	G	1.00	30.00	30.00	0.2107	6.32
8 00062125115	ORTHO TRI- TAB CYCLN LO	B	1.00	28.00	28.00	2.4282	67.99
						8.00	\$200.67
<b>TOTAL</b>						<u>8.00</u>	<u>\$200.67</u>

		<b>Total</b>
<b>Total</b>	<b>Claims Buyout</b>	8.00 \$200.67
<b>PHAMRACY NAME</b>	<b>Claims Buyout</b>	8.00 \$200.67



**RxStrategies, Inc. Tri Color Report**

**Unfulfilled Claim**

Grantee: Qualified Entity (1797)  
Pharmacy: Contract Pharmacy (1234567)

Claims Older than 2 Days  
Dated 02/23/2012

**Replenishment Group 08H**

NDC(9)	LABELNAME	Whlslr	Unit of		Brand /	DEA	Minimum	Purchase	Buyout	Purchase	Buyout	Total Order
			Dose/UsePackage	Size								
<b>RED - Products that should have been bought already</b>												
00591333130	BUPROPION HCL TAB 150MG XL	MK			G	A	5.22000	0.22400	30.00	30	156.60	6.72
57664050988	CITALOPRAM TAB 40MG	MK			G	A	2.52225	0.02860	120.00	100	302.67	3.43
00406114401	METHYLPHENID TAB 10MG	MK			G	A	2	0.47720	0.11730	120.00	100	57.26
											516.53	24.23
<b>YELLOW - Products unavailable for purchase, and sufficient funds may have been collected</b>												
007815238	ONDANSETRON TAB 4MG ODT		X		G	A	22.29000		6.00		133.74	
493480101	SM MULTIPLE TAB VITAMINS		U	100.000	G	A	0.05070		30.00		1.52	
											135.26	
<b>GREEN - Products that have not reached the minimum replenishment size</b>												
633040504	ACYCLOVIR TAB 400MG				G	A	2.16970		25.00	100	54.24	
167140041	ALLOPURINOL TAB 100MG				G	A	0.21278		60.00	100	12.77	
167140042	ALLOPURINOL TAB 300MG				G	A	0.57772		60.00	100	34.66	
007811506	ATENOLOL TAB 50MG				G	A	0.79249		30.00	100	23.77	
167140271	CETIRIZINE TAB 10MG		U	300.000	G	A	2.49750		60.00	300	149.85	
000024462	CIALIS TAB 5MG				B	A	4.51200		6.00	30	27.07	
576640507	CITALOPRAM TAB 10MG				G	A	2.32275		60.00	100	139.37	
576640508	CITALOPRAM TAB 20MG				G	A	2.42725		90.00	100	218.45	
003780751	CYCLOBENZAPR TAB 10MG				G	A	1.09150		90.00	100	98.24	
001431241	DIGOXIN TAB 0.25MG				G	A	0.14616		60.00	100	8.77	
000938121	DOXAZOSIN TAB 2MG				G	A	0.92440		90.00	100	83.20	
243380106	ERYTHROCIN TAB 250MG				B	A	1.68600		40.00	100	67.44	
005550899	ESTRADIOL TAB 0.5MG				G	A	0.24350		90.00	100	21.92	
167140352	FLUOXETINE CAP 20MG				G	A	2.61474		90.00	100	235.33	
005550323	HYDROXYZ PAM CAP 25MG				G	A	0.29040		60.00	100	17.42	
537460466	IBUPROFEN TAB 800MG				G	A	0.16674		60.00	100	10.00	
504740596	KEPPRA TAB 750MG				B	A	8.48466		60.00	120	509.08	
658620537	LEVOFLOXACIN TAB 500MG				G	A	19.26600		10.00	50	192.66	
003781805	LEVOTHYROXIN TAB 75MCG				G	A	0.37080		60.00	100	22.25	
646790929	LISINAPRIL TAB 10MG				G	A	0.91568		20.00	100	18.31	
001723760	LISINAPRIL TAB 20MG				G	A	1.04260		60.00	100	62.56	
646790928	LISINAPRIL TAB 5MG				G	A	0.94000		60.00	100	56.40	
007815077	LORATADINE TAB 10MG		U	100.000	G	A	0.82500		90.00	100	74.25	
005912717	METHYLPHENID TAB 36MG ER				B	A	2	6.57860	60.00	100	394.72	
005912718	METHYLPHENID TAB 54MG ER				B	A	2	7.15830	30.00	100	214.75	
655800643	METOLAZONE TAB 2.5MG				G	A	1.32770		15.00	100	19.92	
620370830	METOPROLOL TAB 25MG ER				G	A	1.05380		60.00	100	63.23	
000540235	MORPHINE SUL TAB 15MG				B	A	2	0.20150	20.00	100	4.03	
004068315	MORPHINE SUL TAB 15MG ER				G	A	2	0.89370	90.00	100	80.43	
609510653	MORPHINE SUL TAB 30MG ER				G	A	2	1.69460	90.00	100	152.51	
664900691	MYSOLINE TAB 250MG				B	A	7.32790		80.00	100	586.23	
000710418	NITROSTAT SUB 0.4MG		U	25.000	B	A	0.38680		25.00	100	9.67	
001431477	PREDNISONE TAB 20MG				G	A	0.08360		87.00	100	7.27	
002282780	PROPRANOLOL CAP 120MG ER				G	A	2.00590		30.00	100	60.18	
537460272	SMZ/TMP DS TAB 800-160				G	A	0.90920		40.00	100	36.37	
000780409	STALEVO 150 TAB				B	A	4.16780		50.00	100	208.39	
005559018	TRI-SPRINTEC TAB		U	28.000	G	A	1.40440		84.00	168	117.97	
519910604	VITAMIN D CAP 50000UNT				G	A	1.97190		20.00	100	39.44	
516724032	WARFARIN TAB 5MG				G	A	0.64059		60.00	100	38.44	
											4,171.54	



**PHARMACY INVOICE**  
Invoice **32882** for **10/01/2014**

**Remit To:**  
COVERED ENTITY NAME  
CONTACT  
ADDRESS 1  
ADDRESS 2  
CITY, ST ZIP

Statement Cycle **01**

**Bill To:**  
PHARMACY NAME  
PHARMACY CONTACT  
ADDRESS 1  
ADDRESS 2  
CITY, ST ZIP

Customer	Payment Terms	Due Date
PHARMACY NAME	Payable by Pharmacy	10/10/2014
<b>Actual Buyout Drug Cost</b>		(200.67)
<b>Gross Pharmacy Collections</b>		5,433.13
<b>Pharmacy Dispensing Fee</b>		(852.00)
		<b>4,380.46</b>

Subtotal **4,380.46**  
Sales Tax  
COVERED ENTITY NAME **4,380.46**

PHARMACY NAME PHARMACY CONTACT ADDRESS 1 ADDRESS 2 CITY, ST ZIP	Invoice <b>32882</b> for <b>10/01/2014</b>
<b>Remit To:</b> COVERED ENTITY NAME CONTACT ADDRESS 1 ADDRESS 2 CITY, ST ZIP	<b>Due Date:</b> 10/10/2014 <b>COVERED ENTITY NAME:</b> 4,380.46 <b>Amount Paid:</b> \$ <input type="text"/>
<i>Make check payable to: COVERED ENTITY NAME</i>	

Pharmacy Invoice (B, BZWH, G1750, 1.3.0)

**PURCHASE ORDER**

2/15/2012

08C Replenishment Pharmacy

Purchase Number: 27686-08C

Date Created: 2/13/12 Date Posted: 2/13/12

Date Fulfilled: 2/14/12

2/13/2012

021162842

<u>NDC</u>	<u>LABEL NAME</u>	<u>B/G</u>	<u>PK SZ</u>	<u>QTY</u>	<u>ORDER</u>	<u>EST PRICE</u>
62856024330	ACIPHEX TAB 20MG	N	30.00	30.00	1	0.30
00173069500	ADVAIR DISKU AER 100/50	N	60.00	60.00	1	68.60
00173069600	ADVAIR DISKU AER 250/50	N	60.00	60.00	1	86.66
59762372001	ALPRAZOLAM TAB 0.5MG	Y	100.00	100.00	1	0.68
00781183120	AMOX/K CLAV TAB 500MG	Y	20.00	40.00	2	6.32
00186003254	ATACAND TAB 32MG	N	90.00	90.00	1	80.14
00591377619	ATORVASTATIN TAB 40MG	Y	90.00	90.00	1	304.45
08290320119	BD PEN NEEDL MIS 31GX3/16	N	100.00	100.00	1	28.90
65162057310	BETHANECHOL TAB 25MG	Y	100.00	100.00	1	14.49
00591354060	BUPROPION TAB 100MG SR	Y	60.00	60.00	1	5.79
00603107558	CHERATUSSIN SYP AC	Y	473.00	473.00	1	2.29
00378021001	CHLORPROPAM TAB 250MG	Y	100.00	100.00	1	35.47
00002324030	CYMBALTA CAP 30MG	N	30.00	90.00	3	65.69
00078047234	DIOVAN HCT TAB 320/25MG	N	90.00	90.00	1	120.75
00378047301	DIVALPROEX TAB 500MG ER	Y	100.00	100.00	1	14.19
00085461001	DULERA AER 200-5MCG	N	13.00	13.00	1	79.95
00002475930	EFFIENT TAB 10MG	N	30.00	30.00	1	128.47
00172541211	FLUCONAZOLE TAB 150MG	Y	12.00	12.00	1	1.27
00054327099	FLUTICASONONE SPR 50MCG	Y	16.00	16.00	1	10.28
00002871501	HUMULIN INJ 70/30	N	10.00	10.00	1	42.14
00603388732	HYDROCO/APAP TAB 10-325MG	Y	1,000.00	1,000.00	1	40.89
00591038801	HYDROCO/APAP TAB 2.5-500	Y	100.00	100.00	1	5.29
00406035705	HYDROCO/APAP TAB 5-500MG	Y	500.00	500.00	1	7.12
00781169501	ISOSORB DIN TAB 20MG	Y	100.00	200.00	2	1.45
00006027731	JANUVIA TAB 100MG	N	30.00	30.00	1	115.79
00185011701	LABETALOL TAB 200MG	Y	100.00	100.00	1	5.23
59762033302	LATANOPROST SOL 0.005%	Y	2.50	2.50	1	1.50
63481068706	LIDODERM DIS 5%	N	30.00	30.00	1	83.03
50742010705	METOPROL TAR TAB 25MG	Y	500.00	500.00	1	8.10
00591569550	MINOCYCLINE CAP 100MG	Y	50.00	50.00	1	6.16
00186504031	NEXIUM CAP 40MG	N	30.00	30.00	1	3.92
00378342201	NITROFURANTN CAP 100MG	Y	100.00	100.00	1	84.04
00169633910	NOVOLOG INJ FLEXPEN	N	3.00	30.00	10	0.15
59310057920	PROAIR HFA AER	N	8.50	17.00	2	7.82
68382006816	SIMVASTATIN TAB 40MG	Y	90.00	270.00	3	2.97
00006011731	SINGULAIR TAB 10MG	N	30.00	30.00	1	44.41
00172241660	TETRACYCLINE CAP 250MG	Y	100.00	300.00	3	1.41
68382003616	VENLAFAXINE CAP 150MG ER	Y	90.00	90.00	1	9.46
63402051001	XOPENEX HFA AER	N	15.00	15.00	1	16.99
						<b>3,681.38</b>



**Therapeutic Category**  
Invoice 336 for 7/15/2005

**CHC:**

Therapeutic Category	Rx Count	Avg Quantity	Avg Days Supply	Avg Ingr Cost	Total Rx Cost	Average Rx Cost	Average Collected	Plan Cost	Plan Cost Per Rx	% of Total Plan Cost
25 CONTRACEPTIVES ORAL	50	27.00	28.00	13.49	1,186.38	23.73	5.00	936.38	18.73	12.08 %
58 ANTIDEPRESSANTS	23	38.91	31.09	30.71	960.36	41.75	5.00	845.36	36.75	10.90 %
30 ENDOCRINE, MISC	14	4.00	27.86	43.95	811.25	57.95	5.00	741.25	52.95	9.56 %
44 ANTIASHTHMATICS	13	21.77	22.54	36.31	630.03	48.46	5.00	565.03	43.46	7.29 %
39 ANTIHYPERLIPIDEMICS	19	30.00	30.00	16.78	580.79	30.57	5.00	485.79	25.57	6.26 %
49 ULCER DRUGS	8	30.00	30.00	48.11	496.85	62.11	5.00	456.85	57.11	5.89 %
27 ANTIDIABETICS	19	63.68	29.00	15.38	498.20	26.22	5.00	403.20	21.22	5.20 %
03 MACROLIDE ANTIBIOTICS	11	5.91	4.45	24.65	425.20	38.65	5.00	370.20	33.65	4.77 %
59 ANTIPSYCHOTICS	1	30.00	30.00	307.30	321.30	321.30	5.00	316.30	316.30	4.08 %
90 DERMATOLOGICAL	13	41.69	15.15	17.14	368.87	28.37	5.00	303.87	23.37	3.92 %
05 QUINOLONES	3	23.33	11.67	82.81	278.42	92.81	5.00	263.42	87.81	3.40 %
36 ANTIHYPERTENSIVES	23	32.61	30.00	4.98	348.46	15.15	5.00	233.46	10.15	3.01 %
42 DECONGESTANTS	5	14.52	28.40	26.78	203.92	40.78	5.00	178.92	35.78	2.31 %
01 PENICILLINS	11	23.55	8.18	10.27	222.96	20.27	5.00	167.96	15.27	2.17 %
37 DIURETICS	25	31.20	30.00	1.18	279.57	11.18	5.00	154.57	6.18	1.99 %
11 ANTIFUNGALS	6	1.50	2.33	19.86	179.14	29.86	5.00	149.14	24.86	1.92 %
55 VAGINAL PRODUCTS	5	58.50	10.40	17.66	154.29	30.86	5.00	129.29	25.86	1.67 %
28 THYROID	10	30.00	30.00	6.46	168.60	16.86	5.00	118.60	11.86	1.53 %
94 DIAGNOSTIC PRODUCT	2	50.00	25.00	39.00	106.00	53.00	5.00	96.00	48.00	1.24 %
66 ANTI-RHEUMATICS	11	71.09	22.18	3.67	150.36	13.67	5.00	95.36	8.67	1.23 %
86 OPHTHALMIC	3	5.00	26.67	24.09	110.26	36.75	5.00	95.26	31.75	1.23 %
33 BETA BLOCKERS	16	33.75	30.00	0.83	173.27	10.83	5.00	93.27	5.83	1.20 %
72 ANTICONVULSANTS	4	97.50	30.00	11.03	88.10	22.03	5.00	68.10	17.03	0.88 %
16 ANTI-INFECTIVES, MISC	9	9.78	5.67	1.03	107.28	11.92	5.00	62.28	6.92	0.80 %
04 TETRACYCLINES	6	26.33	15.67	4.93	89.56	14.93	5.00	59.56	9.93	0.77 %
53 URINARY ANTI-INFECTIVES	5	11.60	5.80	3.02	65.08	13.02	5.00	40.08	8.02	0.52 %
12 ANTIVIRAL	4	73.75	25.00	4.55	58.21	14.55	5.00	38.21	9.55	0.49 %
24 ESTROGENS	2	29.00	29.00	7.67	43.34	21.67	5.00	33.34	16.67	0.43 %
31 CARDIOTONICS	2	30.00	30.00	3.99	35.97	17.99	5.00	25.97	12.99	0.33 %
97 MEDICAL DEVICES	1	100.00	100.00	16.95	30.95	30.95	5.00	25.95	25.95	0.33 %
09 ANTITUBERCULAR	4	30.00	30.00	1.18	44.70	11.18	5.00	24.70	6.18	0.32 %
56 GENITOURINARY PRODUCTS, MISC	3	8.33	3.67	1.68	35.03	11.68	5.00	20.03	6.68	0.26 %
89 ANORECTAL	2	28.35	21.00	4.13	28.26	14.13	5.00	18.26	9.13	0.24 %
65 ANALGESIC NARCOTIC	3	20.00	2.00	0.93	32.79	10.93	5.00	17.79	5.93	0.23 %
83 ANTICOAGULANTS	2	30.00	30.00	2.95	25.89	12.95	5.00	15.89	7.95	0.20 %
<b>Top 35 Categories Totals</b>	<b>338</b>	<b>31.77</b>	<b>24.30</b>	<b>16.46</b>	<b>9,339.64</b>	<b>27.63</b>	<b>5.00</b>	<b>7,649.64</b>	<b>22.63</b>	<b>98.65 %</b>
<b>CHC Totals</b>	<b>352</b>	<b>32.81</b>	<b>24.26</b>	<b>15.90</b>	<b>9,514.40</b>	<b>27.03</b>	<b>5.00</b>	<b>7,754.40</b>	<b>22.03</b>	<b>100.00 %</b>

## COMPLIANCE PLUS



EXPERIENCED | INNOVATIVE | ACCOUNTABLE

### Ensure Program Integrity with **RxStrategies 340B Compliance Plus**

At RxStrategies, we work with Covered Entities (CE) to implement and maintain effective compliance programs, including driving customized, compliant 340B solutions to support program integrity and transparency. In 2014, RxStrategies 340B Compliance Plus was launched to assist clients and partners to proactively prepare for the additional oversight and responsibilities associated with a transparent 340B program.

#### Key Elements of RxStrategies 340B Compliance Plus

RxStrategies works with each CE to create customized 340B solutions that proactively:

- Position CEs to implement internal processes, controls and protocols that ensure program compliance for internal audits and review purposes.
- Promote the benefits of engaging a broad-based CE team in program compliance and support.
- Provide CEs with tools for success in each critical HRSA compliance area, including registration, fee-for-service Medicaid exclusions, duplicate discount focus, GPO exclusions, and CE audit support.

#### The RxStrategies 340B Compliance Plus Advantage

Our team of 340B program experts works closely to support program integrity, including:

1. Design customized Policies and Procedures with each CE and work with Contract Pharmacy sites to reinforce specific details.
2. Confirm accurate details of HRSA registration (initial and ongoing updates) and 340B program operations.
3. On-site consultation with clients to complete CE systemic compliance readiness review.

#### Compliance readiness reviews include:

- Assistance with initial CE internal assessment.
- Implement a CE internal audit focus and leverage RxStrategies' tools to perform a monthly self-audit.
- Assist in internal review driven from seven key pharmacy data points that support a detailed CE review.
- Introduce additional resources via the RxStrategies' portal, an innovative software-based tool to provide 24/7 access for additional detailed testing and audit activities.
- RxStrategies' Account Managers works with the CE team to complete initial CE audit reviews, and reporting.
- Review how the RxStrategies' portal enables CE to document and track and report progress, and associated actions from each internal audit cycle.
- RxStrategies has established strong independent external Preferred Audit Partners for CE consideration.

**RxStrategies provides solutions that assist providers in being 340B Drug Pricing Program compliance ready. Visit [340Bplus.com](http://340Bplus.com) or call 1-877-GoGetRx to discuss 340B solutions.**



## RXSTRATEGIES 340B INSIDER

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RxStrategies is the leading resource for providers seeking fully compliant 340B specific solutions.

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- **CALENDAR OF EVENTS**

**Contact Us Today**  
**1-877-GoGetRx**  
(464-3879)

RxStrategies provides

### MARCH 340B INSIDER

Welcome to the March edition of RxStrategies 340B Insider, a concise communication to provide a quick highlight of updates from RxStrategies' view. [Visit our website](#) to read more.

### UPDATE FROM 340B COALITION WINTER CONFERENCE



#### Conference Highlights

Opening comments by Cmdr. Krista Pedley included remarks on the mega-guidance, regulations, audits and orphan drug regulations.

[Click here](#) for the complete speech is recorded and accessible online.

## RXSTRATEGIES CLINICAL INSIGHTS

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#### IN OTHER NEWS

[Contact Us Today](#)

### April 2016 Issue

Welcome to the April edition of RxStrategies *Clinical Insights*, designed to help pharmacy professionals stay up to date on the ever-changing pharmaceutical and pharmacy market place.

Please [visit our blog](#) to read in-depth information on each topic.

### New Drug Approval

- Venclexta<sup>™</sup> (venetoclax)
- Defitelio<sup>®</sup> (defibrotide)
- Cinqair<sup>®</sup> (reslizumab)
- Taltz<sup>®</sup> (ixekizumab)
- Anthim<sup>®</sup> (obiltoxaximab)
- Idelvion<sup>®</sup> (coagulation factor IX (recombinant))

[Read more information.](#)

### New Formulation Approval

- Cabometyx<sup>™</sup> (cabozantinib)
- Phytexa<sup>®</sup> Viscous (riboflavin 5')

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## COVERED ENTITY DATA SPECIFICATIONS



1900 Glades Rd, Suite 350  
Boca Raton, FL 33431  
Tel 561-910-9100  
www.340BPLUS.com

# RXSTRATEGIES 340BPLUS COVERED ENTITY DATA SPECIFICATIONS

Version: 1.0





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# 340BPLUS DATA SPECIFICATIONS



## 1. Introduction

The purpose of this document is to outline the inbound RxStrategies 340BPlus data requirements for the automation of the key 340B claim eligibility date interface with the Covered Entity. These file including: Eligible Provider file, Patient EMR Encounter file, Electronic Prescription file, the Hospital Drug Order with EMR file and Hospital Drug Order file.

For Split Billing, RxStrategies must have a combination of data so the Patient, Provider, Location, Payor Type, Date, and Time can be identified.

Additional historical data may be required to assist in capturing historical claim refills or activity that is not captured in the CE's ERM systems and manually prescription written, fax, or called in.

### 1.1 DOCUMENT HISTORY

Date	Version	Description	By
06/11/2015	1.0	Initial Version	D. Wanless
9/23/2015	1.1	Added Split Billing Detail	D. Wanless
3/20/2016	1.2	Added Prescriber Info	D. Wanless



## 340BPLUS DATA SPECIFICATIONS

**340B**  
PLUS

### 2. 340BPlus File Transfer Protocol

#### 2.1 SFTP FILE DELIVERY

This section will be setup and sent via email

- Method of File Transfer: PUSH
- Encryption: NA
- Delivery Time: Daily AM
- SFTP setup credentials
  - Client ID: \_\_\_\_\_
  - FTP Address: \_\_\_\_\_
  - IP Address: \_\_\_\_\_
  - Password: \_\_\_\_\_

#### 2.1 AXWAY Activator Secure File Messenger

This section will be setup if required

## 340BPLUS DATA SPECIFICATIONS

**340B**  
PLUS

### 3. 340BPlus Provider File Format (Required)

#### 3.1 GENERAL INFORMATION ON FILE

This section describes the formats supported by 340BPlus automation for the eligible provider file. This file will identify your employed or contracted providers and their eligibility status and dates of eligibility.

- File Delimiter: Fix Width (Preferred) or Pipe Delimited “|”
- Header with Field Names require on each file
- Record Types:
  - Detail: One or more detail records (no carriage returns or multi pages header in detail)
- Character Set: ASCII character set

#### 3.2 DETAIL 340BPLUS PROVIDER RECORDS

Line	Field Name	Data Type	Required/Optional	Description
1	Organization ID	CHAR(1)	Required	Unique Organization ID
2	Prescriber First Name	CHAR()	Required	Prescriber First Name
3	Prescriber Last Name	CHAR()	Required	Prescriber Last Name
4	Prescriber NPI	NUMERIC	Required	Prescriber’s assigned NPI
5	Prescriber DEA	CHAR()	Optional	Prescriber’s assigned NPI
6	Prescriber Address	CHAR()	Optional	Prescriber’s Address
7	Prescriber City	CHAR()	Optional	Prescriber’s City
8	Prescriber State	CHAR()	Optional	Prescriber’s State
9	Start Date	DATE	Required	Prescriber’s start date
10	Term Date	DATE	Optional	Prescriber’s termination date
11	Location ID	CHAR()	Optional	Prescribers Location ID
12	Department	CHAR()	Optional	Prescriber Department
13	Prescriber Status	CHAR()	Required	Exclusive, Part Time, Contracted, Provisional, Inactive

#### 3.3 UNIQUE GRANTEE ID

Your unique Organization Id is required for each organization that works with RxStrategies. This Id is created by RxStrategies.

## 340BPLUS DATA SPECIFICATIONS

**340B**  
PLUS

### 3.4 FILE NAMING CONVENTION

The naming convention for transmitting and receiving the 340BPlus Patient file

- "RXS\_<GRANTEE>\_<TYPE>\_<DATE>
  - <AVENTIST>: unique id assigned by RxStrategies to unique identify your facility in 340BPlus
  - <TYPE>: defines as PROVIDER
  - <DATE>: defined as MMDDYY
- Frequency: Monthly

### 3.5 PROVIDER FILE CONTACT INFORMATION

Customer must supply at least one contact person for any technical issue interfacing with 340BPlus Provider File

- RxStrategies Technical Contact:
  - Erica Del Valle
  - 904-602-0043
  - [edelvalle@340Bplus.com](mailto:edelvalle@340Bplus.com)
- Technical Contact:
  - Name: \_\_\_\_\_
  - Phone: \_\_\_\_\_
  - Email: \_\_\_\_\_

## 340BPLUS DATA SPECIFICATIONS



### 4. 340BPlus Patient Encounter (EMR) File

#### 4.1 GENERAL INFORMATION ON FILE

This section describes the formats supported by 340BPlus automation for the Covered Entity's EMR Patient Encounter file for the previous days EMR encounters data. This file will identify your employed or contracted providers and their eligibility status and dates of eligibility.

- File Delimiter: Fix Width (Preferred) or Pipe Delimited “|”
- Record Types:
  - Header: Required one (1) per file
  - Detail: One or more detail records (no carriage returns or multi pages header in detail)
  - Footer: Optional, with control totals to match to file Detail
- Character Set: ASCII character set

#### 4.2 DETAIL 340BPLUS PATIENT ENCOUNTER RECORDS

Line	Field Name	Data Type	Required/Optional	Description
1	Organization ID		Required	Unique Organization ID
2	Patient ID		Required	Encounter Patient ID
3	Medical Record		Optional	Patient Medical Record Number
4	Patient First Name		Required	Patient First Name
5	Patient Last Name		Required	Patient Last Name
6	Patient Middle Name		Optional	Patient Last Name
7	Date of Birth	Date	Required	Patient Date of Birth
8	Patient Status		Optional	Inpatient (I) / Outpatient (O) Indicator
9	Admitted Date/Time	Date/Time	Required	Date and Time the patient was Admitted
10	Discharge Date/Time	Date/Time	Required	Date and Time the patient was Discharges
11	Location ID		Required	Location ID
12	Department ID		Required	Department of Encounter
13	Prescriber Qualifier		Optional	Prescriber Qualifier (NPI-1, DEA-8)
14	Prescriber ID		Required	Prescriber ID (NPI, DEA)
15	Diagnosis Code Type		Optional	Diagnosis Code Type
16	Diagnosis Code		Optional	Diagnosis Code

# 340BPLUS DATA SPECIFICATIONS



17	Payor Code		Required	Payor Code (Medicaid, Medicare, Insurance Cash)
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### 4.3 UNIQUE ORGANIZATION ID

As an RxStrategies customer you are assigned a Unique Organization ID. This number will uniquely identify your facility within 340BPlus.

### 4.4 FILE NAMING CONVENTION

The naming convention for transmitting and receiving the 340BPlus Patient file

- "RXS\_<GRANTEE>\_<TYPE>\_<DATE>"
  - <GRANTEE>: unique id assigned by RxStrategies to unique identify your facility in 340BPlus
  - <TYPE>: defines as EMR
  - <DATE>: defined as MMDDYY
- Frequency: Monthly

### 4.5 PATIENT ENCOUNTER FILE CONTACT INFORMATION

Customer must supply at least one contact person for any technical issue interfacing with 340BPlus Provider File

- RxStrategies Technical Contact:
  - Rick Debay
  - 904-602-0045
  - [rdbay@340Bplus.com](mailto:rdbay@340Bplus.com)
- Technical Contact:
  - Name: \_\_\_\_\_
  - Phone: \_\_\_\_\_
  - Email: \_\_\_\_\_



## 340BPLUS DATA SPECIFICATIONS

**340B**  
PLUS

### 5. 340BPlus Patient Electronic Prescription File

#### 5.1 GENERAL INFORMATION ON FILE

This section describes the formats supported by 340BPlus automation for the Covered Entity’s EMR Patient E-Prescription file for the previous days EMR encounters data. This file will identify your employed or contracted providers and their eligibility status and dates of eligibility.

- File Delimiter: Fix Width (Preferred) or Pipe Delimited “|”
- Record Types:
  - Header: Required one (1) per file
  - Detail: One or more detail records (no carriage returns or multi pages header in detail)
  - Footer: Optional, with control totals to match to file Detail
- Character Set: ASCII character set

#### 5.2 DETAIL 340BPLUS PATIENT ELECTRONIC PRESCRIPTION RECORDS

Line	Field Name	Data Type	Required/Optional	Description
1	Organization ID		Required	Unique Organization ID
2	Patient ID		Required	Encounter Patient ID
3	Patient First Name		Required	Patient First Name
4	Patient Last Name		Required	Patient Last Name
5	Patient Middle Name		Optional	Patient Middle Name
6	Date of Birth	Date	Required	Patient Date of Birth
7	Patient Status		Optional	Inpatient (I) / Outpatient (O) Indicator
8	Script Written Date	Date	Required	Date the patient’s script was Written
9	Location ID		Required	Location ID
10	Department ID		Required	Department of Encounter
11	Prescriber Qualifier		Optional	Prescriber Qualifier (NPI-1, DEA-8)
12	Prescriber ID		Required	Prescriber ID (NPI, DEA)
13	Prescription Comments		Optional	Written Prescription Comments
14	Pharmacy Name		Optional	Name of Pharmacy Rx was Sent to
15	Diagnosis Code Type		Optional	Diagnosis Code Type
16	Diagnosis Code		Optional	Diagnosis Code

# 340BPLUS DATA SPECIFICATIONS



17	Payor Code		Optional	Payor Code (Medicaid, Medicare, Insurance Cash)
----	------------	--	----------	---

### 5.3 UNIQUE ORGANIZATION ID

As an RxStrategies customer you are assigned a Unique Organization ID. This number will uniquely identify your facility within 340BPlus.

### 5.4 FILE NAMING CONVENTION

The naming convention for transmitting and receiving the 340BPlus Patient file

- “RXS\_<GRANTEE>\_<TYPE>\_<DATE>”
  - <GRANTEE>: unique id assigned by RxStrategies to unique identify your facility in 340BPlus
  - <TYPE>: defines as ESCRIPT
  - <DATE>: defined as MMDDYY
- Frequency: Monthly

### 5.5 PATIENT ELECTRONIC PRESCRIPTION FILE CONTACT INFORMATION

Customer must supply at least one contact person for any technical issue interfacing with 340BPlus Provider File

- RxStrategies Technical Contact:
  - Rick Debay
  - 904-602-0045
  - [rdbay@340Bplus.com](mailto:rdbay@340Bplus.com)
- Technical Contact:
  - Name: \_\_\_\_\_
  - Phone: \_\_\_\_\_
  - Email: \_\_\_\_\_

# 340BPLUS DATA SPECIFICATIONS

**340B**  
PLUS

## 6 340BPlus Hospital Drug Order with Patient Encounter File

### 6.1 GENERAL INFORMATION ON FILE

This section describes the formats supported by 340BPlus automation for the Hospital Drug Order with Patient Encounter for the previous day's data. This file will identify Prescription billed at the in-house pharmacy and RxStrategies will split this information into the GPO, WAC, and 340B categories.

- File Delimiter: Fix Width (Preferred) or Pipe Delimited “|”
- Record Types:
  - Header: Required one (1) per file
  - Detail: One or more detail records (no carriage returns or multi pages header in detail)
  - Footer: Optional, with control totals to match to file Detail
- Character Set: ASCII character set

### 6.2 DETAIL 340BPLUS HOSPITAL DRUG ORDER WITH EMR RECORDS

Line	Field Name	Data Type	Required/Optional	Description
1	Unique Key		Required	Unique Key
2	Patient Number		Required	Encounter Patient ID
3	Patient First Name		Required	Patient First Name
4	Patient Last Name		Required	Patient Last Name
5	Patient Middle Name		Required	Patient Middle Name
6	Patient Medical Record		Required	Patient Medical Record Number
7	CDM Code		Optional	Drug CDM
8	Drug Code		Optional	Drug Item Code
9	Drug NDC			Drug NDC
10	Drug Name		Required	Drug Name
11	Transaction Qty		Required	Qty Dispensed
12	Service Date			Date the Patient Encounter
13	Provider Name		Optional	Provider Name
14	Provider NPI			Provider NPI
15	Prescription Number		Optional	Prescription Rx Number
16	Patient Financial Class		Optional	Patient Financial Class (Medicaid, Medicare, Insurance, Cash)
17	Patient Class		Optional	In-Patient/Out-Patient
18	Location ID			Location ID

# 340BPLUS DATA SPECIFICATIONS



<b>19</b>	Patient Service Location			Location or Department of Encounter
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## 6.3 UNIQUE ORGANIZATION ID

As an RxStrategies customer you are assigned a Unique Key. This number will uniquely identify your facility within 340BPlus.

## 6.4 FILE NAMING CONVENTION

The naming convention for transmitting and receiving the 340BPlus Patient file

- "RXS\_<GRANTEE>\_<TYPE>\_<DATE>"
  - <GRANTEE>: unique id assigned by RxStrategies to unique identify your facility in 340BPlus
  - <TPYE>: defines as RXEMR
  - <DATE>: defined as MMDDYY
- Frequency: Monthly

## 6.5 HOSPITAL DRUG ORDER WITH EMR FILE CONTACT INFORMATION

Customer must supply at least one contact person for any technical issue interfacing with 340BPlus Provider File

- RxStrategies Technical Contact:
  - Jay Singh
  - 904-602-5169
  - [rdbay@340Bplus.com](mailto:rdbay@340Bplus.com)
- Technical Contact:
  - Name: \_\_\_\_\_
  - Phone: \_\_\_\_\_
  - Email: \_\_\_\_\_

# 340BPLUS DATA SPECIFICATIONS



## 7 340BPlus Hospital Drug Order (Requires EMR)

### 7.1 GENERAL INFORMATION ON FILE

This section describes the formats supported by 340BPlus automation for the Hospital Drug Order for the previous day's data. This file required the Patient Encounter data in section 4 to identify Prescription billed at the in-house pharmacy and RxStrategies will Split this information into the GPO, WAC, and 340B categories.

- File Delimiter: Fix Width (Preferred) or Pipe Delimited “|”
- Record Types:
  - Header: Required one (1) per file
  - Detail: One or more detail records (no carriage returns or multi pages header in detail)
  - Footer: Optional, with control totals to match to file Detail
- Character Set: ASCII character set

### 7.2 DETAIL 340BPLUS HOSPITAL DRUG ORDER RECORDS

Line	Field Name	Data Type	Required/Optional	Description
1	Unique Key		Required	Unique Key
2	Patient Number		Required	Encounter Patient ID
3	Patient First Name		Optional	Patient First Name
4	Patient Last Name		Optional	Patient Last Name
5	Patient Middle Name		Required	Patient Middle Name
6	Patient Medical Record		Required	Patient Medical Record Number
7	CDM Code		Required	Drug CDM
8	Drug Code		Optional	Drug Item Code
9	Drug NDC		Optional	Drug NDC
10	Drug Name		Required	Drug Name
11	Transaction Qty		Required	Qty Dispensed
12	Service Date		Required	Date the Patient Encounter

### 7.3 UNIQUE ORGANIZATION ID

As an RxStrategies customer you are assigned a Unique Key. This number will uniquely identify your facility within 340BPlus.



## 340BPLUS DATA SPECIFICATIONS

340B  
PLUS

### 7.4 FILE NAMING CONVENTION

The naming convention for transmitting and receiving the 340BPlus Patient file

- "RXS\_<GRANTEE>\_<TYPE>\_<DATE>"
  - <GRANTEE>: unique id assigned by RxStrategies to unique identify your facility in 340BPlus
  - <TPYE>: defines as RX
  - <DATE>: defined as MMDDYY
- Frequency: Monthly

### 7.5 HOSPITAL DRUG ORDER FILE CONTACT INFORMATION

Customer must supply at least one contact person for any technical issue interfacing with 340BPlus Provider File

- RxStrategies Technical Contact:
  - Jay Singh
  - 904-602-5169
  - [rdbay@340Bplus.com](mailto:rdbay@340Bplus.com)
- Technical Contact:
  - Name: \_\_\_\_\_
  - Phone: \_\_\_\_\_
  - Email: \_\_\_\_\_

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## 340BPLUS DATA SPECIFICATIONS



8 Comments

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## IMPLEMENTATION GUIDE



### Comprehensive 340B Program Provider

Implementation Package for Covered Entities

Experienced | Innovative | Accountable

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## Introduction



Dear Valued Client,

Thank you for your interest in supporting your communities via the 340B program in concert with primary Contract Pharmacy partners. This package is designed to highlight activities and steps that the Covered Entity working with RxStrategies will take to bring your 340B Contract Pharmacy program live as quickly as possible.

In the following pages, we highlight documents, forms and other exchanges of information that are critical pieces to ensure program compliance and to bring your 340B program live quickly. Throughout this process, RxStrategies has dedicated an implementation team to work closely with you to complete and submit data to parties noted. We have included in this document detail of documentation needed from Covered Entities (CEs), but also a high level view of certain data RxStrategies will work with your Contract Pharmacy (CP) sites to secure.

Thanks in advance for your assistance in promptly completing pertinent CE deliverables. Please feel free to reach out to our implementation team ([implementation@340bplus.com](mailto:implementation@340bplus.com) or 877-464-3875) or your RxS contacts if you have any questions as we work through this implementation process.

Sincerely,  
RxStrategies, Inc.





Implementation Timeline

Item	Responsibility	Timeline
Validation of entity's status with HRSA for 340B program	RxS	1 day
Third Party Pharmacy Management Agreement signed by both parties, including legal review	Entity/RxS	1- 4 weeks
Registration of Entity with HRSA if needed	RxS/Entity	First through 15th of each calendar quarter
Provider list with NPI # to RxS	Entity	1 day – 1 week
Pharmacy search based on UDS zip code data	RxS	1 week
Pharmacy Contract with signatures from Pharmacy and Entity (including legal review of contract where requested). All required documentation returned to RxS from Pharmacy.	RxS/Entity and Pharmacy	1 month
Registration of Pharmacies with HRSA	RxS/Entity	First through 15th of each calendar quarter
Wholesaler 340B accounts established. All credit applications and other wholesaler requirements sent to wholesaler.	Entity with assistance from RxS	2 weeks – 6 weeks Based upon completed credit package
Real-time or retrospective processing determined. Pharmacy account established with Switch connection to RxS.	RxS and Pharmacy	2 weeks
Testing of Pharmacy connectivity for data transfer	RxS	2 days
Test orders to Pharmacy	RxS and Wholesaler	3 days
Training of Pharmacy Staff	RxS/Pharmacy	1- 2 days
Training of Entity Staff	RxS/Entity	1- 2 days
Go Live start to finish	RxS/Entity and Pharmacy	Four months minimum HRSA eligibility for January registration is April 1.

Many activities listed are accomplished simultaneously. Timelines are estimates and may vary depending on the expeditious nature of contacts returning the information to RxStrategies.

## 340B Implementation Checklist for Covered Entities



Item	Date Completed	Responsible Party
<b>Contracts/Requirements</b> <ul style="list-style-type: none"> <li>• Completed Pharmacy Benefit Management 340B Services Agreement - Covered Entity (CE)</li> <li>• RFP for Contract Pharmacies</li> <li>• Completed Pharmacy Services Agreement</li> <li>• HRSA Registration/Confirmation</li> </ul>		Entity/RxS/CPs
<b>Covered Entity/RxS Information</b> <ul style="list-style-type: none"> <li>• Primary CE contact for Implementation</li> <li>• Primary CE contact for Reporting</li> <li>• Provider list including NPI/DEA &amp; Full-time/Part-time (FT/PT) designation</li> <li>• EMR Data (if available)</li> <li>• Banking detail (if RxS manages)</li> <li>• Meeting on program details                             <ul style="list-style-type: none"> <li>- Third Party</li> <li>- Cash/Sliding Fee</li> <li>- Other Patient Assistance Programs</li> <li>- CE 340B Policies and Procedures</li> </ul> </li> <li>• 340B eligibility marker from CE</li> </ul>		Entity/RxS
<b>Wholesaler (Customized package to follow)</b> <ul style="list-style-type: none"> <li>• Current wholesale account numbers</li> <li>• Credit application/amendment to existing vendor agreement</li> <li>• ACH/EFT Authorization form</li> <li>• Two (2) recent &amp; consecutive financial statements</li> <li>• Three (3) recent &amp; consecutive vendor statements</li> <li>• Certificate of Tax Exemption</li> <li>• Voided check</li> <li>• Anticipated purchase volume</li> <li>• Contract Pharmacy (CP) sites completed surveys (if required)</li> </ul>		Entity/RxS/CPs
<b>Go Live</b> <ul style="list-style-type: none"> <li>• Training prior to Go Live</li> <li>• Review program details with CE Team</li> <li>• Review Policy &amp; Procedures</li> <li>• Review sample Reporting with CE Team</li> <li>• Review program details with CP</li> </ul>		Entity/RxS

Covered Entity, Signature

Date

RxStrategies, Inc, Signature

Date



## Program Information Requirements

Please see the following pages for sample information that is required, including:

- Completed PSA Agreement
- Completed PBM Agreement
- EMR Data
- Provider Data

## Sample Pharmacy Service Agreement



THIS AGREEMENT is made this \_\_\_ day of October \_\_\_\_\_, 2015\_\_, by and between **NAME OF ENTITY**, a **Name of State** nonprofit corporation exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code, **CE** and, **Name of Pharmacy** with licensed pharmacies located at the locations shown in Exhibit B. (hereinafter "Pharmacies").

WHEREAS, **CE** is a "Covered Entity" as defined in Section 340B of the Public Health Service Act (hereinafter "Section 340B") and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients, as defined in this Agreement, from drug manufacturers who have signed a drug purchasing agreement with the United States Department of Health and Human Services (hereinafter "DHHS") and/or the manufacturers' wholesalers;

WHEREAS, **CE** provides health care services to Eligible Patients at the sites listed in Exhibit A (the **CE**)

WHEREAS, **CE** has engaged RxStrategies, Inc. ("RXS") to manage the pharmacy services and pharmacy relationship of **CE**

WHEREAS, the system, procedures and processes of RXS (past, current and future) remain the sole property of RXS and cannot be used by the **CE** and/or the Pharmacy independent of this agreement in perpetuity without the written consent of RXS,

WHEREAS, Pharmacy is duly licensed as a pharmacy in the State of -----and

WHEREAS, **CE** desires to engage **Pharmacy** to provide Pharmacy Services, as defined in this Agreement, to Eligible Patients on behalf of Eligible Patients with respect to outpatient drugs purchased pursuant to Section 340B

NOW, THEREFORE, the parties agree as follows:

1) **Eligible Patients.** An individual will be considered an Eligible Patient under this Agreement if the following conditions are met:

- a) **CE** has established a relationship with the individual, such that **CE** maintains records of the individual's health care;
- b) The individual receives health care services from a health care professional who is either employed by **CE** or under contract with **CE** such that responsibility for the care remains with **CE**;
- c) The individual receives health care services at the **CE**.
  - i) An individual will not be considered an Eligible Patient if the only health care service provided by **CE** to the individual is the dispensing of a drug or drugs for subsequent self administration or administration in the home setting. Notwithstanding the foregoing, individuals registered in a State operated or funded AIDS drug purchasing assistance program receiving financial assistance under Title XXVI of the Public Health Services Act are considered Eligible Patients.

2) **Covered Drugs.** The prescription outpatient drugs covered by this Agreement (hereinafter "Covered Drugs") are listed on Attachment A of this Agreement. The parties agree that **CE** may add or remove Covered Drugs from Attachment A at its sole discretion during the life of this Agreement.

3) **Purchases, Shipment and Pricing of Drugs**

Initials: \_\_\_\_\_

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Pharmacy PSA.Entity.date

### NAME of ENTITY

THIS PHARMACY BENEFIT MANAGEMENT 340B SERVICES AGREEMENT (the "Agreement") is entered into as of DATE \_\_\_\_\_, 2015\_\_ by and between **NAME of ENTITY** Covered Entity-"**CE**", an Mississippi nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code and RxStrategies, Inc. ("**RXS**") a Delaware corporation.

WHEREAS, **CE** is a Federally Qualified Health Center, FQHC, with patient care sites at the addresses listed on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, **RXS** provides Pharmacy Benefit Management Services including, without limitation, utilization management of covered prescription drug services, claims adjudication, drug utilization review, formulary management, pharmacy network development and maintenance, and reporting to health care providers; and

WHEREAS, **CE** wishes to engage **RXS** to manage the pharmacy services and pharmacy relationships of **CE** and to provide certain administrative services related thereto and **RXS** wishes to be so engaged.

NOW, THEREFORE, in consideration for the mutual promises set forth herein and other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

### Article 1

#### 1. Definitions

- 1.1. "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- 1.2. "Discount Drug Formulary" means a list of pharmaceutical products (usually generic multi-source prescription medications) that are highly discounted. These drugs are often referred to as "\$4" drugs.
- 1.3. "Drug Formulary" means the list of pharmaceutical products established by **CE** for determining coverage of such pharmaceutical products which may be dispensed by the Pharmacy to patients of **CE** and the instructions related to the list. The Drug Formulary is subject to periodic review and modification by **CE** in consultation with **RXS**.



**EMR Patient Encounter and Electronic Script**



Leveraging existing Covered Entity (CE) EMR data can be a critical compliance component of an effective 340B program. RxS works with its CE partners to receive update EMR data on a regular basis. Please find below the EMR data elements required, and associated format of each specific EMR data element used today.

Field	Description	Data Type	Required
ID	Unique EMR ID	Unique ID	Y
PATFSTNME	Patient First Name	Alpha Numeric	N
PATLASTNME	Patient Last Name	Alpha Numeric	Y
BIRTH	Date of Birth	Date	Y
PRESCRIDQL	Prescriber Qualifier	Alpha	Y
PRESCRIBER	Prescriber NPI/DEA	Alpha Numeric	Y
OPAID	OPA Entity ID	Alpha Numeric	Y
ADMIT	Admit Date	Date	Y
DISCHARGE	Discharge Date	Date	N

Another critical compliance component of an effective 340B program is accurate and updated Provider data associated with CE. RxS works with its CE partners to receive updated Provider data (including full time or part time designations) on a regular basis. Please find below the provider data elements required, and format of each Provider data element used today.

Field	Description	Data Type	Required
OPAID	OPA Entity ID	OPAID	Y
NPI	Provider NPI	Numeric	Y
DEANUMBER	Provider DEA Number	Alpha Numeric	N
LASTNAME	Provider Last Name	Alpha Numeric	Y
FIRSTNAME	Provider First Name	Alpha Numeric	Y
MIDNAME	Provider Middle Name	Alpha Numeric	N
ISACTIVE	Active Status	Y (Active), N (Inactive)	Y
ISEXCLUSIVE	Employment Status	Y (Exclusive to Entity), N (Part Time)	Y
STARTDATE	Start Date of Employment	Date	Y
ENDDATE	End Date of Employment	Date	N



# 340B Discount Drug Program Handbook

## Sample



**It's Easy as 1, 2, 3, Go Live**

This guide will walk you through the setup and implementation of your 340B Discount Drug Program.

# Go Live

## Go Live Activities

- All contracts executed.
- Qualified Entity and Pharmacy registered with the Office of Pharmacy Affairs (OPA).
- Weekly calls until Go Live date.
- All wholesaler accounts set up.
- Third party plans setup and tested at Pharmacy.
- Cash plans set up and tested at Pharmacy.
- Pharmacy and RxStrategies contact list established.
- Implementation review and program presentation at Covered Entity and Pharmacy.
- Daily follow-up on program issues or problems.
- Month-end review of activity, reporting and invoicing.



### Pharmacy Support Hotline: 954-602-0046

In the event you must leave a message, please include the following:

Pharmacy Name  
Pharmacy NABP Number  
Rx Number  
Patient ID  
Phone Number with Area Code

# TEMPLATE PSA

## PHARMACY SERVICE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between *Qualified Entity*, a State nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, (hereinafter “(Qualified Entity)” or “QE”) and, Pharmacy Name, with licensed pharmacies located at the locations shown in Exhibit B. (hereinafter “Pharmacies”).

WHEREAS, QE is a “Covered Entity” as defined in Section 340B of the Public Health Service Act (hereinafter “Section 340B”) and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients, as defined in this Agreement, from drug manufacturers who have signed a drug purchasing agreement with the United States Department of Health and Human Services (hereinafter “DHHS”) and/or the manufacturers’ wholesalers;

WHEREAS, QE provides health care services to Eligible Patients at the sites listed in Exhibit A (the “QE Site”);

WHEREAS, QE has engaged RxStrategies, Inc. (“RXS”) to manage the pharmacy services and pharmacy relationship of QE,

WHEREAS, the system, procedures and processes of RXS (past, current and future) remain the sole property of RXS and cannot be used by the QE and/or the Pharmacy independent of this agreement in perpetuity without the written consent of RXS,

WHEREAS, Pharmacy is duly licensed as a pharmacy in the State of *State* and

WHEREAS, QE desires to engage Pharmacy to provide Pharmacy Services, as defined in this Agreement, to Eligible Patients on behalf of Qualified Entity with respect to outpatient drugs purchased pursuant to Section 340B.

NOW, THEREFORE, the parties agree as follows:

- 1) **Eligible Patients.** An individual will be considered an Eligible Patient under this Agreement if the following conditions are met:
  - a) QE has established a relationship with the individual, such that QE maintains records of the individual’s health care;
  - b) The individual receives health care services from a health care professional who is either employed by QE or under contract with QE such that responsibility for the care remains with QE;
  - c) The individual receives a health care service or range of services from QE which is consistent with the service or range of services for which grant funding, listed in Section 340B, or Federally qualified health QE look-alike status has been granted QE; and
  - d) The individual receives health care services at the QE Site.
    - i) An individual will not be considered an Eligible Patient if the only health care service provided by QE to the individual is the dispensing of a drug or drugs for subsequent self- administration or administration in the home setting. Notwithstanding the foregoing, individuals registered in a State operated or funded AIDS drug purchasing assistance program receiving financial assistance under Title XXVI of the Public Health Services Act are considered Eligible Patients.

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- 2) **Covered Drugs.** The prescription outpatient drugs covered by this Agreement (hereinafter “Covered Drugs”) are listed on Attachment A of this Agreement. The parties agree that QE may add or remove Covered Drugs from Attachment A at its sole discretion during the life of this Agreement.
- 3) **Purchases, Shipment and Pricing of Drugs.**
- a) Pharmacy shall maintain sufficient supplies of such drugs to meet the day-to-day needs of Eligible Patients. QE will replenish Pharmacy’s inventory for Covered Drugs dispensed to Eligible Patients for which payment under this Agreement was received by Pharmacy. QE reserves the right to make appropriate substitutions of drugs as required by the manufacturer. QE shall arrange to be billed directly for Covered Drugs by the manufacturer/wholesaler(s), and arrange for shipment of such drugs directly to the Pharmacy or the designated warehouse of the Pharmacy as requested by the pharmacy. QE, through RXS, shall establish all retail prices for Covered Drugs for all Eligible Patients as provided in Attachment A, which may be amended from time to time by QE.
  - b) In order to facilitate the timeliness of the inventory replenishment process and ensure that drug replenishment is consistent with current and historical practices of the Pharmacy, Pharmacy shall provide, if requested by RXS, the following documentation and information to RXS upon execution of this Agreement:
    - i) Identification of all pharmaceutical wholesalers;
    - ii) Velocity reports for the most recent past three-month period from all wholesalers;
    - iii) List of inventory items by NDC with Usual and Customary prices;
    - iv) List of Pharmacy’s third party payer agreements with provider numbers and evidence of Medicaid and Medicare participation;
    - v) A description of the Pharmacy’s computer and communication equipment, including computers, printers, fax machines, number of telephone lines, Internet connectivity, e-mail pharmacy software version and release, and how drug database updates are handled and by whom; and
    - vi) Such other documentation and information as reasonably requested by RXS in support of the 340B program addressed in this agreement.
  - c) If at the end of any 120-day period after a drug has been dispensed, the QE is unable to replenish the dispensed drug to the Pharmacy, the QE will reimburse the Pharmacy for the cost of the drug dispensed at the documented cost of the drug to the Pharmacy. If the Pharmacy cannot produce appropriate documentation (e.g., invoice from wholesaler or manufacturer) for the cost of the drug, then the QE will reimburse the Pharmacy at the prevailing 340B price.
  - d) At the termination of the Agreement, the contract pharmacy must attest to the **QE** that all 340B drugs in inventory in excess of requirement (“Overstock”) have been destroyed and therefore cannot be used in general commerce.
- 4) **Tracking System.** The parties to this Agreement understand that, pursuant to Section 340B, QE is liable to the manufacturer of Covered Drugs in an amount equal to the reduction in the price of Covered Drugs in the event that a discounted Covered Drug is sold or otherwise transferred to a person who is not an Eligible Patient. Pharmacy, with the assistance of QE, shall establish and maintain a tracking system suitable to prevent the diversion of Covered Drugs to individuals who are not Eligible Patients. QE will establish a process for periodic random (sample) comparison of its prescribing records with

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Pharmacy's dispensing records to detect potential irregularities. Said comparison will be conducted quarterly and comparison of purchasing and dispensing records will be performed every six months.

- a) Pharmacy agrees to use the provider identified by Rxs for pre-adjudication of all claims. Pharmacy agrees to make any and all adjustments to purchasing and dispensing records that QE advises are reasonably necessary to prevent diversion of Covered Drugs to individuals who are not Eligible Patients.
- 5) **Prescriptions.** Pharmacy shall dispense Covered Drugs only in the following circumstances:
- a) Upon presentation of a prescription form bearing an eligible prescriber's name, the Eligible Patient's name, or
  - b) Upon receipt of a prescription ordered by telephone, facsimile or electronic transmission on behalf of an Eligible Patient by a legally qualified health care provider.
  - c) QE will furnish lists to Pharmacy of all Eligible Patients and eligible prescribers and will update the lists to reflect any changes.
- 6) **Pharmacy Services.** Pharmacy shall provide the following services (with assistance from Rxs where necessary or requested):
- a) Dispensing Covered Drugs to Eligible Patients in accordance with all applicable State and Federal statutes and regulations and the professional judgment of the dispensing pharmacist;
  - b) Participating in all pre- and post-adjudication programs as directed by QE or Rxs as well as all data collection or auditing programs, plans and procedures as may be of assistance to QE or Rxs in order to establish or verify costs, charges, reimbursement rates, billing, payments or receipts;
  - c) Participating in third party payer arrangements in which the QE participates or which the QE may request. Pharmacy shall make all best efforts to enter into all such third party payer arrangements prior to the Commencement Date;
  - d) Maintaining all records and reports (including without limitation, prescription files, velocity reports and records of ordering and receipt) required under this Agreement, Section 340B, and by any applicable Federal and State law and regulations, which shall be separate from Pharmacy's own operations and records, and shall be accessible to QE, DHHS and the manufacturer/wholesaler in the case of audit. Such records shall be retained for not less than five years after the Pharmacy Services are rendered, and shall be available for inspection or audit by QE and as otherwise permitted by law and this Agreement;
  - e) Conducting Eligible Patient drug utilization review;
  - f) Conducting formulary maintenance, including providing drug-related information services to QE clinical personnel, consulting with QE on the purchase of Covered Drugs, and identifying and disposing of Covered Drugs in its inventory which are out of date;
  - g) Maintaining Eligible Patient drug profiles;
  - h) Counseling and advising Eligible Patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship; and

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- i) Determining if a particular Eligible Patient is covered by a governmental or private insurance program, and if covered, will obtain the necessary authorization(s) or benefit payment for Covered Drugs.
- 7) **Relationship of the Parties.** Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions regarding advice and services it is required to provide to Eligible Patients and QE. Pharmacy agrees to render all services provided under this Agreement in accordance with professional standards applicable to pharmacy services and in accordance with rules and regulations of the State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Eligible Patient where such service would violate any statute, regulations, or professional standards applicable to pharmacy services. Pharmacy shall notify QE of any refusal of service within twenty-four (24) hours of such refusal.
- i) Pharmacy understands and acknowledges that RXS has been engaged by QE to manage pharmacy services and the relationship with Pharmacy. Accordingly, Pharmacy acknowledges that RXS is and will act as agent for QE. All obligations, duties, functions or tasks of QE as described herein may be carried out by RXS, as agent for QE. Unless advised to the contrary, Pharmacy shall provide all reports required hereunder to RXS, as agent for QE, and shall seek assistance from RXS, not QE, for all problems and issues regarding the services, duties and obligations hereunder.
- 8) **Pharmacy Site.** Pharmacy agrees it will provide Pharmacy Services contracted for under this Agreement at the sites listed in Exhibit B.
- 9) **Payment for Services.** Pharmacy shall be paid for Pharmacy Services in accordance with the terms provided on Attachment B to this Agreement. QE and Pharmacy have freely negotiated the terms of this Agreement and neither has offered or received any inducement or other consideration from the other party for entering into this Agreement. The compensation to be paid to Pharmacy is consistent with fair market value in arms-length transactions for Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under a Federal or State health care program. Nothing in this Agreement shall be construed to require QE to make referrals of patients to Pharmacy.
- 10) **Patient Choice.** Pharmacy understands and agrees that Eligible Patients of QE may elect not to use Pharmacy for Pharmacy Services. In the event that an Eligible Patient elects not to use Pharmacy for such services, the patient may obtain the prescription from the prescriber and then obtain the drug(s) from the pharmacy provider of his or her choice.
- 11) **Quarterly Reports and Financial/Operational Reviews.**
- a) RXS with the assistance of the Pharmacies shall provide QE with quarterly financial statements, a detailed status report of collections, and a summary of receiving and dispensing records in a form satisfactory to QE. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.
- b) RXS, QE and Pharmacy will review the financial and operational performance of the 340B program via on-site or web based meetings on the following schedule:
- i) After the first 90 days of operation
- ii) Annually on or near the anniversary of the commencement of operations
- c) Topics of discussion and review in the financial/operational review will include; but, not be limited to: review of dispensing fees; total prescription volume processed in the program; brand and generic

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mix of prescriptions processed; inventory management and replenishment; financial viability of the program; and, any other topics the parties agree upon.

- 12) **Prohibition on Resale or Transfer.** Pharmacy agrees that it will not resell or transfer a Covered Drug ordered under this Agreement pursuant to Section 340B to an individual who is not an Eligible Patient of QE. Pharmacy further agrees that, in the event of transfer, diversion, or resale of a Covered Drug in violation of this Agreement, it will pay QE an amount equal to the price discount QE received from the manufacturer/wholesaler so that the QE can reimburse the manufacturer/wholesaler as provided in Section 4. For purposes of this provision, the QE’s determination of the amount of the discount on a Covered Drug payable to the manufacturer shall be conclusive.
  - a) QE agrees that it will not resell or transfer a Covered Drug to an individual who is not an Eligible Patient.
  
- 13) **Audits.**
  - a) Pharmacy understands and agrees that both Pharmacy and QE are subject to audit by DHHS and by drug manufacturers who have signed a drug purchasing agreement with DHHS, which audits may pertain to the QE’s compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. Pharmacy further understands that the DHHS has published proposed guidelines for such audits, a copy of which is attached hereto as Attachment C. Pharmacy agrees to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.
  - b) Pharmacy grants RXS the right, on behalf of the QE to audit its books and records (including all electronic records) using any reasonable means to verify and ensure compliance with the duties, obligations and transactions outlined hereunder. Pharmacy agrees to use its best efforts to cooperate with such audits in good faith.
  - c) The provisions of this Section 13 shall survive the expiration or termination of this Agreement for any reason.
  
- 14) **Inspection by Manufacturer.** Pharmacy and QE understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS and sells Covered Drugs to QE. In the event either party receives such a request, it shall immediately inform the other party and each party shall then have the opportunity to delete any information in this Agreement and attachments which it considers to be proprietary and confidential prior to submitting the Agreement to the requesting manufacturer. The provisions of this Section 14 shall survive the expiration or termination of this Agreement for any reason.
  
- 15) **Insurance.** Pharmacy shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier in an amount not less than \$100,000 per incident and which includes the Covered Drugs in its coverage.
  
- 16) **Indemnification.** Pharmacy agrees to indemnify and hold QE and RXS harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omission of Pharmacy with respect to this Agreement. QE agrees to indemnify and hold Pharmacy harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omissions of QE with respect to this Agreement.
  
- 17) **Non-Assignment.** This Agreement may not be assigned by either party without the prior written agreement of the other party and RXS.

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18) **Term and Termination.**

- a) This Agreement shall commence on \_\_\_\_\_, 201\_\_ (the “Commencement Date”), and shall continue in effect for \_\_\_\_\_ years from the Commencement Date. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods until terminated as provided below.
- b) This Agreement may be terminated by either party as follows for any one of the provisions listed:
  - i) Mutual agreement of the parties.
  - ii) Sixty (60) days prior written notice by either party without cause.
  - iii) Termination or expiration of the QE and RxStrategies agreement.
  - iv) QE, immediately and without prior notice, upon a material breach of this Agreement by Pharmacy. Without limiting QE’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 Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. QE’s waiver or 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 QE’s right to insist on future compliance with such term or provision.
- c) Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature pages hereto. Notice shall be effective on the day it is mailed.
- d) Upon the request of QE, Pharmacy agrees to continue to provide Pharmacy Services for a period of up to sixty (60) days after the date this Agreement expires or is terminated in order to ensure an effective transition of services and continuation of quality care for Eligible Patients.

19) **Compliance with Laws.** The parties hereto shall comply with all applicable federal, state and local laws, rules, regulations and requirements. QE shall comply with all rules and regulations governing its Health Resources and Service Administration grant funding.

20) **Choice of Law.** This Agreement shall be interpreted according to the laws of the State of *State*.

21) **Representations of Pharmacy.** Pharmacy represents that:

- a) it employs, and will continue to employ throughout the term of this Agreement, sufficient qualified and credentialed personnel needed to manage and operate the Pharmacy and provide the services anticipated hereunder in a timely, professional, competent and ethical manner;
- b) it owns, possesses and employs, and will continue to employ throughout the term of this Agreement, sufficient technology and equipment as needed to manage and operate the Pharmacy and provide the services in the manner anticipated hereunder;
- c) it will render the services hereunder in accordance with prevailing pharmaceutical and medical standards that are applied the same fashion to all patients of QE;
- d) it will render all services to Eligible Patients without regard to race, creed, color, age, sex, sexual orientation, citizenship, marital status, veteran status, national origin, disability, religion, arrest record or other protected status;

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- e) it will not use drugs purchased under Section 340B to dispense Medicaid prescriptions, except as provided in an arrangement with the State Medicaid agency as approved by QE to prevent duplicate discounting;
- f) all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to Pharmacy, by contract or otherwise, sufficient to enable Pharmacy to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that QE has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted will be communicated to Pharmacy, in writing, and in a timely fashion;
- g) it will reasonably cooperate with QE in the performance of the mutual obligations under this Agreement;
- h) the execution and delivery of this Agreement and the performance of the duties obligations and transactions contemplated do not and will not contravene, conflict with or violate any agreement, commitment, plan or instrument binding on Pharmacy, including without limitation any participating provider agreement and any third party payer or pharmacy benefit management agreement; and
- i) it, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect and upon notice that the Party is being investigated in connection with any federal or state healthcare program.

## 22) Confidentiality Compliance.

- a) Definitions:
  - i) “Designated Record Set” shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
  - ii) “Health Care Operations” shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

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- iii) “Privacy Officer” shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a) (1), as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iv) “Protected Health Information” shall have the meaning as set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.
- b) Pharmacy may:
  - i) use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Pharmacy provided that such uses are permitted under state and federal confidentiality laws.
  - ii) disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Pharmacy, provided that Pharmacy represents to QE , in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501 or (ii) Pharmacy has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4).
  - iii) aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that Pharmacy has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide QE with data analyses relating to the Health Care Operations of QE. Under no circumstances may Pharmacy disclose Protected Health Information of one covered entity to another covered entity absent the explicit authorization of QE.
  - iv) de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that QE maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a written assurance from Pharmacy. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.
- c) Responsibilities of Pharmacy with respect to Protected Health Information. With regard to its use and/or disclosure of Protected Health Information, Pharmacy hereby agrees to do the following:
  - i) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law.
  - ii) report to the designated Privacy Officer of QE, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Pharmacy becomes aware within 5 business days of Pharmacy discovery of such unauthorized use and/or disclosure.
  - iii) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information that Pharmacy reports to QE.
  - iv) use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information.
  - v) require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions

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and conditions on the use and/or disclosure of Protected Health Information that apply to Pharmacy pursuant to this Agreement.

- vi) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the Department of Health and Human Services for purposes of determining QE's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
  - vii) upon prior written request, make available during normal business hours at Pharmacy offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to QE within 10 business days for purposes of enabling QE to determine Pharmacy compliance with the terms of this Agreement.
  - viii) within 45 days of receiving a written request from QE, provide to QE such information as is requested by QE to permit QE to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528.
  - ix) except as required by state or federal law, return to QE or destroy, within 5 business days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).
  - x) disclose to its subcontractors, agents or other third parties, and request from QE, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.
- d) **Responsibilities of QE with respect to Protected Health Information.** With regard to the use and/or disclosure of Protected Health Information by Pharmacy, QE hereby agrees:
- i) to inform Pharmacy of any changes in the form of notice of privacy practices (the "Notice") that QE provides to individuals pursuant to 45 C.F.R. §164.520, and to provide Pharmacy a copy of the Notice currently in use.
  - ii) to inform Pharmacy of any changes in, or withdrawal of, the consent or authorization provided to QE by individuals pursuant to 45 C.F.R. §164.506 or §164.508.
  - iii) to inform Pharmacy of any opt-outs exercised by any individual from marketing and/or fundraising activities of QE pursuant to 45 C.F.R. § 164.514(e) and (f).
  - iv) to notify Pharmacy, in writing and in a timely manner, of any arrangements permitted or required of QE under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by Pharmacy under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by QE.
  - v) that Pharmacy may make any use and/or disclosure of Protected Health Information permitted under 45 C.F.R. § 164.512 except uses or disclosure for research is not permitted without prior approval by QE.
- e) **Survival of Obligations.** The rights and obligations set forth in this Section 22 shall survive the termination of this Agreement.

23) **Non-disclosure/Non-solicitation.**

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- a) Non-disclosure. In the course of performing under this Agreement, Pharmacy may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the QE or RXS (“Confidential Information”). Without limiting the foregoing, Pharmacy acknowledges and agrees that this Agreement, including the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. Pharmacy including its employees, agents or representatives (i) shall not disclose to any third party the Confidential Information except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of either Party; (2) which is later publicly released by either Party in writing; (3) which is lawfully obtained from third parties without restriction; or (4) which can be shown to be previously known or developed by either Party independently of the other Party.
- b) Non-solicitation. During the term of this Agreement and for one (1) year after the termination thereof the Pharmacy will not hire, seek to hire or assist in hiring any employee, agent or independent contractor of QE or of RXS or induce or seek to induce or take action which results in the termination of employment or other arrangements between QE or RXS, and such employee, agent or independent contractor or otherwise interferes with such employment or contractual arrangements.
- c) Enforcement. Pharmacy acknowledges and agrees that any breach by it of any of the provisions of Sections 23(a) or 23(b) (the “Restrictive Covenants”) would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if the Pharmacy breaches, or threatens to commit a breach of, any of the Restrictive Covenants, QE shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to QE under law or in equity (including, without limitation, the recovery of damages), to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against Pharmacy of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of such covenants. The existence of any claim or cause of action by Pharmacy, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants. In addition, any breach of the Restrictive Covenants shall constitute a material breach of this Agreement.

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24) **Entire Agreement.** This Agreement represents the entire understanding of the parties. There are no other agreements or understandings between the parties, either oral or written, relating to Covered Drugs. Any amendments to this Agreement shall be in writing and signed by both parties

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

**Pharmacy Name**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Owner, President, Officer Title

State License No. \_\_\_\_\_

Federal DEA No. \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**QE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Owner, President, Officer Title

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Initials: \_\_\_\_\_



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**ATTACHMENT A**  
**COVERED DRUGS**

Covered drugs include all drugs for which Rxs has a fair and reasonable price from the distribution QE for the primary drug wholesaler supplying the Pharmacy. Any formulary (and its updates) of the QE developed in collaboration with the Pharmacy and Rxs will also be covered.

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**ATTACHMENT B**

**PAYMENT FOR SERVICES**

**(Definition of all Dispensing Fees for Pharmacy)**

- 1) Pharmacy’s fee for Pharmacy Services for cash and sliding fee patients for eligible 340B prescriptions<sup>1</sup> that meet 340B eligibility tests shall be (\$X.00) for each Brand Name Drug dispensed, and shall be (\$X.00) for each multi-source or generic drug dispensed.
- 2) For Eligible Patients with Prescription Insurance Coverage:
  - a) Pharmacy’s fee for Pharmacy Services for eligible 340B prescriptions<sup>2</sup> that meet 340B eligibility tests shall be (\$XX.00) for each Brand Name Drug dispensed, and shall be (\$XX.00) for each multi-source or generic drug dispensed.
  - b) Pharmacy shall submit all claims for reimbursement for Covered Drugs dispensed to Eligible Patients to the appropriate Pharmacy Benefit Manager (“PBM”) or insurer/carrier.
  - c) Pharmacy will accept the reimbursement formula as described in the Provider Agreement between the PBM or insurer/carrier and the Pharmacy, and will collect any co-payments from the Eligible Patient, as required by the PBM.
  - d) Pharmacy will pay QE the contracted reimbursement amount less the Pharmacy’s dispensing fee for Pharmacy Services. Such payments will be made to QE twice monthly, and will be accompanied by a report that will detail the payments received from Eligible Patients and the amounts deducted by the Pharmacy. Such payments are not contingent upon Pharmacy’s receipt of funds from PBM or any third party payer.

<sup>1</sup> RXS will insure that the eligible prescription meets the eligibility tests and definitions of eligible patient, qualified entity and the financial parameters established by the Center. Pharmacy will only earn the defined dispensing fee for prescriptions that meet the above criteria.

<sup>2</sup> See Note 1.

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**Exhibit A**

All sites as listed on the Office of Pharmacy Affairs (OPA) website (<http://opanet.hrsa.gov/opa/default.aspx>) as currently listed and as updated from time to time as associated with the Pharmacy.

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Exhibit B

Pharmacy Locations

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**ATTACHMENT C**  
**MANUFACTURER AUDIT GUIDELINES**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Manufacturer Audit Guidelines and Dispute Resolution Process 0905-ZA-19

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

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INFORMATION: Section 602 of Public Law 102-585, the “Veterans Health Care Act of 1992,” enacted section 340B of the Public Health Service Act (the “PHS Act”), “Limitation on Prices of Drugs Purchased by Covered Entities.” Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible (covered) entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services (“HHS”) in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B (a) (5) of the PHS Act identifies certain requirements for covered entities concerning potential double price reductions and drug diversion. A covered entity must permit the manufacturer of a covered outpatient drug to audit the records of the covered entity directly pertaining to the entity’s compliance with the requirements of section 340B(a)(5) (A) and (B) as to drugs purchased from the manufacturer. These audits must be conducted in accordance with guidelines established by the Secretary, acting through the Health Resources and Services Administration, Bureau of Primary Health Care, the Office of Drug Pricing (the “Department”). Section 340B (a) (5) (C) states that the Secretary shall establish guidelines relating to the number, scope and duration of the audits. The Department has defined these terms and provided suggested audit steps.

Further, the Department anticipates that disputes may arise between covered entities and participating manufacturers regarding implementation of the provisions of section 340B. To resolve these disputes in an expeditious manner, the Department has developed a voluntary dispute resolution process.

The purpose of this notice is to inform interested parties of final program guidelines concerning manufacturer audit guidelines and the dispute resolution process.

FOR FURTHER INFORMATION CONTACT: Director, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, West Towers, 10th Floor, Bethesda, Maryland 20814, Phone: (301) 594-4353.

EFFECTIVE DATE: January 13, 1997.

SUPPLEMENTARY INFORMATION:

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(A) Background

Proposed manufacturer audit guidelines and the proposed informal dispute process were announced in the Federal Register at 59 FR 30021 on June 10, 1994. A comment period of 30 days was established to allow interested parties to submit comments. The ODP received comments from 12 sources including pharmaceutical manufacturers, a covered entity, and organizations representing pharmaceutical manufacturers or covered entities, and the American Institute of Certified Public Accountants.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered in developing this final notice. Changes were also made to increase clarity and readability.

(B) Comments and Responses--Manufacturer Audit Guidelines

Comment: A number of commenters addressed the requirement that a manufacturer establish reasonable cause and obtain approval from the Department before conducting an audit. While some commenters believe that the statute gives manufacturers the right to routinely conduct an audit as a normal business practice without the need for Departmental approval, other commenters indicated that manufacturers should be required to provide objective documentation that a violation has occurred before being granted permission to audit.

Response: Section 340B (a) (5) (C) provides that audits will be performed in accordance with procedures established by the Secretary relating to the number, duration, and scope of the audits. These audits must pertain directly to the entity’s compliance with the prohibitions against drug diversion and the generation of duplicate drug rebates and discounts with respect to drugs of the manufacturer. See Section 340B (a) (5) (A) & (B). In order to ensure that the audits pertain to compliance with the prohibitions in the aforementioned subparagraphs, it is appropriate to require manufacturers to submit an audit work plan for the Department’s review and to establish reasonable cause. Although the Department will not require pre-approval of the plan, this will ensure that the audits are performed where there are valid business concerns and are conducted with the least possible disruption to the covered entity. Significant changes in quantities of specific drugs ordered by a covered entity and complaints from patients/other manufacturers about activities of a covered entity may be a basis for establishing reasonable cause.

Comment: Omit the requirement to submit an audit plan for the Department’s approval.

Response: The requirement for approval of an audit plan has been dropped. The Department’s review of the audit work plan is necessary to ensure that audit work performed is relevant to the audit objectives while protecting patient confidentiality and information of the covered entity which is considered proprietary. If after this review the Department has concerns regarding the audit plan it will work with the manufacturer to incorporate mutually agreed-upon revisions to the plan.

Comment: Commenters indicated that audits would not be meaningful without

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a clear definition of a “patient of the entity.”

Response: Because sufficient criteria must be provided by which auditors (and others) can determine if consumers of drugs purchased at the mandated prices are eligible to receive covered drugs, a definition of “patient of the entity” is necessary. ODP has addressed this issue by means of Federal Register final notice dated October 24, 1996 (61 FR 55156)

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Comment: Establish a timeframe or deadline for the various steps in the process. The commenters are concerned that the process could be unreasonably delayed should the Department, the covered entity, or the dispute resolution committee not act in a timely manner. For example, an audit cannot begin until the Department grants permission and approves the audit work plan, while a covered entity's refusal to respond to an audit report would preclude the next step in the process from taking place. The suggestions for timeframes included to shorten from 60 to 30 days the timeframe for covered entities to respond to a manufacturer's audit findings and apply a 30-day timeframe for each step except for the act of performing the actual audit.

Response: There should be timeframes applicable to the actions required by the covered entities and the Department. The following timeframes have been incorporated into the guidelines:<bullet> The Department will review an audit work plan submitted by a manufacturer within 15 days of submission;<bullet> The requirement for covered entities to respond to audit findings and recommendations within 60 days has been reduced to 30 days;

Comment: Access to records should include the records of any organization employed by the covered entity to purchase or dispense drugs or file Title XIX claims on the entity's behalf.

Response: The auditors must have access to all records necessary for identifying and determining the eligibility of the ultimate consumer of drugs purchased at the discount price and whether Medicaid rebates were also claimed for those drugs. The guidelines have been revised to indicate that any organization purchasing or dispensing covered drugs or filing Title XIX claims on behalf of a covered entity is subject to the same audit requirements as the covered entity.

Comment: There were concerns with the Department's March 1994 Guideline Letter concerning the contracted pharmacy mechanism. These commenters believe that unforeseen business relationships and activities by covered entities under these guidelines could result in new patterns of fraud and abuse.

Response: The Department has addressed the contracted pharmacy mechanism in a separate Federal Register final notice on August 23, 1996 at 61 FR 43549.

Comment: Compliance with the requirements outlined in the Government Auditing Standards will significantly increase the cost of performing audits and require the use of independent accountants rather than internal audit staff. It was suggested that manufacturers use their own internal auditing standards or those of the Institute of Internal Auditors.

Response: Conducting audits in accordance with the Government Auditing Standards will provide assurances that audits will be performed in accordance with generally accepted auditing standards relating to professional qualifications of the auditors, independence, due professional care, field work, and reporting of the audit findings. Compliance with these standards will also ensure audit uniformity and consistency and adequacy of documentation to permit independent review in cases where disputes arise.

Comment: The guidelines should stipulate the record retention requirements for covered entities (i.e., indicate how long records must be maintained for possible audit).

Response: Covered entities should maintain records to demonstrate the distribution and use of covered drugs for a period of not less than 3 years.

Comment: There should be greater audit latitude and cooperation between manufacturers and entities as allowed by the "Medicaid Agreement."

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Response: The “Medicaid Agreement” permits manufacturers to audit the Medicaid utilization information reported by the State. In this instance, manufacturers are auditing information received by the State and are permitted to develop mutually beneficial procedures with the State. This is a very different situation from the audits permitted by section 340B. Pursuant to section 340B authority, a manufacturer may audit an entity whose only connection to the State or Federal government is in the form of a grant or reimbursement that it receives. In this instance, the manufacturer is permitted to audit only pursuant to guidelines established by the Secretary.

Comment: In order to maximize profits, covered entities could require patients to purchase covered drugs from them, thus infringing on patients’ rights to choose their own providers.

Response: Patients of covered entities have the right to fill their prescriptions at the pharmacy of their choice. Of course, if the patient chooses to have the prescription filled at a location other than with the covered entity, discount pricing cannot be guaranteed.

Comment: The guidelines should focus only on the number, duration, and scope of audits.

Response: The guidelines stipulate that (1) audits are to be performed only when there is a reasonable cause to believe that there has been a violation of section 340B(a)(5) (A) or (B); (2) audits are to be conducted with the least possible disruption to the operations of the covered entity with only one audit being permitted during the same time period; and (3) the scope of the audits must be sufficient to evaluate the covered entity’s compliance with the aforementioned statutory prohibitions.

Comment: The guidelines are unfairly burdensome and shift the Secretary’s responsibility for enforcing the statute to the manufacturers.

Response: In accordance with the intent of the statute, the audits should be performed only when there is reasonable cause for their performance. Further, the statute also states that the audits should be conducted at the expense of the Government or the manufacturer. We believe that the party which demonstrates a reasonable cause for the audit should commission the audit. However, in cases where more than one manufacturer has demonstrated reasonable cause for an audit, then the Government may perform the audit in order to protect the confidentiality of the manufacturers’ proprietary information.

Comment: Some of the proposed audit steps are duplicative; therefore, the proposed audit steps at section II b, c, e, f, and g should be excised or moved to streamline the proposed guidelines.

Response: The guidelines have been reorganized to provide a section on “Procedures To Be Followed” and a section on “Suggested Audit Steps.” This clearly distinguishes the procedures to be followed by the manufacturer from the suggested procedures to be performed by the manufacturer’s auditors.

Comment: In cases where the Government elects to perform its own audit, the resulting audit report should be made available to the manufacturers.

Response: Audit reports prepared by Government auditors are public documents. A copy of the audit report will be made available to the manufacturers upon request. Requests

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should be addressed to: Director, HRSA, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Towers, 10th Floor, Bethesda, MD 20814.

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Comment: Because audits will be permitted only when the manufacturer can demonstrate that there is “reasonable cause” to believe that a violation of section 340B (a) (5) has occurred, “reasonable cause” should be defined.

Response: The guidelines have been revised to provide a definition of “reasonable cause.”

Comment: A covered entity should be given an opportunity to respond to a manufacturer’s request for an audit before the Department determines whether an audit may be performed and should be permitted to review and comment on the manufacturer’s proposed audit work plan before it is approved by the Department.

Response: The guidelines provide for a 30 day period before the manufacturer submits to the Department an audit work plan in which the manufacturer and the covered entity must attempt in good faith to resolve the matter. When the manufacturer submits its audit work plan, it has already discussed the matter with the covered entity; therefore, we do not believe there is a need for the covered entity to comment on a manufacturer’s submission of an audit work plan. The Department, at its discretion, may contact the covered entity as part of the review process of the proposed manufacturer’s audit. Likewise, we do not believe that there is a need for the covered entity to review and comment on the manufacturer’s proposed work plan once it has been reviewed by the Department.

Comment: The guidelines should be clarified to indicate that the manufacturer’s independent public accountant should perform the audit. This is necessary to comply with the “independence standard” contained in the Government Auditing Standards.

Response: The guidelines have been modified to indicate that a manufacturer’s auditor shall be an independent public accountant employed by a manufacturer to perform the audit.

Comment: Refer to reviews as “attestation engagements” rather than “audits,” and perform them as agreed-upon procedures in accordance with the Statement on Standards for Attestation Engagements No. 3, Compliance Attestation. The procedures to be performed could be jointly developed and agreed upon by the Department, the covered entity, manufacturer, and the independent accountant.

Response: Although some of the work to be performed by the independent public accountant or government auditor may involve some attestation procedures, the statute calls for an audit of the covered entity’s records. Therefore, the term audit has been used in the preparation of the guidelines. Further, we agree that the opinions and views of all interested parties should be considered in the preparation of the guidelines. This has been achieved through the publication of the proposed guidelines in the Federal Register, requesting public comment.

Comment: The notice should include the guidelines to be followed by Federal auditors.

Response: Federal auditors will perform audits in accordance with the Government Auditing Standards. The Notice has been clarified.

Comment: Covered entities should have the right to submit newly compiled or discovered information following the manufacturer’s audit for consideration by the review committee.

Response: The guidelines provide that when a covered entity disagrees with the audit report’s findings and recommendations, the covered entity should provide its rationale for the disagreement to the manufacturer. The manufacturer and the covered entity must make a good faith effort to resolve the issue before requesting review using the dispute resolution process. Newly compiled or discovered information can be provided to the manufacturer during this period of good faith effort. If the parties are still unable to reach agreement, the newly compiled or discovered information can

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be submitted to the Department along with the other information that was developed as part of the audit. The Department will consider the auditor’s findings and recommendations as well as the covered entity’s rationale for disagreeing during the review process.

Comment: All covered entity records and information identified in the audit process should be held in strict confidence by the manufacturer.

Response: Confidential patient information and proprietary information will be protected.

Comment: Manufacturers should not be required to continue to sell to a covered entity at the mandated price once an audit has been initiated, particularly since reasonable cause has already been demonstrated.

Response: Manufacturers must continue to sell at the statutory price during the audit process. Once the audit has been completed and the manufacturer believes that there is sufficient evidence to indicate prohibited entity activity, and then the manufacturer may bring the claim to the Department through the informal dispute process. Not until the entity is found guilty of prohibited activity and a decision is made to remove the entity from the covered entity list, will the manufacturers no longer be required to extend the discount.

Comment: Each manufacturer, wronged by the same business practices of the same entity, must wait its turn to audit the entity and pursue its case through the dispute process in order to recover. This could result in a failure to enforce the statute.

Response: The guidelines have been revised to permit the Department, if deemed necessary, to provide for corrective action as to other manufacturers wronged by prohibited entity activity.

Comment: Include the hospital prohibition against participation in any group purchasing arrangement as a permissible audit subject.

Response: The statute clearly limits the audit subjects to potential entity diversion (section 340B (a) (5) (B)) and entity activity that could generate a rebate on a drug that was discounted under the Act (section 340B (a) (5) (A)).

Comment: Provide for access to different records depending upon the record keeping system of the entity.

Response: The notice has been revised to permit access to primary records which would be included in a reasonable audit trail.

Comment: There is a requirement that an informational copy of the audit be provided to the Department and the Inspector General. Why cannot the entire report be provided to these offices?

Response: The guidelines have been revised to require that the entire report be submitted to the Department and the Office of the Inspector General.

Comment: The guidelines should not preclude the entity and the manufacturer from both voluntarily developing mutually beneficial audit procedures.

Response: The guidelines have been revised to include a statement that the guidelines do not preclude the entity and the manufacturer from both voluntarily developing mutually beneficial audit procedures.

Comment: The auditor should be able to confirm with the Department that the entity has provided its Medicaid provider number.

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Response: The guidelines have been revised to permit the auditor to confirm with the Department that the entity being audited does not generate a Medicaid rebate while accepting 340B

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discounts (e.g., has provided its Medicaid provider number, does not bill Medicaid, or utilizes an all-inclusive rate billing system). Manufacturers are free to challenge a hospital's eligibility as a covered entity by corresponding with the Department.

Comment: The Department must act independently to assure compliance.

Response: The Department will investigate all documentation submitted regarding both entity and manufacturer noncompliance and, when appropriate, take the necessary steps to remove the entity from "covered entity" status or terminate the Pharmaceutical Pricing Agreement which the manufacturer signed with HHS, thus preventing further participation in the program.

Comment: Set a specific time limit for a manufacturer to have audit personnel at the entity facility with the possibility of an extension for good cause.

Response: Because of the many variables (e.g., size of the covered entity and scope of the audit), it would be impossible to set specific time limits. However, if an entity believes that auditors are exceeding a reasonable time period, it may notify the Department for assistance.

Comment: You fail to require entities to allow audits.

Response: Please refer to the section entitled, "Supplemental Information, Manufacturer Audit Guidelines," where we begin the discussion with the statement, "Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act." Section 340B (a) (5) (C) provides that a covered entity shall permit the manufacturer of a covered outpatient drug to audit the records of the entity that pertain to the entity's compliance with section 340B (a) (5).

Comment: Guidelines regarding scope should be expanded to include procedures to assure that manufacturers not have access to information that identifies specific patients or transaction records concerning the products of other manufacturers.

Response: The guidelines require that audits be performed in accordance with the Government Auditing Standards (GAS) developed by the Comptroller General of the United States. These standards require auditors to prepare the audit reports in a manner that protects privileged and confidential information. Confidential patient information and/or proprietary information which auditors may access in the performance of an audit will not be disclosed to the manufacturer.

Comment: In the new section III (b), change the word "access" to "obtain an understanding of," and in section III (e) change the word "determine" to "test."

Response: We have revised the notice accordingly.

(C) Revised Manufacturer Audit Guidelines

Set forth below are the final manufacturer audit guidelines, revised based upon an analysis of the comments above.

#### Manufacturer Audit Guidelines

Covered entities which choose to participate in the section 340B drug discount program shall comply with the requirements of section 340B (a) (5) of the PHS Act. Section 340B (a) (5) (A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate.

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Further, section 340B (a) (5) (B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity. The participating entity shall permit the manufacturer of a covered outpatient drug to audit its records that directly pertain to the entity's compliance with section 340B (a) (5) (A) and (B) requirements with respect to drugs of the manufacturer. Manufacturer audits shall be conducted in accordance with guidelines developed by the Secretary, as required by section 340B (a) (5) (C). Not only will the records of any organization working with a covered entity to purchase or dispense covered drugs, or to prepare Medicaid reimbursement claims for the covered entity be subject to the same audit requirement, but also any primary record that could be part of a reasonable audit trail.

This notice does not include the complete audit guidelines to be used by Government auditors in cases where the Government performs its own audit. Federal auditors shall perform audits in accordance with the Government Auditing Standards. The Government auditors' authority to audit the covered entity's compliance with the requirements of section 340B (a) (5) (A) and (B) shall not be limited by the manufacturer's audit guidelines.

The following is the "Compliance Audit Guide" concerning manufacturer audit guidelines as developed by the Secretary pursuant to section 340B(a)(5)(C): (These guidelines do not preclude the entity and the manufacturer from voluntarily developing mutually beneficial audit procedures.)

#### I. General Guidelines

The manufacturer shall submit a work plan for an audit which it plans to conduct of a covered entity to the Department. (See section III for suggested audit steps.) The manufacturer's auditor shall be an independent public accountant employed by the manufacturer to perform the audit. The auditor has an ethical and legal responsibility to perform a quality audit in accordance with Government Auditing Standards, Current Revision, developed by the Comptroller General of the United States. Patient confidentiality requirements also must be observed. At the completion of the audit, the auditors must prepare an audit report in accordance with the reporting standards for performance audits in Government Auditing Standards, Current Revision. The cost of a manufacturer audit shall be borne by the manufacturer, as provided by section 340B (a) (5) (C) of the PHS Act.

##### (a). Number of Audits

A manufacturer shall conduct an audit only when it has documentation which indicates that there is reasonable cause. "Reasonable cause" means that a reasonable person could believe that a covered entity may have violated a requirement of section 340B (a) (5) (A) or (B) of the PHS Act (i.e., accepting a 340B discount on a covered outpatient drug at a time when the covered entity has not submitted its Medicaid billing status to the Department or transferring or otherwise reselling section 340B discounted covered drugs to ineligible recipients).

Consistent with Government auditing standards, the organization performing the audit shall coordinate with other auditors, when appropriate, to avoid duplicating work already completed or that may be planned. Only one audit of a covered entity will be permitted at any one time. When specific allegations involving the drugs of more than one manufacturer have been made concerning an entity's compliance with section 340B (a) (5) (A) and (B), the Department will determine whether an audit should be performed by the (1) Government or (2) the manufacturer.

##### (b). Scope of Audits

The manufacturer shall submit an audit work plan describing the audit to the Department for review. The Department will review the work plan for reasonable purpose and scope. Only those records of the covered entity (or the records of any organization that works with the covered entity to

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purchase, dispense, or obtain Title XIX reimbursement for the covered drug) that directly pertain to the potential 340B violation(s) may be accessed, including those systems and processes (e.g., purchasing, distribution, dispensing, and billing) that would assist in determining whether a 340B violation has occurred.

(c). Duration of Audits

Normally, audits shall be limited to an audit period of one year and shall be performed in the minimum time necessary with the minimum intrusion on the covered entity's operations.

II. Procedures To Be Followed

(a). The manufacturer shall notify the covered entity in writing when it believes the covered entity has violated provisions of section 340B. The manufacturer and the covered entity shall have at least 30 days from the date of notification to attempt in good faith to resolve the matter.

(b). The manufacturer has the option to proceed to the dispute resolution process described later in the notice without an audit, if it believes it has sufficient evidence of a violation absent an audit. If the matter is not resolved and the manufacturer desires to perform an audit, the manufacturer must file an audit work plan with the Department. (See section For Further Information for address.) The manufacturer must set forth a clear description of why it has reasonable cause to believe that a violation of section 340B (a) (5) (A) or (B) has occurred, along with sufficient facts and evidence in support of the belief. In addition, the manufacturer shall provide copies of any documents supporting its claims.

(c). The Department will review the documentation submitted to determine if reasonable cause exists. If the Department finds that there is reasonable cause to believe that a violation of section 340B (a) (5) (A) or (B) has occurred, the Department will not intervene. In cases where the Department determines that the audit shall be performed by the Government, the Department will so advise the manufacturer and the covered entity within 15 days of receipt of the audit work plan.

(d). The filing of an audit work plan does not affect the statutory obligations of the parties as defined in section 340B of the PHS Act. During the audit process, the manufacturer must continue to sell covered outpatient drugs at the section 340B ceiling price to the covered entity being audited, and the covered entity must continue to comply with the requirements of section 340B(a)(5).

(e). Upon receipt of the manufacturer's audit work plan, the Department, in consultation with an appropriate audit component, will review the manufacturer's proposed work plan. As requested by GAS, the audit work plan shall describe in detail the following:

- (1). audit objectives (what the audit is to accomplish), scope (type of data to be reviewed, systems and procedures to be examined, officials of the covered entity to be interviewed, and expected time frame for the audit), and methodology (processes used to gather and analyze data and to provide evidence to reach conclusions and recommendations);
- (2). skill and knowledge of the audit organization's personnel to staff the assignment, their supervision, and the intended use of consultants, experts, and specialists;
- (3). tests and procedures to be used to assess the covered entity's system of internal controls;
- (4). procedures to be used to determine the amounts to be questioned should violations of section 340B (a) (5) (A) and (B) be discovered; and
- (5). procedures to be used to protect patient confidentiality and proprietary information.

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(f). Within 15 days of receipt of the proposed audit work plan, the Department shall review the work plan. If after this review the Department has concerns about the work plan, it will work with the manufacturer to incorporate mutually agreed-upon revisions to the plan. The covered entity will have at least 15 days to prepare for the audit.

(g). At the completion of the audit, the auditors must prepare an audit report in accordance with reporting standards for performance audits of the GAS. The manufacturer shall submit the audit report to the covered entity. The covered entity shall provide its response to the manufacturer on the audit report's findings and recommendations within 30 days from the date of receipt of the audit report. When the covered entity agrees with the audit report's findings and recommendations either in full or in part, the covered entity shall include in its response to the manufacturer a description of the actions planned or taken to address the audit findings and recommendations. When the covered entity does not agree with the audit report's findings and recommendations, the covered entity shall provide its rationale for the disagreement to the manufacturer.

(h). The manufacturer shall also submit copies of the audit report to the Department (see section For Further Information Contact for the address) and the Office of Inspector General, Office of Audit Services, PHS Audits Division at Room 1-30, Park Building, 12420 Park lawn Drive, Rockville, MD 20857.

(i). If a dispute concerning the audit findings and recommendations arises, the parties may file a request for dispute resolution with the Department. All dispute resolution procedures developed by the Department shall be followed.

### III. Suggested Audit Steps

Suggested audit steps include the following: (a). Review the covered entity's policies and procedures regarding the procurement, inventory, distribution, dispensing, and billing for covered outpatient drugs.

(b). Obtain an understanding of internal controls applicable to the policies and procedures identified above (step a) when necessary to satisfy the audit objectives.

(c). Review the covered entity's policies and procedures to prevent the resale or transfer of drugs to a person or persons who are not patients of the covered entity.

(d). Test compliance with the policies and procedures identified above (step c) when necessary to satisfy the audit objectives. (e). Review the covered entity's records of drug procurement and distribution and test whether the covered entity obtained a discount only for those programs authorized to receive discounts by section 340B of the PHS Act.

(f). If a covered entity does not use an all-inclusive billing system (per encounter or visit), but instead bills outpatient drugs using a cost-based billing system, determine whether the covered entity has provided its pharmacy Medicaid provider number to the Department and test whether the covered entity billed Medicaid at the actual acquisition cost. The auditor is permitted to contact the ODP (at the number in the For Further Information Contact section) to determine if the entity--(1) has provided its pharmacy Medicaid provider number, (2) does not bill Medicaid for covered outpatient drugs, (3) uses an all- inclusive rate billing system, or (4) is an entity clinic eligible for the discount pricing but located within a larger medical facility not eligible for the drug discounts and has provided the ODP a separate pharmacy Medicaid provider number or an agreement with the State Medicaid Agency regarding an operating mechanism to prevent duplicate discounting.

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(g). Where the manufacturer’s auditors conclude that there has been a violation of the requirements of section 340B(a)(5) (A) or (B), identify (1) the procedures or lack of adherence to existing procedures which caused the violation, (2) the dollar amounts involved, and (3) the time period in which the violation occurred.

(h). Following completion of the audit field work, provide an oral briefing of the audit findings to the covered entity to ensure a full understanding of the facts.

(D) Comment and Responses--Informal Dispute Resolution

Comment: The guidelines should include a mechanism to verify or “dispute” the accuracy of the Department’s list of covered entities.

Response: The notice has been revised to include, as a type of dispute covered by the informal dispute mechanism, the accuracy of the master list of covered entities.

Comment: A dispute review committee consisting of only ODP and other PHS employees could result in conflict-of-interest concerns. The dispute review committee should be an independent body (e.g., an administrative law judge), and there should be a mechanism to provide for non-PHS members in cases where the dispute involved ODP.

Response: The Department is overseeing the implementation of section 340B of the PHS Act, and as such, is offering a voluntary dispute resolution mechanism to expedite this process. No manufacturer or covered entity is required to avail itself of this process before resorting to other available measures. Further, parties which do participate in the dispute resolution process will have an appeal opportunity with a HRSA review official or committee.

Comment: The penalties for covered entities that violate section 340B (a) (5) requirements are not adequate. For entities to merely repay discounts (plus interest) which they obtained and to which they were not entitled is not an effective deterrent. It was suggested that entities that have violated statutory requirements pay the cost of the audits, pay various amounts up to 150 percent of the improperly obtained discount (plus interest) and/or be banned from continued participation in the program. Further, it was suggested that an entity’s failure to respond in a timely basis to a manufacturer’s audit findings should result in a “summary judgment” against the entity.

Response: Section 340B(a) is clear concerning entity penalties for reselling or transferring discounted drugs, for generating duplicate discounts and rebates and who must bear the cost of auditing. Section 340B (a) (4) defines “covered entity” as one which meets the requirements of paragraph (5). This paragraph prohibits drug diversion and double price reductions. If an entity is found guilty of either of these activities, the entities may be found by the Department no longer to be covered under section 340B. Section 340B (a) (5) (D) outlines the monetary penalty for violations of these prohibitions and provides that entities must pay to the manufacturer the amount of discount received. Although section 340B provides for no other penalty, copies of the audit results will be submitted to the Office of Inspector General for review and possible further investigation. Section 340B (a) (5) (C) clearly provides that manufacturer audits are performed at the manufacturer expense. We agree that some type of penalty is necessary for an entity which does not respond in a timely fashion to a manufacturer audit results. We have revised the audit guidelines to allow for the manufacturer to submit to the Department a request for dispute resolution for entity non-response within given timeframes.

Comment: Please clarify the meaning of “final determination” as used in Part III of the Notice entitled, “Penalties.”

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Response: A “final determination” under the Dispute Resolution procedure is reached when review by the Administrator of the Health Resources and Services Administration (HRSA) is completed and the HRSA Administrator or appointee has made a decision on the issue(s) involved.

Comment: It is not clear when an administrative decision can be appealed by a covered entity to the Federal courts.

Response: Covered entities or manufacturers are encouraged to participate in this voluntary process for the resolution of disputes regarding section 340B. It is expected that once a covered entity or a manufacturer submits a request for informal dispute resolution, the process will be completed before pursuing other remedies which may be available under applicable principles of law. Entities may wish to seek legal advice concerning the exhaustion of administrative remedies regarding a voluntary administrative process. Section III of the Guidelines has been clarified.

Comment: Additional appeal procedures may be problematic for covered entities or manufacturers who must exhaust their administrative remedies before seeking remedies in a court of law.

Response: The dispute resolution process is a voluntary process. Manufacturers or entities are only encouraged to participate in the process before seeking other remedies.

Comment: The term “PHS” is not defined. It is unclear whether this means the ODP or some other office within the PHS.

Response: The term “PHS” means the Public Health Service in its entirety. The guidelines have been revised to reflect that the Department will be implementing these guidelines through the ODP.

Comment: A party who is unable to resolve a dispute can submit a written request for a review of the dispute. Time deadlines should be included to state when that written request can be submitted.

Response: The guidelines have been changed to include such deadlines.

Comment: Time deadlines and penalties for non-response must be included for various steps in the dispute process. First, upon receipt of a request for a review, the chairperson of the review committee should send a letter to the party alleged to have committed a violation. Time deadlines should be included on when the chairperson must send this letter. Second, the activities of the review committee should also have deadlines. Third, a deadline for the submission of additional information should be included.

Response: The guidelines have been changed to include such deadlines.

Comment: The penalties do not preclude the imposition by the Government of other penalties or remedies under other statutes such as the Federal False Claims Act.

Response: The guidelines have been revised to clarify this issue.

(E) Revised Informal Dispute Resolution Process

Set forth below are the final informal dispute resolution guidelines, revised based upon the analysis of the comments above.

Dispute Resolution Process

The Department, acting through the Office of Drug Pricing (ODP), is proposing a voluntary process for the resolution of certain disputes between manufacturers and covered entities concerning compliance with the provisions of section 340B of the PHS Act. Covered entities or manufacturers are not required to enter this informal process for resolution of disputes regarding section 340B. However, the Department expects parties to utilize the

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process before resorting to other remedies which may be available under applicable principles of law.

I. Types of Disputes Covered

Disputes resolved by these procedures include: (a) A manufacturer believes a covered entity is in violation of the prohibition against resale or transfer of a covered outpatient drug (section 340B (a) (5) (B) of the PHS Act), or the prohibition against duplicate discounts or rebates (section 340B (a) (5) (A) of the PHS Act).

(b) A covered entity believes that a manufacturer is charging a price for a covered outpatient drug that exceeds the ceiling price as determined by section 340B (a) (1) of the PHS Act.

(c) A manufacturer is conditioning the sale of covered outpatient drugs to a covered entity on the entity's provision of assurances or other compliance with the manufacturer's requirements that are based upon section 340B provisions.

(d) A covered entity believes that a manufacturer has refused to sell a covered outpatient drug at or below the ceiling price, as determined by section 340B (a) (1) of the PHS Act.

(e) A manufacturer believes that a covered entity is dispensing a covered outpatient drug in an unauthorized service (e.g., inpatient services or ineligible clinics within the same health system).

(f) A manufacturer believes that a covered entity has not complied with the audit requirements under section 340B (a) (5) (c) of the PHS Act or the audit guidelines as set forth in this notice.

(g) A covered entity believes that the auditors of the manufacturer have not abided by the approved work plan or audit guidelines.

(h) A covered entity is unable to obtain covered outpatient drugs through a wholesaler because the manufacturer will only sell section 340B discounted drugs directly from the manufacturer to the entity.

(i) A manufacturer or covered entity wants to verify the accuracy of the master list of covered entities.

II. Dispute Resolution Process

Prior to the filing a request for dispute review with the Department, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of the good faith attempt to resolve the dispute. Such evidence includes documentation of meetings, letters, or telephone calls between the disputing parties that concern the dispute.

If the dispute has not been resolved after a good faith attempt, a party may submit a written request for a review of the dispute to the Director of the ODP within 30 days.

The party requesting the review may not rely only upon allegations but is required to set forth specific facts showing that there is a genuine and substantial issue of material fact in dispute that requires a review.

The request for review shall include a clear description of the dispute, shall identify all the issues in the dispute, and shall contain a full statement of the party's position with respect to such issue(s) and the pertinent facts and reasons in support of the party's position. In addition to the required statement, the party shall provide copies of any documents supporting its claim and evidence that a

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good faith effort was made to resolve the dispute. These materials must be tabbed and organized chronologically and accompanied by an indexed list identifying each document.

The filing of the dispute does not affect any statutory obligations of the parties, as defined in section 340B of the PHS Act. During the review process, for example, a manufacturer must continue to sell covered outpatient drugs at or below the section 340B ceiling price to all covered entities, including the covered entity involved in the dispute. Only when the entity is found guilty of prohibited activity and a decision is made to remove the entity from the list of covered entities, is the manufacturer no longer required to extend the discount.

The Director, Bureau of Primary Health Care, shall appoint a committee to review the documentation submitted by the disputing parties and to make a proposed determination. A minimum of three individuals shall be appointed (one of whom shall be designated as a chairperson) either on an ad hoc, case-by-case basis, or as regular members of the review committee. The chairperson shall be from the ODP and the committee members shall be from other sections of PHS (e.g. chief pharmacist, auditor).

Upon receipt of a request for a review, the chairperson of the review committee, within 30 days, will send a letter to the party alleged to have committed the violation. The letter will include (1) the name of the party making the allegation(s), (2) the allegations(s), (3) documentation supporting the party's position, and (4) a request for a response to or rebuttal of the allegations within 37 calendar days of the receipt of the letter (7 days from the date of the postmark of the letter being allowed for mailing and processing through the organization).

Upon receipt of the response or rebuttal, the review committee will review all documentation. The request and rebuttal information will be reviewed for (1) evidence that a good faith effort was made to resolve the dispute (2) completeness, (3) adequacy of the documentation supporting the issues, and (4) the reasonableness of the allegations. If the documentation meets these requirements, the review committee will consider the matter.

The reviewing committee may, at its discretion, invite parties to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

The review committee will propose to dismiss the dispute, if it conclusively appears from the data, information, and factual analyses contained in the request for a review and rebuttal documents that there is no genuine and substantial issue of fact in dispute. Within 30 days, a written decision of dismissal will be sent to each party and will contain the committee's findings and conclusions in detail, and, if the committee decided to dismiss, reasons why the request for a review did not raise a genuine and substantial issue of fact.

With all other proposed findings, within 30 days, the review committee will prepare a written document containing the findings and detailed reasons supporting the proposed decision. The document is to be signed by the chairperson and each of the other committee members. The committee's written decision will be sent with a transmittal letter to both parties. If the committee finds the covered entity guilty of prohibited activity and a decision is made to remove the entity from the covered entity list, then the manufacturers will no longer be required to extend the discount. If the covered entity or manufacturer does not agree with the committee's determination, the covered entity or the manufacturer may appeal within 30 days after receiving such a determination to the Administrator of the Health Resources and Services Administration, who will appoint a review official or committee. The review official or committee will respond to appeal request within 30 days from the receipt of the request.

III. Penalties

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If the final determination is that a manufacturer has violated the provisions of section 340B of the PHS Act or the PHS Pharmaceutical Pricing Agreement, the manufacturer's agreement with HHS could be terminated or other actions taken, as deemed appropriate. If the final determination is that an entity has violated Section 340B prohibitions against the resale or transfer of covered outpatient drugs or the prohibition against duplicate discounts and rebates (or billing Medicaid more than the actual acquisition cost of the drug), the entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug for the period of the violation, as provided by section 340B (a) (5) (D) of the PHS Act. After the dispute is resolved, any disputed amounts must be paid or credited to an account balance no later than 30 days following a final determination. The entity may also be excluded from the drug discount program, if the conduct warrants such a sanction. Such penalties do not preclude the imposition by the Government of other penalties or remedies under other statutes such as the Federal False Claims Act. A copy of the findings may be sent to the Office of the Inspector General for further action. If it is documented that several manufacturers have been wronged by the same prohibited entity behavior, corrective action will be afforded such manufacturers. (The reporting and recordkeeping requirements of this document are subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520, and have OMB clearance through 9/30/97 (OMB Control No. 0915-0176). The Paperwork Reduction Act of 1995 added disclosure requirements to the list of items needing OMB approval. The disclosure requirements in the audit guidelines include: section II(a)--the manufacturer shall notify the covered entity in writing when it believes the covered entity has violated provisions of section 340B; section II(g)--the manufacturer shall submit the audit report to the covered entity, and the covered entity shall provide its response to the manufacturer on the audit report's findings \* \* \*; and section III(h)--the manufacturer shall provide an oral briefing of the audit findings to the covered entity. The disclosure requirements in these sections will not be in force until OMB approval has been obtained.

Dated: December 6, 1996.

Ciro V. Sumaya, Administrator

Health Resources and Services Administration.  
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and value-based 340B Drug Pricing Program solutions.



**EXHIBIT C**  
**Mutually Agreed Upon Scope of Work**

I. General Services

1. RxStrategies, Inc. (RXS) must be qualified to order and administrate 340B covered medications in accordance with all applicable Federal and State, statutes and regulations.
2. RXS must maintain all records and reports required by the 340B or other applicable Federal and State statutes and regulations, for both the County and the contract pharmacies (to include mail order). Such records and reports shall be retained in accordance with the applicable Federal and State documentation regulations.

RXS will maintain all records and reports within the RXS 340BPlus™ system. All data will be readily available to CCHCD via RXS robust client data portal.

3. RXS operates as a full-service pharmaceutical services organization. RXS provides a diverse range of 340B services to 340B covered entities, including the administration and management of 340B contract pharmacy networks. RXS provides comprehensive solutions to meet the challenges of regulatory compliance, patient eligibility, pharmacy replenishment, program tracking and reporting for the Federal 340B Drug Pricing Program. The proprietary and integrated system of RXS system is web based and named 340BPlus™. The 340BPlus™ system shall be tailored to the specific needs of CCHCD and its patients.
4. RXS will independently negotiate agreements with contract pharmacies willing to contract with CCHCD for local dispensing. RXS will maintain all existing CCHCD contract pharmacy relationships and mirror those agreements. RXS will independently establish a contractual relationship with CCHCD selected 340B wholesaler(s).
5. RXS will work with CCHCD to customize the process for referral prescriptions 340B capture based upon CCHCD's operations and data. Referral prescription processes generally involve referral provide files and a verification process at CCHCD. The process will be customized based upon the data, operations and resources of CCHCD.
6. RXS will work with CCHCD and/or CCHCD's vendors (i.e. EHR) to establish the data feeds necessary to appropriately administer a fully compliant 340B contract pharmacy program. RXS will block all fee-for-service (FFS) Medicaid claim and either block or allow managed Medicaid organization (MCO) depending on the clients, states or MCO's standards.
7. RXS will provide CCHCD, at no additional cost, purchasing reconciliation reports that will aid CCHCD to accurately reconcile purchase order amounts to the final invoice produced by the wholesaler.

The reconciliation reports will indicate if CCHCD's wholesaler invoices are in accordance with purchase order amounts from the wholesaler ship-to-bill-to account and confirm 340B pricing is accurate.

8. RXS 340BPlus™ system prevents "diversion" and "duplicate discounts" before introduction into the 340B program via a series of filters.

The 340BPlus™ system tracks and replenishes drug usage virtually at full package (i.e. bottle) usage.

- Claims are linked to 340B invoices down to the pill level

- Replenishment system is not just a NDC11 (National Drug Code 11 digits) accumulator
- Transparent Audit reports linking claims to orders and order to claims

RXS system accurately and efficiently determines the correct prescription eligibility. RXS will correctly configure the system with CCHCD input determining eligibility as; only prescriptions associated with CCHCD 340B registered facilities (clinics), the patient has had an office visit at a CCHCD clinic within 12 months, and the prescription was written by a CCHCD provider. RXS will define and build the 340B eligibility criteria based upon CCHCD's data and specifications. The patient and provider eligibility verification system will be implemented at the point of service.

## II. Implementation Services

1. RXS will quickly and efficiently transition CCHCD's current 340B pricing for the FQHC (Federally Qualified Health Center) cash and sliding fee populations. RXS will quickly and efficiently transition CCHCD's current 340B contract pharmacies under RXS administration and management.

RXS will build and manage all aspects of CCHCD's 340B contract pharmacy network. RXS will work with CCHCD to determine which potential "new" 340B contract pharmacies are the best targets for the 340B contract pharmacy network and quickly work to build the network. RXS assists with pharmacy dispensing fee negotiations, contracting and assist with pharmacy registrations. CCHCD will register all pharmacies with the Office of Pharmacy Affairs (OPA).

RXS will serve as a valuable resource in helping CCHCD negotiate 340B dispensing fees. Some national chains (i.e. Walmart and CVS) utilize their own Pharmacy Services Agreement (PSA) and have standard non-negotiable fee structures. For others, RXS will assist CCHCD negotiation dispensing fees with contract pharmacies. Since RXS works with hundreds of 340B contract pharmacies across the country they can provide insight to reasonable dispensing fees and provide fee structure modeling.

2. RXS offers industry leading "real-time" claims adjudication processing and "retrospective" (i.e. pharmacy switch data) claims processing solutions. RXS does not interact directly with the 340B pharmacies prescription systems via data feed, etc. The pharmacy either submits claims directly to RXS via real-time process or RXS obtains the pharmacy's claims data via retrospective "switch" process. Each process is further defined below.

Real-time "Point of Sale" Processing Defined: The 340B contract pharmacy submits claims to RXS directly via defined BIN/PCN. All claims including insured and uninsured claims that meet 340B eligibility criteria as defined in pharmacy training sessions are sent to RXS. If a claim is submitted by the pharmacy that does not meet eligibility requirements, the pharmacy receives a real-time message to submit to the payer directly rather than RXS and the claim is not 340B. Claims that meet eligibility criteria enter the 340BPlus™ system and will ultimately produce an administrative fee when fully adjudicated. Only a claim submitted (via BIN/PCN) by the pharmacy is actually real-time at the pharmacy counter.

Retrospective Processing Defined: The 340B contract pharmacy conducts business as usual submitting claims directly to payer. All 3<sup>rd</sup> party claims are submitted via the pharmacy to the contracted "switch" (i.e. Emdeon, Relay Health). The "switch" receives the pharmacy data transmission and routes the claims to payers. The "switch" data has all the NCPDP (National Council for Prescription Drug Programs) transactional data submitted from the pharmacy including the claim elements to determine eligibility, financials, etc. In a retrospective process pharmacy "switch" data is pulled into the 340BPlus™ system at which time 340B eligibility

criteria is applied to identify which claims are 340B eligible. Claims that are not 340B eligible are disregarded and 340B eligible claims continue through the 340BPlus™ system. RXS must receive a “release” from the pharmacy to access the “switch” data and pay for the data acquisition. (*see Fee Schedules*)

3. RXS proprietary and integrated 340BPlus™ system is web based and no direct interfaces with CCHCD systems are required. RXS uses a batch file data feeds so no direct interface setups are required. RXS will work with CCHCD to establish provider files, encounter data and electronic prescribing data file feeds. RXS will build the 340B eligibility rules to CCHCD’s specifications including patient validation based upon EHR visit location.

The RXS secure web portal contains all reports including HRSA ready audit reports. CCHCD will also have 24/7/365 access to RXS secure client web portal.

RXS will actively manage CCHCD’s 340B program by verifying the dispensing records from the 340B contract pharmacies versus CCHCD’s provider, encounter and prescribing data.

4. Implementation timeline will be 4 months from contract execution.

### III. Client Care Services

1. RXS will provide CCHCD at no additional cost, purchasing reconciliation reports that will aid CCHCD to accurately reconcile purchase order amounts to the final invoice produced by the wholesaler. The reconciliation reports will indicate if CCHCD’s wholesaler invoices are in accordance with purchase amounts from the wholesaler ship-to-bill-to account and confirm 340B pricing is accurate.
2. RXS will maintain current relationships with all major drug wholesalers including the Big 3 Wholesalers (Cardinal, McKesson, Amerisource Bergan) and smaller or regional wholesalers. RXS supports fully automated EDI 850, 855, 810 order management via secure file messenger (Cyclone).

RXS 340BPlus™ system automatically generates the Purchase Order (PO) on the appropriate wholesaler account automatically when the full package NDC-11 package size is achieved.

The web based 340BPlus™ system is tailored to the specific needs of CCHCD and its patients. The management of the virtual inventory and replenishment is the cornerstone of the 340BPlus™ system.

RXS will maintain the NDC-11 inventory virtually based upon the eligible prescriptions. Once the NDC-11 drug product accumulates to full package size the 340BPlus™ system automatically generates a replenishment purchase order on the appropriate ship-to-bill-to account and the drug is shipped to the 340B contract pharmacy. The drug product is the pharmacies drug product once received by the pharmacy because of the retrospective replenishment nature of the transaction.

3. RXS will provide 24/7/365 Pharmacy Help Line support and RXS customer interface model is “high-touch”. CCHCD will be assigned a dedicated RXS account manager and a RXS executive level sponsor. Additionally, CCHCD will receive active high-touch participation from various integrated teams including IT, account management and executive leadership team.
4. The dedicated account manager is to oversee CCHCD’s 340B program and will come onsite to CCHCD’s chosen location for initial account set-up/review around the time of implementation, and potentially other visits to provide customer service. Any travel costs for onsite customer

service visits will be borne by RXS. The account manager will be available for regular monthly check-in conference calls at the request of CCHCD. RXS will provide audit readiness reports and support on demand and in the event of an audit handles all data gathering, and is on-site for the audit (such as a Health Resources and Services Administration (HRSA) audit) at no additional cost to CCHCD.

#### IV. Indigent Fee Services

RXS will appropriately apply 340B for sliding fee patients at the point-of-sale. RXS will appropriately apply 340B pricing for the FQHC (Federally Qualified Health Center) cash and sliding fee populations. RXS will apply different pricing (i.e. full 340B drug cost vs. % 340B discount) and cost methodologies (i.e. dispensing fee and/or subsidy amounts) for “cash” and “sliding fee” claims. CCHCD will decide how the patient pay model will be set-up. For cash and sliding fee patients the dispensing fee will be paid by the patient.

#### V. “Winner’s Only” Model Services

1. RXS standard dispensing fee model is “all inclusive” but RXS can accommodate any model (brand only, winners only, etc.) preferred by CCHCD. RXS will provide or assist the client with transparent data modeling to truly understand the dispensing fee impacts.

A financial filter logic will be used to ensure 340B savings are always greater than the sum of pharmacy dispense fees plus the 340B cost of drugs. Application of the “Winner Only” Model will not change the fee structure.

RXS will accommodate a “winners only” methodology, at no additional costs borne by CCHCD. (*see Fee Schedules*)

2. RXS 340BPlus™ system is the internal audit software CompliancePlus™, that gives CCHCD the ability to audit the 340B activity for full compliance and satisfy self-audit requirements. RXS CompliancePlus™ assists to proactively prepare for the additional oversight and responsibilities associated with a transparent 340B program.

RXS provides clients indemnification against errors and omissions if the CompliancePlus™ self-audits are maintained. RXS is offering CompliancePlus™ to CCHCD for no charge.

#### VI. Remittance of revenue and Fee Schedules

1. RXS is to invoice the 340B contract pharmacies on all 340B eligible claims. The pharmacies will be invoiced bi-monthly:
  - a) Invoice on the 1<sup>st</sup> for all 340B eligible claims from (16<sup>th</sup> day – last day) previous month
  - b) Invoice on the 16<sup>th</sup> for all 340B eligible claims from (1<sup>st</sup> day – 15<sup>th</sup> day).

The 340BPlus™ system automates virtual inventory tracking, invoicing, and reporting. RXS will provide CCHCD a bi-monthly reporting package which includes electronic copies of all pharmacy invoices, and reports. Additionally, CCHCD will receive a detailed dispensing schedule that shows all detailed prescription information captured from the 340B eligible prescriptions which CCHCD can easily reconcile with all receivable amounts minus fees due from the pharmacies to CCHCD. RXS will withhold administrative fees from settlements due to CCHCD monthly. Additionally, CCHCD will receive a detailed dispensing schedule that shows all the detailed prescription information captured from the 340B eligible prescriptions which it can be used to easily reconcile all receivable amounts; minus fees due from the pharmacies to

CCHCD. The settlement report will contain dispense fees net receivables by pharmacy location and RXS administrative fees for true and verifiable expenses.

2. A “True-Up” or “Buyout” occurs for claims that cannot be replenished. RXS standard true-up cycle is 120 days, with the understanding that this is dependent upon contract pharmacies “True-Up” cycle. RXS will reimburse the pharmacy for the units dispensed (not the bottle size; unit doses are fully replenished) at the pharmacy’s cost for the item or WAC (Wholesale Acquisition Cost), whichever is the lesser. This is tracked on the “Buyout” report. This is part of the twice monthly invoice cycle to the pharmacy.

Fee schedules below

<u>Service</u>	<u>Cash &amp; Sliding Fee Rx's</u>	<u>Insured Rx's</u>
Contract Pharmacy Administration Fee	\$4.00 per Eligible Prescription	\$4.00 per Eligible Prescription
Prescription Data Acquisition Fee *	N/A	\$0.03 per Line Item of Switch Data *
Reporting Fee	Included	Included
CompliancePlus™	Included	Included
Implementation Fees	Included	Included
Installation Fees	Included	Included
Pharmacy Replenishment	Included	Included
Interface with Wholesalers	Included	Included
Purchase Order Reconciliation	Included	Included
Secure Web Portal	Included	Included
Customized Reports	Included	Included
Audit Support	Included	Included
* Only applies to Retrospective Processed Claims.		



<u>Fee's by Claims Processing Type</u>			
<u>Patient Type</u>	<u>Claims Procassing Type</u>	<u>Fee Type</u>	<u>Fee</u>
Un-Insured Non-Sliding Fee	Real-Time Only *	Cash / Sliding Fee	\$4.00
	Real-Time Only *	Cash / Sliding Fee	\$4.00
Insured (3 <sup>rd</sup> Party)	Real-Time *	Insured	\$4.00
Insured (3 <sup>rd</sup> Party)	Retrospective **	insured	\$4.00 + \$0.03 per Line Item of Data
<p>* Real-time Processing: Pharmacy submits claim directly to RXS BIN/PCN. All un-insured claims must be submitted “real-time” so the appropriate patient paid amount is available at the point-of-sale. CCHCD could allow pharmacies the option of processing “insured” claims real-time as well.</p> <p>** Retrospective: RXS requires Pharmacy to sign a release for “switch” (i.e. Emdeon, Relay Health) data. All data from pharmacy is received, filtered and enters the 340BPlus™ system. Please note chain pharmacies generally only will allow “retrospective” processing.</p>			

**EXHIBIT D**  
**Qualified Service Organization Business Associate Agreement**

This Qualified Service Organization Business Associate Agreement (“Agreement”) is entered into as of **upon signature** (“Effective Date”) by and between **Clackamas County Health, Housing and Human Services, Health Centers Division** (“Covered Entity”), Health Centers Division Alcohol and Drug Treatment Program (“Program”) and **Rx Strategies** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”), and Confidentiality of Substance Use Disorder Patient Records, 42 CFR Part 2 (“Confidentiality Rule”).

**RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate as defined under 45 CFR §160.103 for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Services Agreement”);

**Whereas**, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Agreement to address certain requirements under the HIPAA Rules **and** the Confidentiality Rule;

**Now, Therefore**, the parties hereby agree as follows:

**SECTION I – DEFINITIONS**

- 1.1 “Breach” is any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within a Workforce member’s course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Workforce members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Disclose” or “disclosure” shall have the meaning given to such terms under the Confidentiality Rule, 42 CFR §2.11.
- 1.5 “Effective Date” shall be the Effective Date of this Agreement.
- 1.6 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.7 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.
- 1.8 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.9 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.10 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.11 “Program” shall have the meaning given to such term under the Confidentiality Rule, 42 CFR §2.11.
- 1.12 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis

- to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.13 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s.
- 1.14 “Qualified Service Organization” shall have the meaning defined under the Confidentiality Rule, 42 CFR §2.11.
- 1.15 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.16 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.17 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.18 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.19 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

## **SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Notwithstanding the preceding language of this subsection, Business Associate acknowledges that PHI obtained by the Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule. This information received from the Covered Entity, is protected by the Confidentiality Rule and therefore the Business Associate is specifically prohibited from re-disclosing such information to agents or subcontractors without specific written consent of the subject Individual;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary’s determining the Covered Entity’s and the Business Associate’s compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.10 To comply with the confidentiality, disclosure and re-disclosure requirements of the Confidentiality Rule as applicable;
- 2.11 To resist any efforts in judicial proceedings any efforts to obtain access to the PHI protected by the Confidentiality Rule except as expressly provided for in the Confidentiality Rule;

- 2.12 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.13 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the PHI. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
- 2.14 To retain records related to the PHI hereunder for a period of six (6) years unless this Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
- 2.15 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
- 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

### **SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

- 3.1 The Covered Entity and the Business Associate agree that this Agreement constitutes a Qualified Service Organization Agreement as required by the Confidentiality Rule. Accordingly, information obtained by the Business Associate relating to Individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule.
- 3.2 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.3 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Confidentiality or HIPAA Rules if done by the Covered Entity; and,
- 3.4 Except as otherwise limited in this Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate so long as such use is also permitted by the Confidentiality Rule; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. PHI that is also subject to the Confidentiality Rule cannot be disclosed to a third party except as permitted under the Confidentiality Rule.

### **SECTION IV – NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. The Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that

the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity, except as set forth in Section 3.3 above.

## **SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. By notice in plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
    - 4) A brief description of what the Covered Entity and/or Business Associate involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
    - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
  - c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

## **SECTION VI – TERM AND TERMINATION**

- 6.1 **Term.** The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Agreement if cure is not reasonably possible. If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach. Upon the Business Associate's knowledge of a material breach of this Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Agreement and Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Agreement if the Covered Entity has breached a material term of this Agreement if cure is not reasonably possible.
- 6.3 **Effect of Termination.**
- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.



- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Agreement to the Confidentiality Rule, HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Covered Entity.** Covered Entity agrees to indemnify, defend and hold harmless the Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Covered Entity’s breach of Section 4.1 of this Agreement. Accordingly, on demand, Covered Entity shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Covered Entity’s breach hereunder. Covered Entity’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Section II and III of this Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.6 **Survival.** The respective rights and obligations of Business Associate under Section II of this Agreement shall survive the termination of the Services Agreement and this Agreement.
- 7.7 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to first comply with the Confidentiality Rule and second to comply with the HIPAA Rules.

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.



**COPY**

**DAN JOHNSON**  
DIRECTOR

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

May 24, 2018

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval of a Resolution Recognizing the Preferred Bridge Location of the  
French Prairie Bicycle-Pedestrian-Emergency Access Bridge**

<b>Purpose/ Outcomes</b>	To recognize the preferred bridge location as recommended by the French Prairie Bridge Task Force for the French Prairie Bicycle Pedestrian Emergency Access Bridge
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Action</b>	Two BCC Study Sessions have been held to update the BCC on the progress of the French Prairie Bridge Project (April 25, 2017 and April 10, 2018)
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Build a strong infrastructure</li> </ul>
<b>Contact Person</b>	Karen Buehrig, Transportation Planning Supervisor - 742-4683
<b>Contract No.</b>	N/A

In the Fall of 2016, the City of Wilsonville began the French Prairie Bridge planning project which is proposing a bicycle/pedestrian/emergency-access crossing of the Willamette River, west of the Interstate 5-Boone Bridge in Wilsonville. The intent of the project is to address the preferred landing points for the bridge, the preferred bridge type and the estimated cost of the preferred bridge.

This project is of specific interest to Clackamas County because while one side of the bridge will be located in Wilsonville, the southern terminus of the bridge will be in unincorporated Clackamas County. In addition, the alignment corridors under consideration traverse over property owned by the Clackamas County Parks Department and is used as the Boones Ferry Marina.

On April 12, 2018, the Stakeholder Task Force met and developed a recommendation for Corridor W1 for the bridge. The attached resolution recognizes the recommended corridor and continued coordination with the City of Wilsonville on the future bridge design to address impacts on Butteville Road and the Boones Ferry Marina. The resolution has been reviewed and approved by county counsel.

**RECOMMENDATION:**

Staff recommends the Board approval of this resolution.

Respectfully submitted,

Karen Buehrig, Transportation Planning Supervisor  
Transportation and Development

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

A Resolution Recognizing the Preferred Bridge Location of the French Prairie Bicycle-Pedestrian-Emergency Access Bridge



Resolution No.  
Page 1 of 4

**WHEREAS**, the adopted 2013 Clackamas County Transportation System Plan lists the French Prairie Bridge, Project #1085, as a 20-year capital project need; and

**WHEREAS**, the adopted 2013 Wilsonville Transportation System Plan (TSP), updated in 2016, identifies a regionally significant gap in the bicycle and pedestrian network between Wilsonville and the area south of Willamette River, including Charbonneau; and

**WHEREAS**, the Wilsonville TSP identifies the need to construct a bridge over the Willamette River for bike, pedestrian, and emergency access to provide an alternative to the I-5 Boone Bridge; and

**WHEREAS**, the Wilsonville TSP identifies the narrow shoulders along the I-5 Boone Bridge, which is the only bicycle and pedestrian connection over the Willamette River for 30 miles, as a significant safety deficiency; and

**WHEREAS**, the French Prairie Bridge north landing is to be located within the City of Wilsonville and the south landing is to be located within unincorporated Clackamas County; and

**WHEREAS**, Metro awarded \$1.25 Million from 2010-2013 Regional Flexible funds to the City of Wilsonville to perform project development for the French Prairie Bridge; and

**WHEREAS**, the Project will determine the final bridge location, type, and preliminary design necessary to determine whether to pursue final bridge design and construction; and

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

A Resolution Recognizing the Preferred Bridge Location of the French Prairie Bicycle-Pedestrian-Emergency Access Bridge



Resolution No.  
Page 2 of 3

**WHEREAS**, the Project identified three potential bridge locations within the Project study area. The French Prairie Bridge Opportunities and Constraints Report dated April 5, 2017 documents the opportunities and constraints associated with each location; and

**WHEREAS**, the Project formed a Task Force, with members representing a wide range of stakeholder values and interests, including affected neighborhoods and businesses, walking and cycling enthusiasts, local parks and trails interests, tourism associations, and emergency services personnel, to provide recommendations to the Wilsonville City Council at key milestones in the bridge planning and design process; and

**WHEREAS**, the Project solicited public input of the three potential bridge locations through individual stakeholder interviews, a public open house (in-person and online), and online comment forms; and

**WHEREAS**, the Task Force finalized bridge location evaluation criteria based on input obtained from interested members of the public, Project Management Team, Technical Advisory Committee, Wilsonville City Council, and Clackamas Board of County Commissioners meetings as documented in the French Prairie Bridge Evaluation Criteria Memo, dated June 7, 2017; and

**WHEREAS**, the three bridge locations were evaluated based on six criteria, including Connectivity and Safety, Emergency Access, Environmental Impacts, Compatibility with Recreational Goals, Compatibility with the Existing Built Environment, and Cost and Economic Impact; and

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

A Resolution Recognizing the Preferred Bridge Location of the French Prairie Bicycle-Pedestrian-Emergency Access Bridge



Resolution No.  
Page 3 of 4

**WHEREAS**, the Task Force evaluated the three potential bridge locations utilizing the Technical Advisory Committee evaluation, Opportunity and Constraints Report, and Evaluation Criteria Memo, unanimously recommending bridge alignment W1 as the preferred bridge location; and

**WHEREAS**, of the three potential locations, bridge alignment W1 is identified as providing the least cost and best connectivity and safety, emergency access, compatibility with recreational goals, compatibility with existing built environment, and economic impact; and

**WHEREAS**, the French Prairie Bridge - Bridge Location Evaluation Report, dated May 2018, attached hereto as **Attachment 1** and incorporated herein, documents the preferred bridge location determination; and

**WHEREAS**, future project work, particularly information gained through further bridge design environmental assessment, may result in a variation from the W1 alignment as the final bridge site.

**NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby resolve:**

1. The French Prairie Bridge Location Evaluation Report summarizes the results of the comprehensive study completed to determine the preferred bridge location for the French Prairie Bridge.
2. The preferred French Prairie Bridge location is identified as alignment W1.
3. The Clackamas County and staff will continue to work with City of Wilsonville through bridge type selection and future project design to address concerns, such as parking and safety, and mitigate potential



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

A Resolution Recognizing the  
Preferred Bridge Location of the  
French Prairie Bicycle-Pedestrian-  
Emergency Access Bridge



Resolution No.  
Page 4 of 4

impacts to the Boones Ferry Marina and Butteville Road due to the construction and operation of the French Prairie Bridge. In addition, the pedestrian and bikeway connections to the Charbonneau district and long term maintenance of the bridge are issues that are yet to be resolved.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

DRAFT

Approval of Previous Business Meeting Minutes:

April 19, 2018

# **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, April 19, 2018 – 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

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

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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

1. Presentation: National County Government Month – “Serving the Underserved”  
Todd Loggan, Public & Government Affairs presented the staff report which included a short video.
2. Presentation: #ClackCo TV 2017 Video Awards  
Garrett Teague, Public & Government Affairs presented the staff report which included a short video.

## **II. CITIZEN COMMUNICATION**

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

1. Linda Malone, Sandy – urged the Commissioner not to fund the O&C Counties.
2. Les Poole, Gladstone – attended a meeting in Clark County regarding the tolling plans.
3. John Michales, West Linn – Clackamas County should not support the O&C Counties.

*~Board Discussion regarding O&C Counties~*

## **III. CONSENT AGENDA**

Chair Bernard asked the Clerk to read the consent agenda by title, then asked for a motion.

### **MOTION:**

Commissioner Humberston: I move we approve the consent agenda.  
Commissioner Fischer: Second.  
all those in favor/opposed:  
Commissioner Humberston: Aye.  
Commissioner Fischer: Aye.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye.  
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

## **A. Health, Housing & Human Services**

1. Approval of Intergovernmental Grant Agreement #157026 with the State of Oregon, acting by and through its Oregon Health Authority for the 2018 Farm Direct Nutrition Program (FDNP) – *Public Health*
2. Approval of Contract with Tri-County Metropolitan Transportation District of Oregon (TriMet) for the Monthly Hop Pass Program for Electronic Fare Instrument Services to Clackamas County Social Services and Residents – *Social Services*

3. Approval of a Revenue Agreement with Health Share of Oregon for Behavioral Health Services to members enrolled in the Oregon Health Plan (OHP) – *Health Centers*

4. Approval for a Revenue Agreement with CareOregon for Dental Health Expansion – *Health Centers*

**B. Department of Transportation & Development**

1. Approval of an Intergovernmental Agreement between Clackamas County and TriMet for Maintenance of the Portland-Milwaukie Light Rail (PMLR) Project Facilities

2. **Board Order No. 2018-25** Approving Solid Waste Management Fee Adjustments

**C. Elected Officials**

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

2. Approval of Contract Amendment No. 7 with DePaul Industries Inc. for Security Screening Personnel for the Clackamas County Court System – *CCSO via Procurement*

**D. Business & Community Services**

1. Approval of a Purchase and Sale Agreement with Stone Land & Timber LLC for the Sale of Real Property

**IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

1. Approval of a Temporary Construction Easement from the North Clackamas Parks and Recreation District (NCPRD) to Clackamas County Service District No. 5 (CCSD #5)

**V. DEVELOPMENT AGENCY**

1. Approval of Utility Easement Provided to Portland General Electric

**VI. SERVICE DISTRICT NO. 5**

1. Acceptance of a Temporary Construction Easement form the North Clackamas Parks and Recreation District (NCPRD) Related to the McLoughlin Blvd. Street Lighting Project

**VII. COUNTY ADMINISTRATOR UPDATE**

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

**VIII. COMMISSIONERS COMMUNICATION**

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

**MEETING ADJOURNED – 11:30 AM**

**NOTE:** Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. [www.clackamas.us/bcc/business.html](http://www.clackamas.us/bcc/business.html)



May 24, 2018

Board of Commissioners  
Clackamas County

Members of the Board:

Amendment of Lease with Blackhawk, LLC for  
Clackamas County Tourism and Cultural Affairs Office Space

<b>Purpose/ Outcomes</b>	Amend lease to include defined commencement date to qualify for property tax exemption, change base year from Tax Year 2017-2018 to 2018-2019 and include one exception to completing of tenant improvements.
<b>Dollar Amount and Fiscal Impact</b>	First year rent is \$10,427.67 per month, with annual CPI based adjustments. Pursuant to ORS 307.112, Landlord to credit Tenant \$2 per square feet of rentable area monthly (\$744.83) upon demonstration Tenant has successfully applied for property tax exemption.
<b>Funding Source</b>	Tourism Development Fund. No County General Funds are involved.
<b>Duration</b>	Ten years (120 months) from date of Commencement; July 1, 2018
<b>Previous Board Action</b>	Board approved lease at its March 22, 2018 meeting.
<b>Strategic Plan Alignment</b>	Build public trust through good government. Grow a vibrant economy. Build a strong infrastructure.
<b>Contact Person</b>	Danielle Cowan – TCA Director – 503-655-8420
<b>Contract No.</b>	NA

**BACKGROUND:**

At its March 22, 2018 Business meeting the BCC approved a lease with Blackhawk, LLC for office space for Clackamas County Tourism and Cultural Affairs (CCTCA). The commencement date on the original (current) lease reads as "upon completion of tenant improvements for occupancy." Because CCTCA is a public body/entity it will be applying for a property tax exemption under ORS 307.112. This will result in a \$744.83 rent credit when the exemption is reflected on the Landlord's property tax statement. Assessment and Taxation reviewed the lease and exemption application and noted two changes that are needed for an exemption to be granted. The first is a defined commencement date of at least July 1, 2018 or sooner. The second is changing the "Base Year" in from tax year 2017-2018 to 2018-2019. The final change is the addition of an exception to the list of tenant improvements to be completed by the Landlord prior to CCTCA assuming occupancy. This is for an upgrade to a folding partition between two conference rooms. It was determined that the original partition would not provide adequate sound-deadening properties for two meetings to take place simultaneously. It will take additional time for this item to be



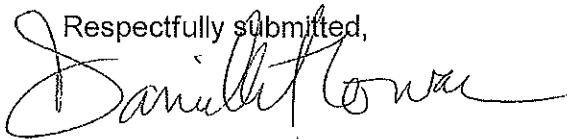
manufactured and installed. CCTCA does not wish for this to delay its move-in date. Its installation will not impact the departments operations or work flow.

County Council drafted that attached amendment and the Landlord has agreeable to signed.

**RECOMMENDATION:**

Staff recommends the Board approve the amendment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Danielle Cowan". The signature is fluid and cursive, with a large initial "D" and "C".

Danielle Cowan,  
Executive Director, Clackamas County Tourism and Cultural Affairs

**First Amendment to**

**OFFICE LEASE**

**Between:**

**Blackhawk, LLC ("Landlord")**

**and**

**Clackamas County, by and through its Department of Tourism and Cultural  
Affairs ("Tenant")**

The parties to the above referenced OFFICE LEASE dated March 14, 2018, for premises located at 1830 Blankenship Road, Suite 100, West Linn, Oregon 97068 (the "Lease"), hereby agree to the following amendments to the Lease. Except as expressly indicated herein, all terms, conditions, exhibits and attachments of the original Lease remain in full force an effect.

1. Section 1.1(I) TERM OF LEASE is amended to read: Commencement Date: This lease shall commence upon Landlord's completion of all agreed upon Tenant Improvements, which shall occur no later than July 1, 2018. Notwithstanding the foregoing, the term of this lease may commence prior to Landlord's installation of the Tenant Improvement consisting of the upgraded folding partition walls between conference rooms, provided that all other Tenant Improvements have been completed.

The expiration date and number of full calendar months for the lease shall remain as indicated in the original Lease.

2. Section 1.1(O) BASE YEAR is amended to read: Property Taxes 2018 – 2019.

By their signatures below the parties to the Lease hereby agree to this First Amendment to the Lease and are bound by the amendments indicated herein:

Landlord Signature:

  
\_\_\_\_\_  
Jeff Parker, Managing Member

5/4/18  
\_\_\_\_\_  
Date

Tenant Signature:

\_\_\_\_\_  
Don Krupp, County Administrator

\_\_\_\_\_  
Date



NANCY S. BUSH  
DIRECTOR

DEPARTMENT OF DISASTER MANAGEMENT

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

May 24, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval to Apply for FY2018 Emergency Management Performance Grant  
between Clackamas County and the State of Oregon

<b>Purpose/Outcomes</b>	The FY2018 Emergency Management Performance Grant (EMPG) will reimburse Clackamas County Disaster Management (CCDM) for up to 50% of pre-identified program costs.
<b>Dollar Amount and Fiscal Impact</b>	The grant agreement total value is anticipated to be similar to FY17, around \$165,000; however, the exact award amount is not yet known. The grant is a 50% federal share grant that will reimburse CCDM for up to fifty percent of salaries and benefits of six employees.
<b>Funding Source</b>	FY 2018 Emergency Management Performance Grant via the State of Oregon Military Department, Office of Emergency Management
<b>Duration</b>	Estimated to be effective July 1, 2018 and terminate on June 30, 2019
<b>Previous Board Action</b>	The Board approved the application for the FY17 EMPG grant on June 15, 2017. The FY17 EMPG agreement was approved by the Board on December 21, 2017, agenda item E.1.
<b>Strategic Plan Alignment</b>	1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
<b>Contact Person</b>	Nancy Bush, Director – Disaster Management Department, 503-655-8665
<b>Contract No.</b>	Unknown

**BACKGROUND:**

County emergency management programs are required by Oregon Revised Statutes 401. The EMPG is a recurring federal grant program providing limited reimbursement of a portion of the costs incurred in operating local emergency management programs. The funds provided are for the development of an all-hazard emergency management capability to promote preparedness, mitigation, response and recovery.

**RECOMMENDATION:**

Staff respectfully recommends Board approval of the Disaster Management FY2018 EMPG application.

Respectfully submitted,

Nancy Bush, Director

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**\*\* CONCEPTION \*\***

*Note: The processes outlined in this form are not applicable to disaster recovery grants.*

## Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: Disaster Management Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No

Name of Funding Opportunity: FY2018 Emergency Management Performance Grant  
Funding Source:  Federal  State  Local: \_\_\_\_\_  
Requestor Information (Name of staff person initiating form): Sarah Stegmuller Eckman  
Requestor Contact Information: 503-650-3381, sarahste@clackamas.us  
Department Fiscal Representative: Michael Morasko  
Program Name or Number (please specify): FY18 EMPG  
Brief Description of Project:

The FY18 Emergency Management Performance Grant will reimbursement Clackamas County for up to 50% of staff salaries and benefits. Disaster Management will include the entire departmental salary and benefit amount in the grant application; however, grant award is anticipated to be approximately \$165,000, similar to the FY17 award.

Name of Funding (Granting) Agency: Federal Emergency Management Agency via Oregon Emergency Management

Agency's Web Address for Grant Guidelines and Contact Information:  
\_\_\_\_\_

### OR

Application Packet Attached:  Yes  No

Completed By: Sarah Stegmuller Eckman 05/15/2018  
Date

**\*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\***

## Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant/Renewal  Other Notification Date: \_\_\_\_\_  
CFDA(s), if applicable: 97.042  
Announcement Date: 05/02/2018 Announcement/Opportunity #: FY17 Invitation to Apply  
Grant Category/Title: FY18 Emergency Mgt. Performance Grant Max Award Value: approximately \$165,000  
Allows Indirect/Rate: N/A Match Requirement: 50%  
Application Deadline: 06/15/2018 Other Deadlines: \_\_\_\_\_  
Grant Start Date: Estimated 7/1/18 Other Deadline Description: \_\_\_\_\_  
Grant End Date: Estimated 6/30/19  
Completed By: Sarah Stegmuller Eckman  
Pre-Application Meeting Schedule: \_\_\_\_\_



**Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal St**

**Mission/Purpose:**

1. How does the grant support the Department's Mission/Purpose/Goals?

The grant reimburses salary and benefit costs for Disaster Management personnel.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

Provides funding for personnel, resulting in support for Disaster Management programmatic activities.

3. What, if any, are the community partners who might be better suited to perform this work?

None

4. What are the objectives of this grant? How will we meet these objectives?

The grant requires that each county has a dedicated emergency manager, is National Incident Management System (NIMS) compliant, has an Emergency Operations Plan (EOP) consistent with Comprehensive Preparedness Guidance 101, has a current and FEMA approved Natural Hazard Mitigation Plan, has an identified and functional Emergency Operations Center (EOC) and has an established incident command structure. Disaster Management personnel are tasked with ensuring these objectives and requirements are met.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Yes, the grant funds existing personnel costs for the Disaster Management Department.

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required?

If no, can staff be hired within the grant timeframe?

Yes, the Disaster Management Department has six staff who are qualified to carry out the work required by the EMPG grant.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

N/A

3. If this is a pilot project, what is the plan for sunseting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted?

If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?

N/A

**Collaboration**

1. List County departments that will collaborate on this award, if any.

None

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

The grant requires quarterly performance reports and requests for reimbursement.

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

The Disaster Management evaluates grant performance on a quarterly basis in conjunction with the required performance reports. Performance data is gathered from department personnel and input into the required report template.

3. What are the fiscal reporting requirements for this grant?

This grant requires quarterly reimbursement requests from the county to the state. Disaster Management's fiscal contact inside the Finance Department prepares these reports and all required supporting documentation.

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

Yes. This grant provides funding for personnel and the award amount is sufficient enough that it brings greater benefit than the cost to administer the grant.

2. What other revenue sources are required? Have they already been secured?

This grant is a 50% match reimbursement grant, so county general funds are required to be spent for personnel. The grant reimburses up to 50% of the costs for personnel salary and benefits; however, the grant award amount is anticipated to be approximately \$165,000, a small portion of the total departmental salary and benefit costs.

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

Yes, this grant is a 50% match reimbursement grant. The county match portion is met with the departmental salary and benefit costs covered by the general fund.

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

This grant has historically been received each year; however, the future stability of the grant is unknown and future funding cannot be expected. The program will be sustained with general fund dollars.

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

This grant allows indirect costs; however, the Disaster Management Department is not applying to use any indirect costs.

Program Approval:

Sarah Stegmuller Eckman

05/15/2018

Name (Typed/Printed)

Date

Signature

**\*\* NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR \*\***

**Section IV: Approvals**

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Nancy Bush	05/15/2018	
Name (Typed/Printed)	Date	Signature

**IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.**

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**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. All grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:  Date:

OR

Policy Session Date:

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County Administration Attestation

**County Administration: re-route to department contact when fully approved.  
Department: keep original with your grant file.**



NANCY S. BUSH  
DIRECTOR

DEPARTMENT OF DISASTER MANAGEMENT

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

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between the City of Portland and Clackamas County for purchase and reimbursement activities related to the use of the FY17 United States Department of Homeland Security's Urban Area Security Initiative (UASI) grant program

<b>Purpose/Outcomes</b>	The Intergovernmental Agreement between the City of Portland and Clackamas County is to allow Clackamas County and its sub-recipients to purchase and receive reimbursement for approved expenditures under the FY17 UASI grant program.
<b>Dollar Amount and Fiscal Impact</b>	\$2,496,835 of FY17 UASI funds will directly benefit law enforcement, fire, public works and emergency management within the Portland Urban Area in the form of funding equipment and planning. \$800,000 will directly benefit Clackamas County.
<b>Funding Source</b>	The funding source for the FY17 UASI grant is the United States Department of Homeland Security via the Oregon Military Department.
<b>Duration</b>	The agreement is effective from the date both parties have signed and shall end, unless otherwise terminated or extended, on May 31, 2020.
<b>Previous Board Action</b>	The Board of County Commissioners approved the FY16 UASI Intergovernmental Agreement with the City of Portland on August 3, 2017, agenda item E.1.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Coordination and Integration of Planning and Preparedness</li> <li>2. Ensure Safe, Healthy and Secure Communities</li> </ol>
<b>Contact Person</b>	Nancy Bush, Director – Emergency Management - 655-8665
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Urban Area Security Initiative (UASI) is comprised of the City of Portland and the contiguous counties of Clackamas, Multnomah, Washington, Columbia and Clark County, Washington. In FY16, \$2,822,000 was awarded to the UASI region. \$673,300 of the total directly benefited Clackamas County. The FY17 grant will bring \$2,496,835 to the Portland Urban Area. A minimum of \$800,000 of that total will directly benefit Clackamas County agencies. The County will benefit from UASI-funded regional projects related to training, exercise, and equipment, as well as the continued support of a regional Intelligence Fusion Center. County Counsel has approved this agreement as to form.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve this agreement.

Respectfully submitted,

Nancy Bush, Director

# **INTERGOVERNMENTAL AGREEMENT**

**Between**

**THE CITY OF PORTLAND, OREGON**

**And**

**CLACKAMAS COUNTY, OREGON**

THIS IS an Intergovernmental Agreement (IGA) between the City of Portland ("City") and Clackamas County, Oregon ("Agency") entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190, for the coordination of activities related to the use of the United States Department of Homeland Security's Urban Areas Security Initiative (UASI) grant program funds for addressing the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, to assist in building an enhanced and sustainable capacity to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

## **Recitals**

WHEREAS, the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$2,837,000 in Fiscal Year 2017 to the State of Oregon ("State"), acting by and through the Oregon Military Department, Office of Emergency Management (OEM) for distribution of \$2,496,835 to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #17-170 to the City of Portland, Bureau of Emergency Management (PBEM) for Fiscal Year 2017 in the amount of \$2,496,835, a copy of which is attached to this Agreement and incorporated herein as Attachment 2 and Exhibits A, B, C and D; and

WHEREAS, UASI Grant #17-170 is intended to increase the capabilities of the PUA, which includes jurisdictions in Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington, as well as the Port of Portland and TriMet, to build an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism; and

WHEREAS, a list of equipment, supplies, professional services, training and exercise events to be grant funded has been developed through the application process and coordination with the State; and



WHEREAS, PBEM, as Grant Administrator, is required to oversee and coordinate the expenditure of the UASI grant funds and has developed procedures to guide the procurement, delivery, and reimbursement processes; and

WHEREAS, PBEM, as Grant Administrator, is required to make periodic reports to the State regarding the expenditure of the UASI grant funds and has developed procedures to coordinate the collection and submission of information and documents needed to support the reporting process; and

WHEREAS, the City and all other PUA jurisdictions that receive direct benefit from UASI grant purchases are required to comply with all terms of the U.S. Department of Homeland Security, UASI Grant CFDA # 97.067, Grant #17-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the Regional Disaster Preparedness Organization (RDPO) is the designated organization in the PUA that serves in the capacity of Urban Area Work Group (UAWG) to coordinate program development and decision-making processes for allocating UASI sub-grants, as specified in the "Standard Operating Procedure Urban Areas Security Initiative (UASI) Program Management Under the Regional Disaster Preparedness Organization (RDPO)", Attachment 3; and

WHEREAS, the City is entering into agreements with PUA counties and agencies to secure their commitment to follow the City-developed procurement, delivery, reimbursement, and reporting procedures, to ensure their compliance with all terms of the grants, and to obligate them to coordinate with and obtain similar assurances from directly benefiting jurisdictions (i.e., "sub-recipients") within the respective counties and regional agencies.

NOW, THEREFORE, the Parties agree as follows:

**1. The City agrees:**

- a) That it is authorized to purchase and distribute equipment, supplies and services which have been approved by the State and, as appropriate, the City may delegate this purchasing authority to the Agency. Such authorization, however, does not guarantee payment for the Agency. The State requires invoicing with the appropriate backup documentation by the Agency, to the City, and compliance with the purchasing rules of the Code of Federal Regulations, any applicable state rules, City purchasing practices and the Agency's purchasing practices prior to approval of payments.
- b) Because there is no IGA between the City and the sub-recipients of the Agency (if any), the Agency will be the point of contact for all requests

made by its sub-recipients. The Agency will be responsible for submitting all purchase requests on behalf of their sub-recipients to the City.

- c) When the City has purchased goods or services for the Agency or the Agency's sub-recipient, arrangements for delivery will be made between the parties. The Agency or the Agency's sub-recipient shall be the Owner of said goods or services and shall be responsible for complying with all applicable requirements as outlined in the Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) Circulars, the State grant agreement, and this Intergovernmental Agreement.

## **2. The Agency agrees:**

- a) That it has read the award conditions and certifications for UASI Grant #17-170; including Exhibits A, B, C and D and that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the City, as grantee, under those grant documents.
- b) To comply with all City and State financial management processes, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations and Office of Management and Budget Circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
  - i. Administrative Requirements: 2 CFR 200 (State and Local Governments) and 2 CFR Part 215 (Non-Profit Organizations).
  - ii. Cost Principles: 2 CFR 200 Subpart E
  - iii. Audit Requirements: 2 CFR 200 Subpart F-Audit Requirements.
- c) To comply with all City and State procurement requirements, including the competitive bid processes as outlined in Portland City Code (PCC) and Oregon Revised Statutes (ORS). A nonexclusive list of code and statutes commonly applicable to procurement include:
  - i. PCC Chapter 5.33 (Goods and Services) and PCC Chapter 5.68 (Professional, Technical and Expert Service Contracts).
  - ii. ORS 279A (Public Contracting – General Provisions) and ORS 279B (Public Contracting – Public Procurements).

- d) Any potential conflicts of interest under the Federal awarding agency's conflict of interest policies must be disclosed in writing to the City within five (5) calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
- e) That all equipment, supplies, and services procured by the Agency are as described in the approved grant budget documents.
- f) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the Agency or the Agency's sub-recipient until disposition takes place. The Agency or the Agency's sub-recipient shall be responsible for inventory tracking, maintenance and storage while in possession of such equipment and supplies.
- g) That regardless of who the Owner is, all equipment purchased with grant funds will be made available to all eligible regional partners per 44 CFR 13.32(c)(2). All reasonable requests must be met when sufficient notice is given and no reasonable conflict exists. Owners may not charge "rental" fees for equipment, but may seek reimbursement for normal expendables (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, etc., when appropriate.
- h) To comply with all property and equipment tracking and monitoring processes required by the grant, this Agreement, the City and the State. To treat all single items of equipment valued over \$5,000 as fixed assets and to provide the City with a list of such equipment on a biennial basis, using PBEM's Equipment Inventory Report and completing and returning the report to PBEM on or before June 30<sup>th</sup> of the reporting year. **The list should include, but is not limited to, status and condition, asset number, funding source (including the federal award identification number), who holds the title, date of purchase and cost, equipment description, serial number, location where the equipment is housed or stored, and disposition information (date of disposal and sale price of the property). Additionally, all equipment must have a sticker affixed that visibly states: "Purchased with funds provided by the U.S Department of Homeland Security."** All requirements for the tracking, monitoring, disposition, and transfer of fixed assets are set forth in 2 CFR 200.313, which can be found here:  
[http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d75f90044e30262070fe0bc233c337f&mc=true&n=pt2.1.200&r=PART&ty=HTML#\\_top](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d75f90044e30262070fe0bc233c337f&mc=true&n=pt2.1.200&r=PART&ty=HTML#_top)

The Agency or the Agency's sub-recipient shall maintain and store all equipment and supplies, provided or purchased, in the manner that will

keep it safe, prolong its useful life and be maintained in good working condition at all times.

- i) That any request or invoice it submits for reimbursement of costs will be consistent with the items identified in the approved grant budget documents and include proper documentation.
- j) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the State and/or the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- k) That it will not deviate from the items listed in the approved grant budget documents without first securing written approval from the City.
- l) That it shall return to the City, within (fifteen) 15 days after the City's written request, any funds disbursed under this Agreement that, in the City's sole judgment, are spent in violation of the provisions of this Agreement.
- m) That all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."
- n) That all financial records, supporting documentation and all other records pertinent to this grant or agreements under this grant shall be retained by the Agency following termination, completion or expiration of this Agreement for purposes of State of Oregon or Federal examination and audit, as established by Federal, State or City retention schedules (whichever is longer). Currently, the City of Portland's retention requirement for these documents is 10 years after close-out, or as specified in the agreement, whichever is longer. A nonexclusive list of code and statutes commonly applicable to retention include:
  - i. City of Portland Retention Schedules, Section 4808  
<http://www.portlandonline.com/auditor/index.cfm?c=27183&a=7949>
  - ii. OAR 166-200-0050(17)
  - iii. 2 CFR 200.333-337
- o) To obtain a copy of 2 CFR 200 Subparts A-F, and to apprise itself of all rules and regulations set forth.



- p) Not to supplant its local funds with federal funds but rather use the federal funds to increase the amount of funds that, in the absence of federal aid, would be made available to fund programs within the UASI grant program guidelines.
- q) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State and certify that the Agency and any sub-recipients of the Agency are registered with the State as being NIMS compliant.
- r) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide information requested to ensure compliance with applicable laws.
- s) To comply with federal guidelines (2 CFR 200.213) concerning exclusions for contractors and sub-recipients by verifying that a contractor or sub-recipient is not excluded from receiving federal funds prior to any expenditure made and record of verification is maintained. Currently, verification can be made at the System for Award Management site – [www.sam.gov](http://www.sam.gov). A copy of this report must be submitted to the City, as part of the documents required for reimbursement requests. Agency is responsible for further requiring this inclusion of a similar term or condition in any subsequent lower tier covered transactions.
- t) To timely comply with all reporting obligations required by the Grant's terms and the City.
- u) To provide the City with Performance and Program Reports, Financial Reimbursement Reports, Asset / Inventory Reports and Audit Reports when required by the City and in the form required by the City.
  - i. Performance reports are due to the City on a quarterly basis: April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup> during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
  - ii. Asset / Inventory Reports are due to the City on a biennial basis, on June 30<sup>th</sup> every two years.
  - iii. Results of the Agency's audit report that complies with 2 CFR 200 are due to the City fifteen (15) days after the Agency's receipt of the report, along with a corrective action plan (if applicable). Agencies expending \$750,000 or more in Federal awards during their fiscal year, are required to have an audit. 2 CFR 200.21 (including Subpart F and Appendix XI audit requirements can be found here:



[http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d75f90044e30262070fe0bc233c337f&mc=true&n=pt2.1.200&r=PART&ty=HTML#\\_top](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d75f90044e30262070fe0bc233c337f&mc=true&n=pt2.1.200&r=PART&ty=HTML#_top)

- iv. Financial Reimbursement Reports are due no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.
  - v. Per UASI Grant #17-170, Section 5b. Financial Reimbursement Reports, part ii, reimbursement for expenses will be withheld if Performance Reports are not submitted by the specified dates or are incomplete.
- v) To follow the travel expense and per diem guidelines as set forth by the U.S. General Services Administration (GSA) as well as the guidelines of the City and State. Per UASI Grant #17-170, Section 5b. Financial Reimbursement Reports, part iii, reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

GSA per diem rates can be found on the GSA website:  
<http://www.gsa.gov/portal/content/104877>

The City's guidelines can be found on the Office of the City Auditor's website:

BCP-FIN-6.13 Travel:  
<http://www.portlandonline.com/auditor/index.cfm?c=34747&a=160271>

BCP-FIN-6.14 Non-travel Meals, Light Refreshments and Related Miscellaneous Expenses:  
<http://www.portlandonline.com/auditor/index.cfm?&a=160283&c=34747>

- w) To maintain a list of all sub-recipients of the Agency, and ensure that the entities on that list are in compliance with the terms of the Grant Agreement, including Attachment 2 and Exhibits A, B, C and D and Attachment 3. The list of sub-recipients shall be made available to the City by the Agency upon execution of this Intergovernmental Agreement, and the Agency shall immediately inform the City of any changes to the list. If the Agency's sub-recipient is a government entity, then the Agency must have an intergovernmental agreement in place with them and a copy of said agreement must be sent to the City. The Agency shall not enter into any sub-recipient agreement without the City's prior written consent. The

City's consent to any sub-recipient agreement shall not relieve the Agency of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to the Agency and sub-recipients have no right to payment directly from the City. Agency is solely responsible for paying Agency's sub-recipients and nothing contained herein shall create or be construed to create any contractual relationship between any sub-recipient and the City. All sub-recipient agreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition and use small, minority, or women-owned or disadvantaged business to the extent practicable. Agency agrees to include all relevant provisions of this Agreement in all sub-recipient agreements entered into as part of the activities undertaken in furtherance of this Agreement and will take appropriate action pursuant to any sub-recipient agreement upon a finding that the sub-recipient is in violation of regulations issued by any federal agency.

- x) To develop a sub-recipient monitoring plan that shall be in compliance with the requirements set forth in the most recent versions of applicable CFR and OMB Circulars.
- y) To comply with all applicable laws, regulations, program guidance and guidelines of the Federal Government, the State of Oregon, and OEM in the performance of this Agreement, including but not limited to those listed in UASI Grant #17-170, Exhibit B, Federal Requirements and Certifications, Exhibit C, Subagreement Insurance Requirements and Exhibit D, Information Required by 2 CFR 200.331(a).
- z) To comply with its obligations under this Agreement and any applicable, incorporated document or documents.

3. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall be terminated upon the end date of the agreement between the City and the State (UASI Grant #17-170), unless otherwise extended by the parties in writing or this IGA is terminated due to failure of one of the Parties to perform.
4. **Amendment.** This Agreement may be modified or amended only by the written agreement of both parties but must remain consistent with the requirements of the UASI program and the Agreement between the State and the City.
5. **Termination.** Either party may terminate this Agreement in the event the other fails to comply with its obligations under the Agreement. If the Agreement is terminated due to the Agency's failure or inability to comply with the provisions of the grants or the Agreement, the Agency will be liable to the

City for the full cost of any equipment, materials, or services provided by the City to the Agency, and for any penalties imposed by the State or Federal Government. Each party will notify the other, in writing, of its intention to terminate this Agreement and the reasons therefore. The other party shall have fourteen days, or such other time as the parties may agree, from the date of the notice in which to correct or otherwise address the compliance failure which is the subject of the notice.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding that arises from or relates to this Agreement shall be brought and conducted exclusively within the Circuit Court of the state of Oregon for the county of Multnomah. In the event a claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon.
7. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
8. **Survival.** The terms, conditions, representations and all warranties in this Agreement shall survive the termination or expiration of this Agreement.
9. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond reasonable control. Each party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Agreement.
10. **Indemnification.**
  - a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the Agency shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees arising out of or resulting from the acts of the Agency, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall indemnify, defend and hold harmless the Agency from and against all liability, loss and costs arising out of or resulting from the acts of the City, its officers, employees and agents in the performance of this agreement.

- b. The Agency shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM, the City, and their officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims
  - c. The Agency shall require its contractor(s) or subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, the City and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.
11. **Third Party Beneficiaries.** The City and the Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such persons are individually identified by name herein.
12. **Successors in Interest.** The terms of this Agreement shall be binding upon the successors and assigns of each party hereto.
13. **Entire Agreement.** The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the FY 2017 UASI program grant (Grant #17-170) and that it is the entire agreement between them relative to that grant.
14. **No Waiver of Claims.** The failure to enforce any provision of this Agreement shall not constitute a waiver by City of that or any other provision.
15. **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.



16. **Lobbying.** Agency certifies that none of the funds provided under this Agreement will be used to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress in connection with any Federal action concerning the award or renewal.
17. **Mandatory Disclosures.** Agency must immediately notify the City in writing of all violations of local, state and federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the funds under this Agreement as provided in 2 CFR 200.113.
18. **Workers' Compensation.** Each party shall be responsible for providing worker's compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027). Neither party shall be required to provide or show proof of any other insurance coverage.
19. **Nondiscrimination.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
20. **Human Trafficking (2 CFR Part 175).** If funding is provided to a private entity, the private entity, its employees, contractors and sub-recipients under this Agreement and their respective employees may not:
  - o Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - o Procure a commercial sex act during the period of time the award is in effect; or
  - o Use forced labor in the performance of the subgrant or subgrants under the award.

The Agency must inform the City and OEM immediately of any information the Agency receives from any source alleging a violation of any of the above prohibitions in the terms of this IGA. OEM may terminate Grant #17-170, without penalty, for violation of these provisions. OEM's right to terminate Grant #17-170 unilaterally, without penalty, is in addition to all other remedies under Grant #17-170. The Agency must include these requirements in any subgrant made to public or private entities.

21. **Access to Records.** Agency shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, Agency shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Agency's performance. Each party shall maintain, and shall



have access to the books, documents, papers and other records of the other party which are related to this agreement for the purpose of making audit, examination, excerpts, and transcripts. Copies of applicable records shall be made available upon request. Access to records for the City, Oregon Emergency Management (OEM), Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall not be limited to the required retention period but shall last as long as records are retained. Agency is required to retain the records relating to this Agreement in compliance with the schedules and requirements of 2 CFR 200.333 through 200.337.

- 22. Subcontracts and Assignment.** Notwithstanding any goods or services the Agency procures using UASI grant funds received under this IGA, neither party will subcontract or assign any part of this agreement without the prior written consent of the other party. Notwithstanding City approval of a subcontractor, the Agency shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Agency hereunder.

**City of Portland**

\_\_\_\_\_ Date \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_ Date \_\_\_\_\_  
Attorney

**Clackamas County, Oregon**

\_\_\_\_\_ Date \_\_\_\_\_

APPROVED AS TO FORM

  
\_\_\_\_\_ Date 5/15/18  
Attorney

**Attachment 1-Other Certifications**

**I. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION**

This certification is required by the regulations implementing Executive Order 12549 and 12689, 2 CFR part 180.

By signing and submitting this Agreement, the Agency certifies as follows:

The certification in this clause is a material representation of fact relied upon by **City of Portland**. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to remedies available to **City of Portland**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Agency agrees to comply with the requirements throughout the period of this Agreement. The Agency further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Organization \_\_\_\_\_

Date \_\_\_\_\_

II.

**CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned **Agency** certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such expenditure or failure.

The Agency, Clackamas County, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Agency understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Agency's Authorized Official

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### III. Subrecipient Insurance

Agency shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement. **In lieu of filing the certificate of insurance required herein, if Agency is a public body, Agency may furnish a declaration that Agency is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.272 and 30.273.**

1. Workers' Compensation Insurance: Agency, its contractors and all employers working under this Agreement shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, Agency, its contractors and any employers working under this Agreement shall maintain coverage for all subject workers.
2. Commercial General Liability Insurance: Agency shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$ 1,000,000, and aggregate limit of not less than \$2,000,000.
3. Automobile Liability Insurance: Agency shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned autos. This coverage may be combined with the commercial general liability insurance policy.
4. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name the City and its bureaus, officers, agents and employees as Additional Insureds, with respect to the Agency's or its contractor's activities to be performed or services to be provided. Agency shall provide proof of additional insured coverage in the form of an additional insured endorsement form or a policy coverage document acceptable to City. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
5. Continuous Coverage; Notice of Cancellation: Agency shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from Agency to the City. If the insurance is canceled or terminated prior to termination of the Agreement, Agency shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement.
6. Proof of Insurance: Agency shall provide proof of insurance through acceptable certificate(s) of insurance, along with applicable additional insured endorsements, to City at execution of the Agreement and prior to any commencement of work or delivery of goods or services under the Agreement or initial payment of grant funds. The certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to City. Agency shall pay for all deductibles and premium from its non-grant funds. City reserves the right to require, at any time, complete and certified copies of the required insurance policies evidencing the coverage required.



## ATTACHMENT 2

**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
HOMELAND SECURITY GRANT PROGRAM  
URBAN AREA SECURITY INITIATIVE**

**CFDA # 97.067**

**CITY OF PORTLAND**

**\$2,496,835**

**Grant No: 17-170**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and the **City of Portland**, hereinafter referred to as "Subrecipient," and collectively referred to as the "Parties."

- 1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2017** and ending, unless otherwise terminated or extended, on **May 31, 2020** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
- 2. Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

- 3. Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$2,496,835** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2017 Urban Area Security Initiative (UASI) grant.
- 4. Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
- 5. Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.



**a. Performance Reports.**

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2017 Urban Area Security Initiative program.
- ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

**b. Financial Reimbursement Reports.**

- i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

**6. Disbursement and Recovery of Grant Funds.**

- a. **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the Urban Area Security Initiative program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at <http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx>.
- b. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
  - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

- ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
  - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.
- c. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

**7. Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

- a. **Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **NIMS Compliance.** By accepting FY 2017 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at [http://www.oregon.gov/oem/emresources/Plans\\_Assessments/Pages/NIMS.aspx](http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx).

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**8. Records Maintenance and Access; Audit.**

- a. **Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles,

generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

**b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

**c. Audits.**

i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

**9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

**a. Subagreements.** Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.
  - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
  - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
  - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
  - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
  - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
  - iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
  - v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.



- vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
  - vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
  - ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.
- c. Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

## **10. Termination**

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:



- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
  - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v. or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

## 11. GENERAL PROVISIONS

- a. **Contribution.** Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceeding, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any negligent or wrongful act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.
- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

- c. **Responsibility for Grant Funds.** Any Subrecipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Subrecipient of Grant Funds, 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.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by

the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.
- j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

CITY OF PORTLAND

By

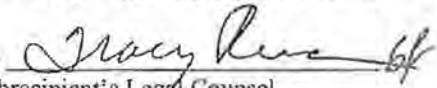


Name Ted Wheeler, Mayor  
(printed)

Date 7/16/18

**APPROVED AS TO LEGAL SUFFICIENCY**

(If required for Subrecipient)

**APPROVED AS TO FORM**  
By   
Subrecipient's Legal Counsel  
CITY ATTORNEY

Date 3/23/18

**Subrecipient Program Contact:**  
Denise Barrett  
Senior Program Manager  
Portland Bureau of Emergency Management  
9911 SE Bush St  
Portland, OR 97266  
503-823-2691  
denise.barrett@portlandoregon.gov

**Subrecipient Fiscal Contact:**  
Keren Ceballos  
Finance Manager  
Portland Bureau of Emergency Management  
9911 SE Bush St  
Portland, OR 97266  
503-823-4187  
keren.ccballos@portlandoregon.gov

OEM

By



Sonya Pedersen  
Operations and Preparedness Section Manager, OEM

Date 4/05/18

**APPROVED AS TO FORM**

By Marvin D. Fjordbeck  
Senior Assistant Attorney General

Date November 17, 2017

**OEM Program Contact:**  
Sidra Metzger-Hines  
Grants Coordinator  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-3661  
sidra.metzgerhines@state.or.us

**OEM Fiscal Contact:**  
Angela Creasey  
Senior Grants Accountant  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-3316  
angela.creasey@state.or.us

**Exhibit A**  
**Grant No: 17-170**  
**Subrecipient: City of Portland**

**I. Project Description**

Project Title: Urban Area Security Initiative

This grant supports regional urban area projects selected by the Regional Disaster Preparedness Organization (RDPO) as vital to the regional preparedness, response and recovery efforts. The budget categories below support the following projects:

- Grant Management and Administration
- Cyber Security Assessment
- Just-in-Time Shelter Training Kits
- Mass Fatality Project
- MCSO Air Support Equipment
- Pediatric Surge Planning
- Portable Water Pipeline
- Portland Area Capabilities Exercise 2019
- PPB Air Support Equipment
- PublicAlerts.org Improvements
- Regional Citizen Corps Capacity Building
- Regional Disaster Preparedness Organization
- Regional Earthquake Impact Analysis
- Regional Multi-Agency Coordination System Development – Phase IV
- WCSO Air Support Equipment
- Windshield Survey Procedures

**II. Budget Categories**

<b>Administration</b>	\$ 131,850
<b>Planning</b>	\$ 828,930
<b>Training</b>	\$ 21,855
<b>Exercise</b>	\$ 14,900
<b>Equipment</b>	
Other Authorized Equipment	\$ 61,285
CBRNE Operational and Search & Rescue	\$ 450,000
CBRNE Aviation Equipment	\$ 473,000
CBRNE Logistical Support	\$ 135,015
Information Technology	\$ 380,000
<b>Total</b>	<b>\$2,496,835</b>



## EXHIBIT B

### Federal Requirements and Certifications

**I. General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

#### II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. Compliance with Applicable Federal Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
    - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
    - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
  2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
  3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
  4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
  5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
  6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement

may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

**D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.**

1. **Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
  - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
  - g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.
2. **Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

- F. Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.
- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.

- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.
- R. Energy Policy and Conservation Act.** Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act.
- S. Lobbying Prohibitions.** Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and 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 any Federal action concerning the award or renewal.
- T. Terrorist Financing.** Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws



## EXHIBIT C

### Subagreement Insurance Requirements

#### GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

#### TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers' liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

iii. **AUTOMOBILE Liability Insurance: Automobile Liability.**

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:



Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor 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 Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor 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 contractor may request and OEM may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

## Exhibit D

### Information required by 2 CFR 200.331(a)

- I. Federal Award Identification:
  - (i) Sub-recipient name (which must match registered name in DUNS): City of Portland
  - (ii) Sub-recipient's DUNS number: 054971197
  - (iii) Federal Award Identification Number (FAIN): EMW-201-SS-00031-S01
  - (iv) Federal Award Date: September 01, 2017
  - (v) Sub-award Period of Performance Start and End Date: From October 1, 2017 to May 31, 2020
  - (vi) Amount of Federal Funds Obligated by this Agreement: \$2,496,835
  - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement \*: \$2,496,835
  - (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$2,496,835
  - (ix) Federal award project description: The Urban Area Security Initiative Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities in the Portland regional area essential to achieving the National Preparedness Goal of a secure and resilient Nation.
  - (x)
    - (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
    - (b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
    - (c) Contact information for awarding official: Andrew Phelps, Director – Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062
  - (xi) CFDA Number and Name: 97.067 Homeland Security Grant Program  
Amount: \$6,659,100
  - (xii) Is Award R&D? No
  - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 0%

\*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.



**RDPO**

**Regional Disaster Preparedness Organization**

Unified. Prepared. Resilient.

**Program Management  
Standard Operating  
Procedure:**

for Urban Areas Security  
Initiative (UASI) Program Grant  
Awards and RDPO Local  
Contributed Funds

**October 13, 2017 Update**

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## ACRONYMS

<b>DHS</b>	<b>U.S. Department of Homeland Security</b>
<b>DWG</b>	<b>Discipline Work Group</b>
<b>FEMA</b>	<b>Federal Emergency Management Agency</b>
<b>GAA/POC</b>	<b>Grant Administrative Agency/Point of Contact (i.e., PBEM, for UASI grants)</b>
<b>GFC</b>	<b>Grants and Finance Committee</b>
<b>LCF</b>	<b>Local Contributed Funds (i.e., from RDPO Contributing Partners)</b>
<b>LCSM</b>	<b>Local Cost Share Method</b>
<b>PC</b>	<b>Policy Committee</b>
<b>PMR</b>	<b>Portland Metropolitan Region (A.K.A., Portland Urban Area)</b>
<b>PrC</b>	<b>Program Committee</b>
<b>PUA</b>	<b>Portland Urban Area (A.K.A., Portland Metropolitan Region)</b>
<b>PUAHSS</b>	<b>Portland Urban Area Homeland Security Strategy (A.K.A., the RDPO Strategic Plan)</b>
<b>RDPO</b>	<b>Regional Disaster Preparedness Organization</b>
<b>SAA</b>	<b>State Administrative Agency (i.e., Oregon Emergency Management for the UASI grant)</b>
<b>SC</b>	<b>Steering Committee</b>
<b>TF</b>	<b>Task Force</b>
<b>UASI</b>	<b>Urban Areas Security Initiative</b>
<b>UAWG</b>	<b>Urban Area Work Group (A.K.A., the RDPO Structure)</b>

Note: This document supersedes "Standard Operating Procedure: Urban Areas Security Initiative (UASI) Program Management under the Regional Disaster Preparedness Organization (RDPO), April 11, 2012."

## I. Background

The Regional Disaster Preparedness Organization (RDPO) is a partnership of government agencies and private and non-profit organizations working together to build and maintain regional disaster preparedness capabilities in the Portland Metropolitan Region (PMR)<sup>1</sup> through strategic and coordinated planning, training and exercising, and investment in technology and specialized equipment.<sup>2</sup> The PMR encompasses the City of Portland; Clackamas, Columbia, Multnomah, and Washington Counties in Oregon; and Clark County in Washington.

The work of the RDPO is conducted and coordinated through a well-defined structure of committees and work groups, including Policy, Steering and Program Committees; discipline-specific work groups; and cross-discipline task forces. RDPO public, private and non-profit sector partners from across the PMR work collaboratively to develop, maintain, and implement a regional disaster preparedness vision, strategy (i.e., strategic plan), work plan, and process.



Figure 1: Portland Metropolitan Region

The federal Urban Areas Security Initiative (UASI) was established in 2003 as part of the U.S. Department of Homeland Security Grant Program (HSGP) and awards grant funds to address the unique risk-driven and capabilities-based planning, organization, equipment, training, and exercise needs of high-threat, high-density metropolitan areas (designated, "Urban Areas"). UASI program implementation and governance must include regional partners (i.e., an Urban Area Work Group or UAWG) and should have balanced representation among entities with operational responsibilities for prevention, protection, mitigation, response, and recovery activities within the region. With its broad, inclusive structure, the RDPO functions as the PUA's Urban Area Work Group (UAWG) and the RDPO Strategic Plan serves as the Portland Urban Area Homeland Security Strategy (PUAHSS) for the purposes of guiding UASI and other RDPO disaster preparedness investments in the PMR.

In support of some of its administrative, operating and program costs, the RDPO also receives annual contributions from its Core Group and other Participating Jurisdictions<sup>3</sup>, known as "Local Contributed

<sup>1</sup> Otherwise known as the Portland Urban Area (PUA) for UASI purposes.

<sup>2</sup> From 2008 – 2009, the Portland UAWG engaged stakeholders from throughout the PUA in the development of a more cohesive, integrated and efficient organizational structure to coordinate regional all-hazards disaster preparedness than existed at the time. Formalized by [intergovernmental agreement](#) in January 2015, the RDPO replaces the Regional Emergency Management Group (REMGE), which was established initially in 1993 and reaffirmed in 2003, and incorporates the organization and processes created in 2003 to manage the Urban Areas Security Initiative (UASI) grant awarded to the Portland Urban Area.

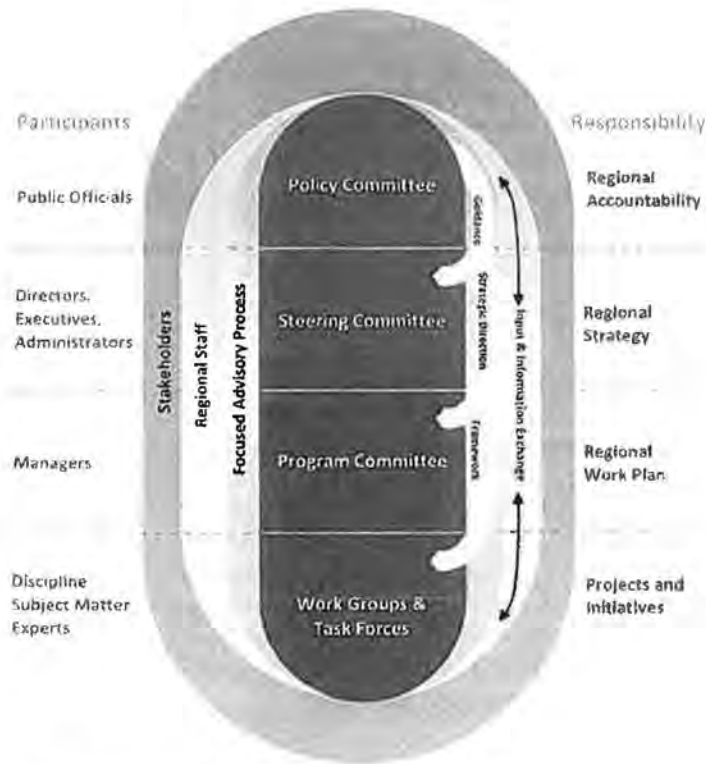
<sup>3</sup> Core Group refers collectively to the group of Participating Jurisdictions that contribute funds to cover the RDPO's core operating and administration costs, as set forth in the RDPO IGA. Participating Jurisdictions are the counties,

Funds”, which are calculated by a local cost share methodology that is updated annually and approved by the RDPO Policy Committee/Core Group prior to the start of a new fiscal year (July 1 – June 30).

The fiscal agent for the RDPO, including Local Contributed funds and the UASI Grant Program, is the City of Portland. The assigned Grant Administrator/Point of Contact (POC) is the Director of the Portland Bureau of Emergency Management (PBEM).

These standard operating procedures govern the allocation of all UASI Grant Program Awards and RDPO Local Contributed Funds.

## II. RDPO/UAWG Composition, Roles and Responsibilities, and Decision-Making



*Figure 2: The RDPO Structure*

The RDPO/Portland UAWG is comprised of these primary organizational components:

- Policy Committee (PC)
- Steering Committee (SC)
- Program Committee (PrC)
- Discipline Work Groups (DWGs) and Task Forces (TFs)
- Grants and Finance Committee (GFC)
- Grant Administrator/Point of Contact (GA/POC)/RDPO Lead Administrative

cities, regional governments, and special districts within the region that sign the RDPO IGA.

Agency

- RDPO Manager and planning and administrative staff

Note: [Click here](#) to see the RDPO structure unpacked, including current DWGs and TFs.

**A. Policy Committee (PC)** — The Policy Committee is the governing body of the RDPO and is comprised of elected officials and chief executive officers from Participating Jurisdictions and other member organizations. The Policy Committee composition includes:

- An elected official from the City of Portland;
- An elected official from each of the Region’s five counties;
- An elected official from every other Participating Jurisdiction whose governing body is comprised of elected officials;
- The chief executive officer or designee of every other Participating Jurisdiction whose governing body is not comprised of elected officials; and
- The chief executive officer or designee of any other member organization that makes a financial contribution as indicated in section VIII of the RDPO IGA (i.e., contributing member).

The Policy Committee:

- Provides political leadership to develop and promote a unified regional vision and strategy for disaster preparedness and to establish and operate a sustainable regional disaster preparedness organization;
- Approves and promotes the RDPO Strategic Plan/Portland Urban Area Homeland Security Strategy (PUAHSS) and priorities, as developed by the Steering Committee;
- Provides political leadership to promote the development, adoption, and implementation of regional disaster preparedness policies;
- Advocates on state and federal bills and other issues to advance disaster preparedness and resilience priorities in the RDPO strategic plan;
- Approves budget, grant, contracting, and other financial procedures, which define organizational roles, responsibilities, and authorities for management of UASI and other funds contributed to the RDPO or awarded to the PUA and managed by the RDPO;
- Reviews the efficacy of the RDPO and its IGA on an on-going basis; and
- Advises on issues brought forward by the Steering Committee.

The designated representative to the PC from each contributing member organization has the right to vote on all matters before the PC. Representatives from non-contributing member organizations may participate in all PC discussions and deliberations but may not vote on matters related to the RDPO’s financial activities<sup>4</sup>. They may, however, vote on all other matters before the Committee.

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<sup>4</sup> Financial Activities include establishing the contribution amounts and allocation formulas for local partner contributions to the RDPO; approving grant applications, budgets and expenditures; and allocating, reallocating grant and other funds contributed or made available to the organization.

**B. Steering Committee (SC)** —The Steering Committee is comprised of senior executives from Participating Jurisdictions and other member organizations and includes both organizational and discipline-specific representatives. The Steering Committee composition includes:

- A representative from the City of Portland;
- A representative from each of the PMR/PUA's five counties;
- A representative of every other Participating Jurisdiction;
- A representative of any other member organization that makes a financial contribution as indicated in section VIII of the RDPO IGA (i.e., contributing member);
- When not already represented on the Committee, a representative from each of the following disciplines – fire, law enforcement, public works, emergency management, public safety communications, public health, and healthcare;
- A non-governmental organization representative;
- A private sector utility representative;
- A private sector industry representative; and
- Up to two at-large representatives.

The Steering Committee:

- Develops and updates the RDPO Strategic Plan/PUAHSS every three to five years through a process that engages the entire organization and key external stakeholders;
- Approves the annual RDPO Program Development/Projects Pipeline process, including establishing priorities and other project development guidance/requirements;
- Approves, adjusts as needed, and prioritizes a set of projects recommended by the Program Committee for the RDPO Project Pipeline (pre-award of funding) and projects for reallocation of funding (within assigned authority limit);
- Approves the UASI grant application timeline to ensure completion of the application by the grant submission deadline;
- Based on grant award guidance in the HSGP Notice of Funding Opportunity (NOFO), determines the priorities/investment justifications and selects and approves the final set of projects from the RDPO Projects Pipeline to include in the UASI grant award application;
- Approves other RDPO Pipeline projects for funding with RDPO Local Contribution Funds;
- Approves project amendments within authority limits set by the Policy Committee;
- Reviews and approves the policies and procedures of all committees and work groups, except those of the Policy Committee, which approves its own.
- Develops, and adopts where appropriate, such other policies and procedures as are necessary to ensure effective Committee and organizational operations and administration; and
- Monitors and evaluates the overall effectiveness of the RDPO program and organization and recommends/makes strategic or organizational changes as appropriate.

The designated representative to the SC from each contributing member organization has the right to vote on all matters before the SC. Representatives from non-contributing member organizations may participate in all SC discussions and deliberations but may not vote on matters related to the RDPO's financial activities. They may, however, vote on all other matters before the Committee.



- C. **Program Committee (PrC)** —The Program Committee is comprised of the chairs of the RDPO’s Discipline Work Groups (DWGs), and a separate chair and vice chair drawn from the DWGs and elected by the Committee. The Committee also includes the chairs of all chartered RDPO task forces, a representative of the RDPO’s Grants and Finance Committee, a representative of the State Administrative Agency<sup>5</sup> (i.e., Oregon Office of Emergency Management), and RDPO staff.

The Program Committee (PrC):

- Contributes to the development, implementation, and maintenance of the RDPO Strategic Plan/PUAHSS;
- Vets all project proposals, including project narratives and budgets, submitted as part of the RDPO Projects Pipeline process, using the Steering Committee’s project development guidance;
- Ensures cross-discipline coordination and information sharing among the DWGs.
- Develops project proposals for projects that overlap multiple WGs or for which there is no responsible WG or task force in place;
- Approves project amendments within authority limits set by the Policy Committee; and
- Charters task forces, as needed, to implement multi-disciplinary projects, and oversees task force progress;

The PrC’s Chair and Vice Chair and the Discipline Work Group chairs have the right to vote on all matters before the Committee. Other Program Committee representatives may participate in Committee discussions and deliberations but may not vote.

- D. **Discipline Work Groups (DWGs)** — Discipline Work Groups (DWGs) are comprised of staff from Participating Jurisdictions and other member organizations. Some DWGs may have one or more sub-committees focused on a closely aligned sub-discipline or subject matter.

The DWGs:

- Provide expert advice to the Program Committee on regional capabilities, strategic needs and priorities, and recommended initiatives, policies, and procedures;
- Design, propose and execute projects in alignment with the RDPO Strategy/PUAHSS and other priorities and guidance provided by the Steering Committee;
- Provide group members to contribute to the annual Threat and Hazard Identification and Risk Assessment (THIRA) update process, to serve on task forces chartered by the Program Committee, and to complete other priority RDPO work; and
- Monitor and report on the progress of assigned projects and other RDPO work.

Each DWG maintains its own written decision-making process, which typically includes simple majority voting of its designated voting membership and/or consensus, depending upon the matter.

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<sup>5</sup>State Administrative Agency (SAA) refers to the state agency responsible for administering homeland security grants, including the Urban Areas Security Initiative grant. For the PUA, that agency is the Oregon Office of Emergency Management (OEM).

- E. Task Forces (TFs)** — Task Forces are multi-discipline bodies comprised of representatives drawn from RDPO Discipline Work Groups. Other representatives from within and outside of the organization may participate in task force activities to provide appropriate subject matter expertise.

Task Forces:

- Implement the regional strategy and work plan by executing assigned projects and design the next phase(s) of a project and submit as project proposals for the RDPO Project Pipeline process;
- Provide expert advice to the Program Committee on regional capabilities, strategic needs and priorities, and recommended initiatives, policies, and procedures;
- Develop coordinated, multi-discipline approaches; and
- Monitor and report on the progress of assigned work to their parent DWG or Committee.

Each task force maintains its own decision-making process (e.g., simple majority voting of its designated voting membership and/or consensus).

- F. Grants and Finance Committee (GFC)** — The GFC is comprised of financial staff from Participating Jurisdictions and other member organizations. At minimum, the Committee will include representatives from the UASI Grant Administrator/Point of Contact (see point G below), each of the region’s five counties, any other contributing member that wishes to designate a representative to the GFC, and the SAA. The GFC works together to ensure that regional partners/grant sub-recipients comply with federal, state, local, and city funding requirements. GFC members assist PBEM in monitoring compliance, including identifying challenges to be addressed and best practices that can be shared among members and with the SAA and FEMA. The GFC does not make governance or program decisions.

- G. UASI Grant Administrator/Point of Contact (GA/POC)** — The UASI GA/POC (also known as the RDPO Lead Administrative Agency)<sup>6</sup> represents the fiscal agent, the City of Portland, and is responsible for communication and coordination with the SAA, Oregon Emergency Management (OEM). For the period of this SOP, the GA/POC is the Portland Bureau of Emergency Management (PBEM).

As the GA/POC for PUA-awarded UASI grants and RDPO Local Contributed Funds, PBEM provides fiscal oversight, accounting, grant management and procurement/contracting services, and is responsible for ensuring grant compliance and sound fiduciary performance. In addition, PBEM:

- Designs the program development processes and tools, in collaboration with the RDPO Manager, RDPO planning staff and the Program and Steering Committees;
- Manages the RDPO Projects Pipeline process, in coordination with RDPO staff

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<sup>6</sup> The Lead Administrative Agency (LAA) is an RDPO Participating Jurisdiction selected by the Policy Committee to support the organization’s personnel, administrative, and fiscal operations. The responsibilities of the LAA, the obligations of the RDPO as it pertains to its relationship with the LAA, and the mutual understandings between the LAA and the RDPO will be spelled out in a Service Level Agreement (SLA) negotiated between the two parties.

- and the Program and Steering Committees;
- Completes and submits federal and state grant applications, manages the project amendments processes, and approves project amendments within authority limits set by the Policy Committee;
- Coordinates with the RDPO Manager on the annual Local Cost Share Method and manages the fund;
- Submits proposals and reports to the SAA;
- Provides grant program implementation updates to the Program and Steering Committees; and
- Leads and coordinates the Grants and Finance Committee.

**H. RDPO Manager and Other RDPO Staff** —The RDPO Manager, among other things, manages the organization, including facilitating the Policy and Steering Committees; develops and maintains new relationships for the organization; designs and facilitates the strategic planning process and writes and updates the strategic plan; supports the launch of new projects/initiatives and the formation/launch of any new DWGs or task forces; and coordinates all RDPO advocacy and communications.

The RDPO Planning Coordinator, among other things, facilitates the annual update of the Portland Urban Area Threat and Hazard Identification and Risk Assessment (THIRA), data from which feeds into the RDPO's strategic planning process and guides project investments; manages the Program Committee; and manages implementation of regional projects and/or supports project task forces, including those producing preparedness plans for the region.

The RDPO Manager and Planning Coordinator both support the GAA/POC's staff, as indicated in point G. above.

### **III. RDPO Regional Strategy and Program Development/Projects Pipeline**

The RDPO Steering Committee is responsible for charting the direction of the RDPO and conducts a program review and strategic direction-setting process every three to five years. Subject matter experts and partner jurisdictions and agencies at all levels of the organization contribute to this process. The RDPO Manager is charged with designing and facilitating the process, as well as writing the plan.

The SC develops regional strategic goals and objectives in coordination with the PC and PrC and bases them on a synthesis of multi-source data, including from an external trends scan, an assessment of organizational and program challenges, opportunities, and gaps, and identified maintenance needs across the core capabilities in the RDPO's five mission areas: Prevention, Protection, Mitigation, Response and Recovery. To generate the data, the RDPO reviews past project results, its annual Threat and Hazard Identification and Risk Assessment (THIRA), exercise after-action reports, state and national preparedness reports, FEMA Region X and state THIRAs, post-disaster case studies, and other research.

The RDPO Strategic Plan/PUAHSS guides the annual program development process, known as the RDPO Projects Pipeline, which serves as the source of project investments utilizing UASI and RDPO Local Contributed Funds. The steps of the Program Development/Projects Pipeline process include:

- **Call for Projects and Issuing Project Development Guidance:** each fall (circa September), the RDPO Steering Committee (SC) calls for projects to fill the RDPO Projects Pipeline. PBEM Finance and Grants circulates to the Discipline Work Groups (DWGs), task forces (TFs) and the Program Committee (PrC) the SC's program development guidance, outlining year-over-year changes to the process, project criteria, and priorities (if any), along with project concept forms, inclusive of a self-scored project criteria checklist.
- **Review/Update Current Pre-Approved Projects Pipeline:** with the Steering Committee's program guidance in hand, the Program Committee, together with the Discipline Work Groups and Task Forces, reviews the pre-approved projects in the pipeline from past programming years to ensure they are still relevant and an investment priority. The project concepts and budgets are updated as needed.
- **Develop and Submit New Project Concepts:** from September to November, the PrC, DWGs and TFs develop and submit projects in alignment with the Steering Committee's project development guidance. These groups ensure that each project has a project manager and that project concepts are prioritized as a set before being submitted to the Program Committee for review. They include any pre-approved Pipeline projects in their prioritized projects package. Each DWG and TF must approve all projects submitted to the Pipeline by a simple majority. All TFs and DWG standing committees must submit their project proposals for approval to their parent DWG or Committee, which is then responsible for submission to PBEM Finance and Grants by the deadline.
- **Vet, Prioritize and Pre-Approve Projects (i.e., Pre-Award):** Usually between November and December, the PrC conducts the first review of the entire set of projects submitted using the SC's project guidance and project criteria score sheets. Using a simple majority voting process, the PrC votes on a package of projects and an order of prioritization, then submits that to the SC. From January to February, the PrC, along with project managers and other subject matter experts, presents the prioritized project package to the SC for review, amendment, if needed, and approval. The SC may make some adjustments to the proposed projects package (e.g., scale back some projects; change priority order of others) before approving a final pre-award Projects Pipeline.

#### IV. Funding Methodology

##### A. Overview

The RDPO has two main funding streams: UASI grant awards and RDPO Local Contributed Funds (LCF). The annual UASI grant award cycle in the spring drives the allocation of the bulk of these funds to projects in the RDPO Projects Pipeline. Funds not allocated at the time PBEM prepares and submits the UASI application remain in contingency until needed for project amendments, to cover funding gaps of projects with unforeseen additional needs, or for pooled funding reallocations to one or more projects in the Projects Pipeline, usually during the last year of the UASI grant cycle.

UASI grant funds are awarded by the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) on an annual basis. RDPO Local Contributed Funds

(LCF) are donated by partner local governments on an annual basis per the annual Local Cost Share Method (LCSM) and follow the same award processes and requirements as UASI funds.

UASI project awards are made by FEMA based on applications consisting of investment justifications submitted by the PUA. Each investment justification represents one or more related projects. RDPO LCF project awards are made by the RDPO Steering Committee through the same process as the UASI-funded project awards. The Steering Committee decides which projects to include in the investment justification package and which projects to fund with RDPO LCF through a simple majority voting process of eligible voting members.

All projects funded through UASI or RDPO LCF must align with the RDPO Strategic Plan/PUAHSS and the purpose and specific requirements of the UASI grant program. All UASI/RDPO grant sub-recipients are bound by contracts or intergovernmental agreements (IGAs) that require compliance with all grant terms and conditions. Awarded grant funds are managed by the RDPO/UAWG consistent with investment justifications and grant guidelines.

#### **B. Guiding Principles**

- All DWGs, TFs and standing committees have equal access and opportunity to seek UASI/RDPO grant funding.
- All jurisdictions that seek funding through the UASI grant program must be National Incident Management System (NIMS) compliant.
- Projects must align with the RDPO Strategic Plan/PUAHSS and other guidance, as provided by the Steering Committee.
- Jurisdictions purchasing a capital asset<sup>7</sup> with UASI Grant or RDPO LCF are, in effect, purchasing it for the region and shall 1) maintain it to its expected end of life; 2) capitalize the asset in their accounting system to eventually replace it; and 3) provide the asset to partners in the region to utilize, when available. (Note: FEMA or other recipients of HSGP funds may also request the use of the RDPO's UASI-funded assets for incident response outside the region).
- Projects that provide multi-jurisdictional or multi-disciplinary benefit are given preference over single agency or single jurisdiction requests.
- Whenever possible, projects should provide regional benefit by reducing risk, developing/supporting regional plans or developing/enhancing regional capabilities.
- As the UASI administrative agency, all questions to state or federal government partners about the eligibility of grant-funded projects or items shall be coordinated by PBEM.

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<sup>7</sup> “Capital assets” means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with generally accepted accounting principles. Capital assets include: (a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and (b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).



- All projects are subject to FEMA's Environmental Planning and Historic Preservation (EHP) review. No funds will be allocated to or expended on a project until the required EHP review has been completed and approved.

**C. RDPO Funding Allocation/Grant Cycle**

Figure 3 below illustrates the steps in the allocation of UASI grant and RDPO Local Contributed funds to approved projects in the RDPO Projects Pipeline, from the point where the PUA receives notification of a UASI award (usually in the late spring) to the end of the grant cycle (about three years later), when all projects funded with the UASI grant award and RDPO Local Contributed Funds designated for the cycle have been implemented. Note: the GAA/POC, with the approval of the RDPO Steering Committee, may elect to retain a portion of funds available for award in contingency in case of project overruns or unforeseen expenses.

**Figure 3: The RDPO UASI Grant Award and Local Contributed Funds Allocation and Program Implementation Process**



**D. RDPO Local Cost Share Method and Use of Contributed Funds**

The RDPO welcomes the financial contributions of its members to help advance its strategic priorities and fund its work plan, as well as to sustain its operations and administration. The organization also relies on and appreciates the in-kind donations (i.e., of agency staff time and

technical skills) and other resources that contribute to building and maintaining regional capabilities.

Section VIII.C of the RDPO Intergovernmental Agreement requires the Policy Committee to establish the contribution levels for a member organization to become a “Contributing Member” and have full voting rights. It also requires the Committee to identify the RDPO’s core operating and administration costs and establish the method for allocating those costs amongst a core group of Participating Jurisdictions.

Each year the Policy Committee approves an annual administration and operating budget for the RDPO and Local Cost Share Method (LCSM), to assist the Policy Committee in addressing both these needs. It also provides guidance for:

- Member organizations that would like to contribute to the RDPO but are not able or willing to meet the established levels, or who have no desire to become a Contributing Member with full voting rights; and
- Member organizations that would like to contribute to the RDPO’s priority projects in its work plan.

Figure 4, below, outlines the main steps in the process of securing the RDPO Local Contributed Funds (LCF).

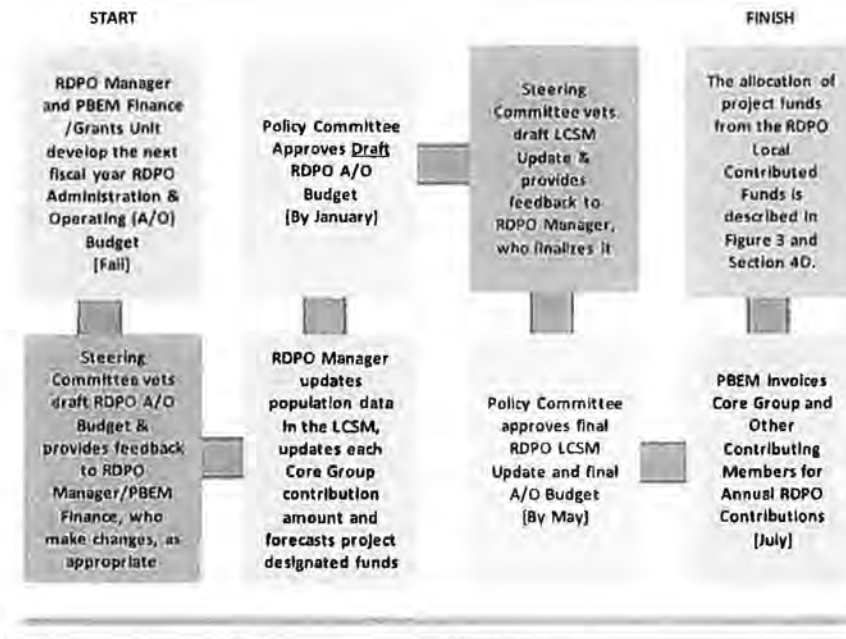


Figure 4: The RDPO Administrative and Operating Budget and Local Cost Share Method Update Process

#### E. Project Amendments

During project implementation, a project manager/DWG/TF may encounter a need to amend the original project scope and/or the project budget to move funds from one line to another in

a project budget (i.e., no cost amendment) or to request additional funds to complete the project in question. PBEM processes no cost amendment requests on a rolling basis and amendments requesting additional funds when sufficient UASI and/or RDPO LCF are available. The table below illustrates the RDPO committees authorized to approve amendments and the dollar levels assigned to each.

**Funding Reallocation Approval Matrix**

≤ \$5,000	\$5,001 - \$20,000	>\$20,000
The GAA, in coordination with the RDPO Manager	The Program Committee	The Steering Committee

The following section contains the three core types of project amendments and associated steps:

**1) No Cost Budget Revision/No Change in Project Scope<sup>8</sup>**

- The project manager identifies budget shortfalls and overages and prepares an amendment form to request administrative movement of funds from one budget line to another based on project needs;
- The project manager obtains DWG/TF or assigned committee approval, then submits the completed form to the GAA by email;
- The GAA, in coordination with the RDPO Manager, reviews the amendment and obtains further clarification from the project manager, as needed. The GAA may make further adjustments to the proposed amendment;
- The GAA submits the amendment to the SAA for approval;
- Once the SAA approves the amendment, the GAA provides final approval to the Project Manager and DWG/TF and informs the Program and Steering Committees.

**2) Additional Funds Request/No Change in Project Scope**

- The project manager identifies budget shortfalls and other budget line change requirements and prepares an amendment form to request additional funds and to make other budget revisions, as needed;
- The project manager obtains DWG/TF approval, then submits the completed form to the GAA by email;

<sup>8</sup> Minor changes in scope, such as "more planning steps, fewer training events" or a new approach to achieving the intended project outcomes are acceptable.

- Depending upon the amount of additional funding requested, the GAA then acts per the following table, which incorporates the Funding Reallocation Matrix and steps in the reallocation per authority level.

≤ \$5,000	\$5,001 - \$25,000	> \$25,000
<ul style="list-style-type: none"> <li>➤ The GAA reviews the request together with the RDPO Manager, and if no issues, approves it.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The GAA reviews the request and, if no issues, submits it to the Program Committee (PrC);</li> <li>➤ The PrC considers the request and either approves, disapproves or returns it to the DWG/TF for more information or changes (DWG revises and re-submits to GAA, who reviews and submits again to PrC for approval)</li> <li>➤ If the request is ≥ \$20,000, GAA submits the PrC-approved project amendment to the SAA for approval.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The GAA reviews the request and, if no issues, submits it to the PrC;</li> <li>➤ The PrC considers the request and recommends its approval to the Steering Committee (SC) considers the request and either approves, disapproves or returns it to the DWG/TF for more information or changes (DWG revises and re-submits to GAA, who reviews and submits again to SC approval)</li> <li>➤ GAA submits the SC-approved project amendment to the SAA for approval.</li> </ul>

For all amendment funding levels:

- Once the SAA approves the amendment, the GAA provides final approval to the PM/DWG/TF and informs the Program and Steering Committees.

### 3) Major Change in Project Scope/with or without Budget Change

On rare occasion, a project manager, DWG/TF, the PrC or SC determines that a project is not meeting the intended strategic objectives and requires a major change in scope, with either a no cost or cost amended budget. The following steps guide these requests:

- The project manager revises the project scope and budget, as needed, and completes an amendment form;

- The project manager obtains DWG/TF approval, then submits the amended project and amendment forms to the GAA by email;
- The GAA vets the revised project narrative and budget to ensure funding eligibility, budget accuracy, and compliance with city, state and federal requirements.
- The GAA then acts per the following table, which incorporates the Funding Reallocation Matrix and steps in the reallocation per authority level.

\$0 - \$25,000	> \$25,000
<ul style="list-style-type: none"> <li>➤ The GAA submits the project revision documentation to the PrC</li> <li>➤ The PrC reviews and approves (may return to DWG for changes before giving final approval)</li> <li>➤ If the request is ≥ \$25,000, GAA submits the PrC-approved project revision to the SAA for approval</li> </ul>	<ul style="list-style-type: none"> <li>➤ The GAA submits the project revision to the PrC</li> <li>➤ The PrC considers the request and recommends its approval to the SC</li> <li>➤ SC acts on the request (may return to DWG for changes before giving final approval)</li> <li>➤ GAA submits the SC-approved project revision to the SAA for approval.</li> </ul>

**F. Pooled Funding Reallocations**

Periodically, PBEM will inform the RDPO that a pool of funds (i.e., maintained in contingency and/or generated through project amendments) is available for reallocation to one or more projects in the RDPO Projects Pipeline. The Steering Committee will review the Pipeline and decide which projects to fund with pooled reallocation dollars, taking into consideration project priorities, funds available, grant implementation deadline, etc. The SC may ask the PrC for advice before making a final decision.

If the amount of funding for reallocation is not sufficient to support any of the existing projects in the Pipeline, the Steering Committee may initiate an emergency call for projects, utilizing appropriate steps in the allocation process (illustrated in Figure 3, page 10) to identify and fund projects with reallocation dollars.

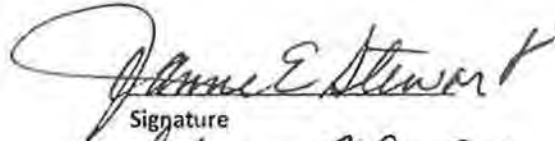
[Signature page follows.]



Approved by the Policy Committee: October 13, 2017

Date

Jeanne Stewart  
Policy Committee Chair Name

  
Signature  
Chair R.D.P.O



NANCY S. BUSH  
DIRECTOR

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

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County and City of Lake Oswego for  
the activation of the Clackamas County Emergency Notification System

<b>Purpose/Outcomes</b>	Approval of IGA.
<b>Dollar Amount and Fiscal Impact</b>	Lake Oswego Communications (LOCOM) agrees to pay a portion of the annual cost of the emergency notification system based on a formula in the IGA. FY 18/19 – LOCOM will pay Clackamas County \$6,321.00
<b>Funding Source</b>	N/A
<b>Duration</b>	Renews annually unless terminated
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	N/A

**BACKGROUND:**

Clackamas County is upgrading its Emergency Notification System also known as CCENS. The current system in place is outdated and does not allow for integration with the federal Integrated Public Alert and Warning System (IPAWS). The new contract and vendor will allow for integration into that system which will allow us to access the Emergency Alert System (EAS) digitally and will provide us with the technology to send Wireless Emergency Alerts (WEA) messages when warranted. WEA messages are the same technology as Amber Alerts you may receive on your cell phone.

Lake Oswego Communications (LOCOM) has agreed to pay a portion of the cost of the system to share the system. Currently, LOCOM and CCDM have different systems, which creates problems with notifications crossing borders causing confusion for residents. Many residents are also confused when registering their cell phones for the system because they are not sure which system to sign up for. Clackamas County Communications (CCOM) and LOCOM also back-up each other for continuity of operations and currently dispatchers need to know how to use two systems instead of one. By sharing a system these issues will be mitigated.

County Counsel has reviewed and approved this IGA on 1/9/18.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the IGA.

Respectfully submitted,

Nancy Bush, Director

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY AND CITY of LAKE OSWEGO**

**Purpose**

- A. This Agreement is entered into between Clackamas County (County), by and through Clackamas County Department of Disaster Management (CCDM), Clackamas County Department of Communications (CCOM), and the City of Lake Oswego for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship for the activation of the Clackamas County Emergency Notification System ("System"). The project consists of (1) maintaining an emergency notification system with an agreed upon vendor, (2) administration of users within the system, (3) activating the public notification system for life-safety situations, (4) providing activation reports and summaries following activations, and (5) cost sharing between the County and the City for the system cost.

**Scope of Cooperation**

- A. The City of Lake Oswego through its Police Communications Center (LOCOM) agrees to:
  - 1. Assign a city staff representative to work with Disaster Management to:
    - a. Setup, edit, and delete System users.
    - b. Request, schedule and track training for LOCOM System users.
  - 2. Provide System data, including jurisdictional maps and any data to be incorporated into the System (i.e. Comcast data, if purchased).
  - 3. Provide text and all necessary information for requested notification templates to be pre-loaded into the System.
  - 4. Reimburse Clackamas County Disaster Management annually for a portion of the System cost, based on agreed upon formula in Attachment A.
  - 5. Liaison between Clackamas County and LOCOM user agencies for establishing authorized users of the System to conduct emergency/life safety notifications within the LOCOM service area, including the Lake Oswego Fire Department jurisdiction and

## INTERGOVERNMENTAL AGREEMENT

contract areas, the Milwaukie Police Department jurisdiction, and the West Linn Police Department jurisdiction.

6. Conduct boil water notifications for the municipal water departments within the LOCOM service area, including the City of Lake Oswego, Tigard Water Partnership, the City of West Linn and the City of Milwaukie.
7. Notify CCOM if, when conducting a notification, the emergency/life safety or boil water notification areas cross into or border CCOM's service area.
8. Designate a city employee to serve on the County-established System Oversight Committee, per Section B.7 below.

### B. County agrees to:

1. Authorize LOCOM access to the County's emergency notification system software produced by Everbridge during the term of this Agreement.
2. Provide contract oversight of the System vendor Everbridge.
3. Provide for the administration, coordination and evaluation of the System operation within Lake Oswego.
4. Purchase and upload 911 ALI Database Extract to the System.
5. Provide activation reports and summaries during and after activations in a timely manner.
6. Provide user "train-the-trainer" training to LOCOM on an annual basis and by special request.
7. Establish and maintain a System Oversight Committee to :
  - a. conduct after-action reviews of notifications, and
  - b. review system uses and agreements at least annually.

The System Oversight Committee shall be comprised as follows:  
See Attachment B

8. Invoice LOCOM annually in July.

## INTERGOVERNMENTAL AGREEMENT

- C. County and LOCOM agree to jointly review all issues, design developments, specifications, and documents for the System.

### **Compensation**

- A. County will be compensated annually for an administrative fee. The administrative fee will be based on the formula in Attachment A.
- B. There will be no other terms of compensation.

### **Liaison Responsibility**

Liaison from County for the Project will be:

Jamie Poole  
Clackamas County Disaster Management  
2200 Kaen Rd.  
Oregon City, OR 97045  
503-655-8838                      [jhays@clackamas.us](mailto:jhays@clackamas.us)

The City Manager shall designate from time to time a city employee to act as the City liaison, and shall notify the County liaison upon the designation of a new City liaison. The initial liaison from LOCOM will be:

Sue Scobert  
Lake Oswego Police Department (LOCOM)  
380 A Ave.  
Lake Oswego, OR 97034  
503-635-0252                      email: [sscobert@ci.oswego.or.us](mailto:sscobert@ci.oswego.or.us)

### **Indemnification and Insurance**

To the extent permitted by law, each party agrees to indemnify, defend, and hold harmless the other, and its officers, agents and employees, against all liability, loss, and costs arising from actions, suits, claims, or demands arising or resulting from performance of this agreement, except when due to the other party's sole negligence.

Each party shall obtain, at its own expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the other party, its officers, commissioners/councilors, and employees. This coverage must



## INTERGOVERNMENTAL AGREEMENT

be able to be applied to, and used for, the indemnity provision provided under this agreement. Alternatively, a party may maintain self-insurance as provided by Oregon law in lieu of the commercial liability insurance in order to ensure their ability to comply with the indemnity provisions of this agreement.

### Other Terms

- A. Compliance with Laws. County and LOCOM agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. No Assignment. This agreement may not be subcontracted, assigned or transferred by either party without the express written consent of the other party.
- C. Entire Agreement; Amendment. This agreement constitutes the entire agreement between the parties, and may be modified only in writing signed by both parties. This agreement may be amended at any time with the written agreement of both parties.

### Term of Agreement

- A. This agreement becomes effective when it is signed by both parties and automatically renews annually.

### Termination

- A. This agreement may be terminated by either party upon 30 days written notice.
- B. This agreement may be terminated at any time for nonperformance of any material term of this agreement.

In the event of termination the effective date of the termination is June 30. Accordingly, in the event of termination, no refund of any monies paid prior to the date of termination shall be due to LOCOM.

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[Next page contains signatures]

INTERGOVERNMENTAL AGREEMENT

**CLACKAMAS COUNTY**

By: \_\_\_\_\_  
Name: Jim Bernard  
Title: Chair  
Agency: Clackamas County Board of  
Commissioners  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Nancy Bush  
Title: Director  
Agency: Clackamas County Disaster  
Management  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Anna Pendergrass  
Title: Interim Director  
Agency: Clackamas County  
Communications (CCOM)  
Date: \_\_\_\_\_

\_\_\_\_\_  
Attest: Recording Secretary

\_\_\_\_\_  
Date

On file 1/9/18  
\_\_\_\_\_  
Approved as to form

**CITY OF LAKE OSWEGO**

By: \_\_\_\_\_  
Name: Scott Lazenby  
Title: City Manager  
Agency: City of Lake Oswego

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

ATTACHMENT A

Compensation Formula:

<b>Annual Cost of System</b>	<b>\$66,000.00</b>	
Less Special User Fees Recovered	(\$5,800.00)	
CCDM 50% Share	\$30,100.00	
<b>Remaining Portion Split Between PSAPS</b>	<b>\$30,100.00</b>	
LOCOM User Fees (2018)	\$6,321.00	0.21*
CCOM Users Fees (2018)	\$23,779.00	0.79*

LOCOM agrees to pay a prorated amount for Fiscal Year 2017-2018, in the amount of \$3,160.00, billed in January 2018.

LOCOM will pay their portion of the annual cost of the system based on the agreed upon formula above, billed in July each Fiscal Year (July-June). The amount due may change slightly because:

- more or less Special User Fees are recovered within a given annual term, and
- \*the percentage of the population within LOCOM's PSAP and within County's PSAP\*\*'s coverage area changes, as compared to the aggregate populations within both PSAPs. (\*\*County's PSAP population is based on the population within the portion of the County covered by County's PSAP.)

## ATTACHMENT B – SYSTEM OVERSIGHT COMMITTEE

The System Oversight Committee shall be comprised as follows:

- A. At a minimum:
  - 1 Disaster Management (DM) Staff (Designated by DM Director)
  - 1 CCOM Staff (Designated by CCOM Director)
  - 1 LOCOM Staff (Designated by LOCOM Communications Manager)
  
- B. In addition, at a maximum the following representatives can be designated in agreement by the DM Director, CCOM Director, and LOCOM Communications Manager:
  - 1 additional staff person each for DM, CCOM and LOCOM
  - 2 Law Enforcement Agency Representatives
  - 2 Fire Agency Representatives
  - 1 City Representative
  - 1 Water Provider Representative
  - 1 Dam Owner Representative



NANCY S. BUSH  
DIRECTOR

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

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Research Service Agreement No. 26178 with University of Oregon

<b>Purpose/Outcomes</b>	Approval of Research Service Agreement No. 26178 for National Hazard Mitigation Plan update for Clackamas County
<b>Dollar Amount and Fiscal Impact</b>	\$12,500 match for the planning project
<b>Funding Source</b>	General Fund
<b>Duration</b>	August 1, 2017 through August 31, 2018
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Federal Emergency Management Agency (FEMA) requires that counties and cities update their Natural Hazard Mitigation Plans (NHMP) every five years in order to be eligible for Hazard Mitigation Assistance funds (44 CRF 201). Clackamas County's last update the FEMA compliant NHMP in April of 2013 and is in need of an update. Because FEMA dollars availability for the project were delayed an extension for the plan was obtained through August 2018.

The purpose of this project is to update the existing NHMP, improve the risk assessment section through an enhanced assessment of lifeline infrastructure systems, and better integrate NHMP information in related county plans and planning documents. When implemented, the benefits of an updated NHMP include reduced loss of life and property and decreased long-term economic loss due to reduced recovery and reconstruction costs. In addition, by updating the plan Clackamas County will remain eligible for FEMA Hazard Mitigation Assistance.

This Agreement is effective August 1, 2017 through August 31, 2018. Clackamas County Disaster Management will pay the University of Oregon a fixed fee of \$12,500. County Counsel reviewed and approved this Agreement on May 14, 2018.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the Research Services Agreement No. 26178 to update the NHMP.

Respectfully submitted,

Nancy Bush, Director



## RESEARCH SERVICES AGREEMENT NO. 26178

This research services agreement (“Agreement”) is between Clackamas County (“Client”), and the University of Oregon (“University”).

### 1. Scope of Work

University will perform the services described in **Exhibit A - Scope of Work** (the “Work”).

### 2. Period of Performance

This Agreement is effective when signed by both parties and will terminate on 8/31/2018.

### 3. Payment

**A. Fixed Fee.** Client will pay University a Fixed Fee of \$12,500.00 for performance of the Work. Client acknowledges that the University has performed services pursuant to the Work beginning on August 1, 2017, prior to the execution of this Agreement. Client hereby ratifies any Work done prior to the execution of this Agreement and agrees to compensate Client accordingly under the terms of this Agreement.

**B. Payment Schedule and Address.** Client will make payments according to the following schedule.

#### 1. Schedule.

Client will pay University 100% of the fixed fee upon receipt of invoice following execution of this Agreement.

**2. Payment Address.** Client will submit payments to:

University of Oregon  
c/o Cashiers  
PO Box 3237  
University of Oregon  
Eugene, OR 97403-0327

### 4. Funds Available and Authorized

Client certifies at the time of signing this Agreement that within Client’s current appropriation or limitation it has sufficient funds available and authorized for expenditure to cover all payments this Agreement requires.

### 5. Termination

Both parties may mutually agree to terminate this Agreement at any time. Either party may terminate this Agreement with 30 calendar days written notice to the other party’s Business Contact. If Client terminates this Agreement, it will pay University for services rendered, work performed, non-cancellable obligations created, and costs incurred up to the date of termination.

### 6. Ownership of the Work Product

**A. University Work Product.** All work product and intellectual property including, without limitation, any inventions, improvements and discoveries conceived including, all computer software, copyrightable works, material, reports and data created in the course of performance of the Work (“Work Product”) University produces under this Agreement is the property of University. University grants to Client a royalty-free, non-exclusive, non-commercial and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, that Work Product.

- B. Client Work Product.** All Work Product Client produces under this Agreement is the property of Client. Client grants to University a royalty-free, non-exclusive and irrevocable license to reproduce, publish, otherwise use, and to authorize others to use, that Work Product for research and educational purposes.
- C. Joint Work Product.** Client and University are joint owners of and both may reproduce, publish or otherwise use, and to authorize others to use the Work Product produced by both parties jointly under this Agreement.

**7. Disclaimer**

**UNIVERSITY DISCLAIMS ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH REGARD TO UNIVERSITY’S PERFORMANCE OF THE WORK AND ANY DELIVERABLES UNIVERSITY PRODUCES UNDER THIS AGREEMENT, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, OR NONINFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.**

**8. Insurance**

University is self-insured under ORS Chapter 352, with adequate levels of excess liability insurance.

**9. Notice and Contacts**

- A. Notices.** Except as otherwise expressly provided in this Agreement, the parties will provide any communications or notices in writing by personal delivery, facsimile, first-class mail (postage prepaid) or email to the other party at their address set forth below unless either party has designated a different contact with a previous notice.
- B. Effective Date.** All notices a party mails are effective three (3) days after the party mails the notice. All notices a party sends by facsimile or email are effective when the transmitting machine generates receipt of the transmission. All communications or notices a party delivers in person are effective when that party actually delivers the notice.
- C. Contacts.**

Communications concerning work to be performed under this Agreement will be sent to:

**Client (Technical)**

Jay Wilson  
 Clackamas County Disaster Mgt  
 2200 Kaen Rd  
 Oregon City, OR 97045  
 Phone: (503) 723-4848  
 jaywilson@clackamas.us

**University (Technical)**

Josh Bruce  
 1209 University of Oregon  
 Eugene, OR 97403-1209  
 Phone: (541) 346-7326  
 jdbruce@uoregon.edu

Invoices and communications in regards to this Agreement will be sent to:

**Client (Business)**

Same as Technical Contact

**University (Business)**

Sponsored Projects Services  
 5219 University of Oregon  
 Eugene, OR 97403-5219  
 Phone: (541) 346-5138  
[sponsoredprojects@uoregon.edu](mailto:sponsoredprojects@uoregon.edu)

## **10. Confidential Information**

“Confidential Information” is any materials, written information, and data that the Client marks “Confidential” or non-written information and data that the Client discloses and identifies at the time of disclosure to University as confidential and later reduces to writing and transmits to University within 30 days of their non-written disclosure. University agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, including but not limited to the Oregon Public Records Law, to maintain as confidential for a period of 3 years the Confidential Information Client discloses to University under this Agreement. University’s obligations in this section do not apply to information in the public domain or that University independently knows or obtained.

## **11. Publicity**

Client will not authorize or commission the publication of any promotional materials containing any reference to University without University’s prior written approval. University may include Client’s name in listings of research sponsors. For any other publication containing a reference to Client’s name, University will obtain the Client’s prior written approval.

## **12. Independent Contractors**

University and Client are independent contractors and nothing in this Agreement creates a partnership, agency, or joint venture between the parties. Neither party has the power to bind or obligate the other in any manner, other than as this Agreement expressly sets forth. Each party is responsible for wages, hours and conditions of employment of their respective personnel under this Agreement.

## **13. Choice of Law**

The laws of the State of Oregon govern this Agreement.

## **14. Indemnity**

- A. University.** To the fullest extent permitted by the laws of the State of Oregon, University will protect, indemnify, and save Client harmless from and against any damage, cost or liability for any or all injuries to persons or property arising from University or its employees’ or agents’ negligent acts or omissions under this Agreement.
- B. Client.** To the fullest extent permitted by the laws of the State of Oregon, subject to the limitations contained in the Oregon Tort Claims Act and the Oregon Constitution, Client will protect, indemnify, and save University harmless from and against any damage, cost or liability for any or all injuries to persons or property arising from Client or its employees’ or agents’ negligent acts or omissions under this Agreement or their use of or reliance on any University Work Product.

## **15. Sovereignty**

Nothing in this Agreement is a waiver of Oregon's sovereign or governmental immunities.

## **16. Severability**

If a court of competent jurisdiction determines any term or provision of this Agreement is invalid or unenforceable to any extent, it will not affect the remainder of this Agreement, and each term and provision of this Agreement will remain valid and enforceable to the fullest extent law allows.

## **17. Compliance**

University agrees to comply with all applicable Federal and state laws, including but not limited to those regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or disability.

**18. Non-Waiver**

If either party fails to enforce any provision of this Agreement it does not constitute that party's waiver of that or any other term or provision of this Agreement.

**19. Execution and Counterparts**

The parties may execute this Agreement in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Agreement), each of which the parties will consider an original and all of which together will constitute one and the same agreement. At the request of a party, the other party will confirm facsimile or electronically transmitted signature page by delivering an original signature page to the requesting party.

**20. Entire Agreement; Modification**

This Agreement, including all exhibits and attachments, constitutes the sole agreement between the parties with respect to its subject matter. Any amendments to this Agreement will be made in writing and signed by Client and University.

CLIENT

UNIVERSITY OF OREGON

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Analinda Camacho

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Director, Sponsored Projects Services

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Tax ID No. \_\_\_\_\_

Tax ID No. 46-4727800

Exhibit A - Scope of Work



Exhibit A

# **Clackamas County/OPDR Cooperative Intergovernmental Agreement Natural Hazards Mitigation Plan Update Scope of Work**

## **Background and Purpose**

The Federal Emergency Management Agency (FEMA) requires that counties and cities update their Natural Hazard Mitigation Plans (NHMP) every five (5) years in order to be eligible for Hazard Mitigation Assistance funds (44 CFR 201). Clackamas County last updated its FEMA compliant Natural Hazard Mitigation Plan in April of 2013, and thus must have a FEMA compliant NHMP approved by FEMA and adopted locally by April of 2018 in order to remain eligible for Hazard Mitigation Assistance funding. Having an updated NHMP will allow Clackamas County to continue its efforts to reduce risks to hazards through proactive mitigation planning, projects and policy.

The purpose of this project is to (1) update the existing Clackamas County NHMP, (2) improve the risk assessment section through an enhanced assessment of lifeline infrastructure systems, and (3) better integrate NHMP information in related county plans and planning documents. When implemented, the benefits of an updated NHMP include reduced loss of life and property and decreased long-term economic losses due to reduced recovery and reconstruction costs. By updating the NHMP, Clackamas County will not only remain eligible for FEMA Hazard Mitigation Assistance funds, but will also be a more secure place for industry, citizens, business, and beyond through focused attention on local mitigation actions and investments.

This Scope of Work (SOW) describes in detail how Clackamas County Emergency Management will partner and collaborate with the Oregon Partnership for Disaster Resilience (OPDR) at the University of Oregon to update the Clackamas County Multi-Jurisdictional NHMP. This statement includes a description of the general roles and responsibilities of each of the organizations listed above, including the cities responsibilities as being part of the multi-jurisdictional NHMP. This SOW will be implemented through a regional Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Planning grant (PDM 16) administered by the Oregon Military Department's Office of Emergency Management (OEM). Clackamas County will utilize grant funds to contract with the UO/OPDR to facilitate the Clackamas Count NHMNP update. Clackamas County will provide matching funds to support the grant.

## **Proposed Work Program**

Josh Bruce, CSC Faculty and OPDR Program Director, will advise the CSC project team.

COMMUNITY SERVICE CENTER  
1209 University of Oregon | Eugene, Oregon 97403 | T: 541.346.3889 | F: 541.346.2040 <http://csc.uoregon.edu>



OPDR's plan update will operate on a six-phase mitigation planning process that has successfully resulted in FEMA-approved mitigation plans in numerous communities throughout Oregon. The OPDR planning process generally includes the following six phases:

- Phase I. Getting Started
- Phase II. Review and Update the Risk Assessment
- Phase III. Review and Update the Mitigation Strategies
- Phase IV. Review and Update the Implementation and Maintenance
- Phase V. Finalize the Plan Update
- Phase VI. Convene the Coordinating Body

OPDR will assist Clackamas County with administering the six phases in the planning process described above with specific focus on Phases II through IV. The scope of work below includes a list of parties involved and their specific roles, descriptions of each task, a list of associated work products, a timeline, and documents explaining how the task relates to the six phase planning process described above.

## **Roles and Responsibilities**

### **Clackamas County Emergency Management staff:**

- Convene, coordinate and staff the Clackamas County NHMP steering committee. This committee will serve as an advisory board to the Emergency Manager and will not be subject to Oregon public meeting law.
- Coordinate and support development of participating city and special district NHMP addenda within the county NHMP document.
- Coordinate and implement public outreach process including project website.
- Track and fulfill agreement deliverables and complete and submit quarterly progress reports.
- Work with UO-CSC to submit the draft NHMP to OEM and FEMA for review and pre-approval.
- Present the FEMA pre-approved plan to the Clackamas County Board of Commissioners for local adoption.
- Provide plan development support.
- Grant administration, including quarterly reporting, grant documentation, etc.

### **University of Oregon CSC team:**

- Serve as the primary contact for information about the natural hazard mitigation plan update process.
- Serve as a technical advisor to Clackamas County emergency management staff.
- Provide plan development support to the County through training sessions, conference calls, e-mails, and face-to-face meetings.
- Communicate with the Clackamas County project lead (Jay Wilson) a minimum of once per month.
- Participate in local NHMP update meetings as needed on invitation from the Clackamas County Project Lead.

- Review Clackamas County’s current NHMP and note areas of strength and opportunities for improvement.
- Construct original materials for updated NHMP.
- Interact with Clackamas County emergency management team and stakeholders to gauge perception of top priorities and important additions to the current NHMP.
- Write, edit, format the updated NHMP until a presentable draft is created.
- Incorporate constructive feedback from county and stakeholders to create final draft.
- Provide the following planning resources:
  - FEMA plan update resources and OPDR’s 2009-10 Natural Hazards Mitigation Plan Update Manual
  - OPDR’s Natural Hazard Mitigation Plan Templates
  - Sample Action Item Report
  - OPDR’s Action Item Form
  - Plan Appendix – Cost-Benefit Analysis of Mitigation Actions
- Facilitate and document the local planning process as defined in the tasks of this Scope of Work.
- Guide the draft plan through the FEMA review process and local adoption process.

**Clackamas County NHMP Stakeholders:**

- Attend public workshops administered by Clackamas County Emergency Management and CSC students and staff.
- Offer data, input, recommendations, and critiques about the current NHMP and potential problems to be considered in the updated plan.

**Participating Clackamas County cities:**

One of the most important aspects of creating a countywide Natural Hazards Mitigation Update is receiving and interpreting data from the local municipalities in order to accurately represent the unique needs and intricacies of each city. The 2016 Clackamas County NHMP will work closely with the cities to address vulnerable populations, critical communities, public health, geologic risks, climate-specific challenges, critical facilities, and other highly vulnerable entities. This will be an ongoing effort throughout the NHMP update process that will involve multiple community workshops, outreach efforts, and city-specific data analysis. Clackamas County will be responsible for engaging city partners.

- Convene a local NHMP steering committee (e.g. planning commission, city council or ad hoc committee).
- Provide at least one representative and actively participate in the county steering committee meetings and Plan Update Work Sessions.
- Participate in the County’s public outreach and engagement process.
- Develop locally relevant mitigation strategies.
- Present the FEMA pre-approved plan to the City Council for adoption.

**Oregon Emergency Management (OEM):**

- Provide plan development support.
- Provide administrative oversight on grant.

## Scope of Work

The 2018 Clackamas County NHMP will not simply be a minor update from the 2013 Clackamas County NHMP – but will instead be an in-depth analysis of the unique hazards pertaining to Clackamas County. This analysis will occur through three primary lenses:

- County Lifelines
- Critical Facilities
- Vulnerable Populations

The goal of the 2016 NHMP update is to go above and beyond previous updates or minimum updating standards. This document will serve as an easily digestible guide of perseverance throughout the county for the next five years.

### Objective 1: Project Kickoff and Work Plan Preparation

*Task 1.1:* CSC will meet with the Clackamas County Emergency Management staff and other stakeholders to clarify the goals and objectives of the project. We will review the sequence of activities, the timeline, and budget, required for the completion of the work. CSC will gather key documents and discuss details of data collection, community involvement, and other issues related to the project.

*Task 1.1 Timeline:* September 2017

*Task 1.1 Product(s):* Clackamas County NHMP Update Work Plan Draft

*Task 1.2:* CSC team will craft and distribute the final work plan, based on feedback from Clackamas County and stakeholders.

*Task 1.2 Timeline:* September 2017

*Task 1.2 Product(s):* Clackamas County NHMP Update Work Plan Final

*Task 1.3:* Clackamas County will host a planning initiative webpage on the emergency management website (<http://www.clackamas.us/emergency/>) for this project. Clackamas County will post the final updated plan on its website at: <http://www.clackamas.us/emergency/publications.html>. In addition, the CSC will post a final version of the plan to the University of Oregon's Scholars' Bank. At the request of Clackamas County, CSC will develop and maintain an online project management site using a private software vendor (e.g. Basecamp).

*Task 1.3 Timeline:* September – October 2017 (then ongoing)

*Task 1.3 Product(s):* Project website

### Objective 2: Plan Review

*Task 2.1:* The CSC will review the 2013 Clackamas County NHMP to assess the changes that have occurred in the previous five years. This task will include review of the county comprehensive plan and will identify opportunities to integrate information from the mitigation plan therein. The planning team will pay particular attention to comprehensive plan sections that address the Statewide Natural Hazard Planning Goal (Goal 7). CSC will prepare a Comprehensive Plan Crosswalk summary as well as a Conclusions and

Recommendations Memo that identifies specific areas within the Comprehensive Plan to be updated.

*Task 2.1 Timeline:* September – October 2017

*Task 2.1 Product(s):* Comprehensive Plan Crosswalk Summary  
Conclusions and Recommendations Memo

### **Objective 3: Risk Assessment**

*Task 3.1:* The first step of the project will be to incorporate updated hazards risk assessment information generated by DOGAMI, FEMA Risk MAP, US Army Corps, and Clackamas County since 2013. The focus of this effort will be on utilizing existing risk assessment information, rather than generating new information.<sup>1</sup> The assessment will include an update of the hazard history and previous occurrences for Clackamas County as well as clarifying the location, extent and probability information where relevant. We propose to conduct the assessment through two steps: (1) a meeting with the NHMP Steering Committee, and (2) a high-level analysis of critical supply chain linkages and infrastructure (see task 4.2). CSC will work with the staff leads in the county and each participating city to obtain lists of all known local hazard data sets. NHMP city leads will provide current hazard data to compliment county-wide information.

*Task 3.1 Timeline:* September – November 2017

*Task 3.1 Product(s):* NHMP Steering Committee Meeting  
Updated hazard history and hazard descriptions

*Task 3.2:* Conduct assessment of Clackamas County lifeline sectors – transportation, energy, communication, and water. The assessment will focus on review of each sector’s adaptive capacity and vulnerabilities, as well as critical interdependencies. The team will use OPDR’s Hazard and Climate Vulnerability Assessment Tool, which was created through public and private partnerships, to complete this assessment. We will modify the tool as needed for applicability to Clackamas County.

**Sector Assessment Part 1:** The first step will be to assess each sector’s adaptive capacity. We will conduct this assessment independent of any particular hazard scenario. To complete this task we will administer Part 1 of the Vulnerability Assessment Tool to representatives from each sector. This will be completed through a facilitated meeting of expert system managers and compiled in a qualitative/quantitative dataset – which will then be interpreted and assigned a numerical risk factor.

**Sector Assessment Part 2:** The second step will be to assess each sector’s hazard sensitivity and potential impacts. This part of the assessment will be informed by specific chronic and catastrophic hazard scenarios. We will work with the local project lead to select up to three scenarios. To complete this task we will administer Part 2 of the Vulnerability Assessment Tool to representatives from each sector. This will be completed through a second facilitated meeting of expert system managers and compiled in a qualitative/quantitative

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<sup>1</sup> NOTE: Clackamas County does not intend to use Hazus to generate any new risk assessment information. The SOW describes the proposed risk assessment approach in tasks 3.1-3.3. To the extent that new Hazus derived information is *available* at the time the risk assessment is being updated, the county will incorporate it. This acknowledges that DOGAMI is currently in the process of generating Hazus derived risk assessment information for greater metro area (including Clackamas).



dataset – which will then be interpreted and assigned numerical sensitivity and impact scores.

Sector Assessment Part 3: The planning team will utilize the information collected to analyze each sector and develop a final scoring summary. In addition, the team will compile the results and information into a set of sector summaries.

*Task 3.2 Timeline:* October – December 2017

*Task 3.2 Product(s):* Lifeline Sector Assessment Memo  
Updated Risk Assessment Section

*Task 3.3:* CSC will utilize the prior Risk Assessment and the most recent Clackamas County Hazard Analysis to update the hazard probability and vulnerability scores. CSC will utilize best available data to inform the Risk Assessment update, paying particular attention to information developed by DOGAMI through the FEMA Risk MAP process. CSC will meet with the Clackamas NHMP steering committee to review the hazard history and draft risk assessment. We will work with Clackamas County and other available partners to update any hazard maps utilized in the plan.

*Timeline:* December 2017 – January 2018

*Product(s):* Updated Risk Assessment Section

#### **Objective 4: Draft Mitigation Plan Goals and Action Plan**

*Task 4.1:* Building from the Objective 3: Risk Assessment, the CSC team will work with the Clackamas County Emergency Management department to draft and refine goals and objectives related to the 2018 Clackamas County NHMP. This will include an evaluation of the existing NHMP Goals against the recently update State of Oregon NHMP Goals. These goals will be updated and refined from the 2013 NHMP. We will also have a discussion of what updates and changes need to be made for the updated plan.

*Task 4.1 Timeline:* January – February 2018

*Task 4.1 Product(s):* NMHP Steering Committee Meeting  
Updated Plan Mission and Goals

*Task 4.2:* The updated goals and risk assessment will inform an updated and prioritized set of specific mitigation actions. The CSC team will work with the NHMP steering committee to review and update the status of existing mitigation actions. In addition, the team and steering committee will identify new actions to be added to the plan. Finally, the team and steering committee will select a short list of priority actions for the five-year planning period.

*Task 4.2 Timeline:* January – February 2018

*Task 4.2 Product(s):* Updated Mitigation Strategy

#### **Objective 5: Community Outreach**

*Task 5.1:* The Clackamas County Emergency Manager or designee will brief the County Board about the NHMP update process and provide an opportunity for public comment.

*Task 5.1 Timeline:* September 2017, November 2017, and February 2018

*Task 5.1 Product(s):* County Commissioner Briefings



*Task 5.2:* CSC will assist Clackamas County staff with developing and implementing a public outreach strategy. Clackamas County and each participating city will be responsible for public outreach related to this plan update. The county intends to leverage existing engagement strategies (e.g. quarterly city hazard planning workshops) to tailor city specific outreach strategies. Options the county is considering include:

- Community Events
- Social media
- Area-specific meetings
- Forums

Because the county cannot speak on behalf of each city, specific strategies, number, or characteristics are not available at this time.

Notably, the county is currently in the process of collaborating directly with watershed councils throughout the county to engage the public on a range of hazard related risk reduction issues. The County has pilot tested this approach in the Upper Sandy River Basin with great success in connection with ongoing FEMA Risk Map efforts.

*Task 5.2 Timeline:* Ongoing

*Task 5.2 Product(s):* Public feedback to be used in NHMP draft

## **Objective 6: City NHMP Update Support and Technical Assistance**

*Task 6.1:* OPDR faculty and students will assist cities that actively participate in the County Steering Committee Meetings in updating their respective NHMP Addenda. OPDR will provide technical assistance and process facilitation support to the participating jurisdictions.

*Task 6.1 Timeline:* January – June 2018

*Task 6.1 Product(s):* Updated City Addenda

*Task 6.2:* Time, capacity, and resources permitting, OPDR will also provide support to Special Districts interested in developing an addendum to the County NHMP. OPDR will assist special districts that actively participate in the County Steering Committee Meetings in completing the OEM special district mitigation planning template. OPDR will provide technical assistance and process facilitation support to the participating special districts.

*Task 6.2 Timeline:* June – September 2018

*Task 6.2 Product(s):* Special District Addenda

## **Objective 7: Draft and final deliverables**

*Task 7.1:* CSC will prepare a draft 2018 Clackamas County Natural Hazards Mitigation Plan. We will meet with Clackamas County Emergency Management team to review and discuss the updated plan. After revisions are discussed, the CPW team will work together with the CSC staff to construct and submit a final version of the plan.

*Task 7.1 Timeline:* February – March 2018

*Task 7.1 Product(s):* Draft NHMP for County review

**Task 7.2:** OPDR will submit the final FEMA “review draft” to the State of Oregon Office of Emergency Management for initial review. OEM will forward the plan to FEMA for review and pre-approval. FEMA will have 45-days from the date of submittal to review the plan.

**Task 7.2 Timeline:** March – June 2018

**Task 7.2 Product(s):** NHMP for FEMA review

**Task 7.3:** Once the plan is pre-approved by FEMA, Clackamas County and the participating cities and special districts will formally adopt the plan. Adopting resolutions will be forwarded to FEMA for final plan approval.

**Task 7.3 Timeline:** June - August 2018

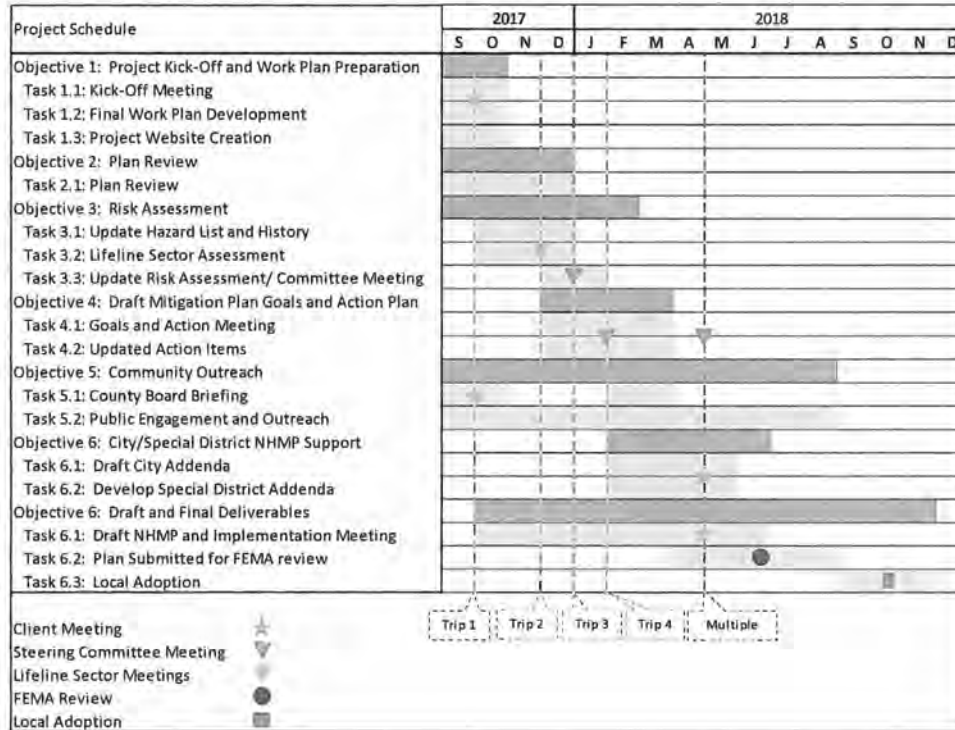
**Task 7.3 Product(s):** FEMA approved Clackamas County NHMP

## Deliverables

Our work program will result in one major product:

1. A FEMA-compliant Natural Hazards Mitigation Plan updated for the year 2018.

## Schedule



## Budget

CSC will complete the tasks described herein in part with funds from FEMA PDM'16 grant number PDMC-PL-10-OR-2016-001. Through this agreement, Clackamas County will provide a fixed amount of \$12,500 in cash to match the FEMA grant funds.

<b>Pre-Disaster Mitigation Planning Project Budget for PDM'16 - Clackamas</b>			
<b>September 2017 - August 2018</b>			
	<b>UO-PDM Grant</b>	<b>Matching Sources</b>	<b>Total</b>
<b>Personnel</b>			
OPDR Director (Bruce)	5,699		5,699
OPDR Staff (Howard)	11,153	6,500	17,653
CSC Staff (Foster)	1,278		1,278
Post Grad Summer Interns	-	-	-
Student Effort	3,120		3,120
<b>Salaries and Wages SUBTOTAL</b>	<b>21,250</b>	<b>6,500</b>	<b>27,750</b>
Staff fringe benefits (aka Other Payroll Expenses)	13,201	4,700	17,901
Student fringe benefits (aka Other Payroll Expenses)	78	-	78
<b>Fringe Benefits/OPE SUBTOTAL</b>	<b>13,278</b>	<b>4,700</b>	<b>17,979</b>
<b>CSC-OPDR Personnel TOTAL</b>	<b>34,529</b>	<b>11,200</b>	<b>45,728</b>
<b>Direct Expenses</b>			
1. Travel	795	705	1,500
2. Supplies (including meeting refreshments)	250		250
3. Printing/Copying/Postage/Long Distance	141		141
			-
<b>Direct Expenses SUBTOTAL</b>	<b>1,186</b>	<b>705</b>	<b>1,891</b>
<b>Management Costs (F&amp;A) capped at 5%</b>	<b>1,786</b>	<b>595</b>	<b>2,381</b>
	<b>FEDERAL GRANT</b>	<b>MATCHING</b>	<b>TOTAL</b>
	<b>(75% Share)</b>	<b>(25% Share)</b>	<b>PROJECT</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$ 37,500</b>	<b>\$ 12,500</b>	<b>\$ 50,000</b>



NANCY S. BUSH  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Agreement with Everbridge, Inc. for  
the Purchase of an Emergency Community Notification System

<b>Purpose/Outcomes</b>	Approval of contract for a new emergency notification system for Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	Total Contract Value for the initial five (5) year term, including implementation, is \$347,553.00. Anticipated fiscal impact to County is \$208,913.00 after deducting the anticipated cost sharing outlined in Funding Source below.
<b>Funding Source</b>	Cost sharing with Lake Oswego Communications, several water providers including the Portland Water Bureau, Clackamas County Communications (C-COM) and Clackamas County Technology Services.
<b>Duration</b>	May 24, 2018 through May 23, 2019 with four (4) additional one (1) year options to renew.
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	N/A

**BACKGROUND:**

Clackamas County is upgrading its Emergency Notification System also known as CCENS. The current system in place is outdated and does not allow for integration with the federal Integrated Public Alert and Warning System (IPAWS). The new contract and vendor will allow for integration into that system which will allow us to access the Emergency Alert System (EAS) digitally and will provide us with the technology to send Wireless Emergency Alerts (WEA) messages when warranted. WEA messages are the same technology as Amber Alerts you may receive on your cell phone.

The system cost is being shared by multiple stakeholders, both external and internal. The system may be utilized for notifying the public as well as employees and special teams like the Clackamas County Sheriff Office's Homicide and Violent Crimes Unit (HVCU), and the County's Emergency Operations Center (EOC) staff and volunteers.

Clackamas County procured this system in order to maintain interoperability with neighboring counties and local governments. This software will enable citizens to receive emergency notifications that cross county boundaries from a single location without the need to download multiple applications.

In accordance with LCRB Rule C-046-0400 Disaster Management is utilizing the U.S. Communities through Mallory Safety & Supply LLC procured by the County of Fairfax, Virginia; Cooperative Contract No. 4400001839. The pricing was secured through the cooperative agreement; however, Clackamas County was still required to negotiate a contract directly with Everbridge, Inc. In accordance with LCRB Rule C-046-0440, Procurement issued a seven (7) day notice of intent to purchase on May 8, 2018. Procurement did receive comments on the notice and responses were provided.

This Agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the Agreement with Everbridge, Inc. to provide and implement the Emergency Community Notification Software and delegate authority to the Disaster Management Director to sign all documents necessary in the ongoing performance of this Agreement.

Respectfully submitted,

Nancy Bush, Director

Placed on the Board Agenda on \_\_\_\_\_ by the Procurement Division.





Everbridge, Inc.
Master Services Agreement

This Master Services Agreement ("Agreement") is entered into by and between Everbridge, Inc. ("Everbridge") and Clackamas County a political subdivision of the State of Oregon ("Client"), effective on the date of Client's signature below ("Effective Date"). Everbridge and Client are each sometimes referred to as a "Party" and collectively, the "Parties."

1. SERVICES.

1.1 Orders. Everbridge shall provide Client access to its proprietary interactive communication solutions (the "Solutions") subject to the terms and conditions set forth in this Agreement and the description of services and pricing provided in the applicable quote or other ordering document (e.g., statement of work) (the "Quote") and the applicable Solution documentation (the "Documentation"). If applicable, Everbridge shall provide the training and professional services ("Professional Services") set forth in the Quote. Collectively, the Solutions and Professional Services are referred to as the "Services". Everbridge shall provide Client with login and password information for each User (as defined below) and will configure the Solutions based on the maximum number of Contacts (as defined below) or Users, as applicable depending on the Solutions ordered. Client shall undergo the initial setup and training as set forth in the onboarding Documentation within sixty (60) days of the Effective Date. Unless otherwise provided in the applicable Quote or Documentation, Services are purchased as annual subscriptions.

1.2 Users; Contacts. "Users" are individuals who are authorized by Client from time to time to use the Solutions for the purposes of sending notifications, configuring templates, reporting or managing data, serving as system administrators, or performing similar functions, and who have been supplied user identifications and passwords by Client. Users may include employees and contractors of Client or an Included Department. "Included Department" means any enterprise department, office, agency, or other entity that receives a majority of its funding from the same general or enterprise fund, as applicable, as the Client. "Contacts" are individuals who Client contacts through the Solutions and/or who provides their personal contact information to Everbridge, including through an opt-in portal. If applicable to the particular Solution, the number of Users and/or Contacts that may be authorized by Client is set forth on the Quote.

2. PAYMENT TERMS. Everbridge shall invoice Client annually in advance for all Solutions and Professional Services, and Client shall pay the fees set forth in the Quote within thirty (30) days from date of invoice. If Client exceeds the usage levels specified in the Quote, then Everbridge may invoice Client for any overages at the then applicable rate. All Professional Services must be used within 12 months from date of purchase. Late payments shall accrue interest at a rate of eight percent (8%) per annum. Such interest shall be in addition to any other rights and remedies of Everbridge. Unless otherwise provided, the fees set forth in the Quote do not include any local, state, federal or foreign taxes, levies or duties of any nature, except for those relating to Everbridge's net income or property.

2.1 Compensation. The Client agrees to compensate Everbridge on a fixed fee basis as detailed in the following fee schedule:

Table with 3 columns: Fee Type, Amount, Contract Total. Rows include Professional Services, Year 1 fees, Years 2-5, and Total (\$347,553.00).

2.2 Tax Compliance Certification. Everbridge must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement. Further, any violation of Everbridge's warranty in this Agreement that Everbridge has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle Client to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to: (A) Termination of this Agreement, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Everbridge, in an amount equal to Client's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Client shall be entitled to recover any and all damages suffered as the result of Everbridge's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and Client may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Everbridge represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, Everbridge has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Everbridge, to Everbridge's property, operations, receipts, or income, or to Everbridge's performance of or compensation for any Work performed by Everbridge; (C) Any tax provisions imposed by a political subdivision of this state that applied to Everbridge, or to goods, services, or property, whether tangible or intangible, provided by Everbridge; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

3. RESPONSIBILITIES.

3.1 Client Data. Client shall retain all ownership rights in all Contact data and all electronic data Client transmits to Everbridge to or through the Solutions ("Client Data"). Client represents that it has the right to authorize and hereby does authorize Everbridge to collect, store and process Client Data subject to the terms of this Agreement. Client shall maintain a copy of all Contact data it provides to Everbridge.

**3.2 Use of Solutions.** Client is responsible for all activity occurring under Client's account(s) and shall comply with all applicable Privacy Laws (as defined below) and all other applicable laws and regulations in connection with Client's use of the Services, including its provision of Client Data to Everbridge. Where applicable, Client shall obtain the required consent of Contacts to send communications through the Solutions. Client shall use the Service in accordance with Everbridge's then applicable Acceptable Use Policy posted on [www.everbridge.com](http://www.everbridge.com). The Acceptable Use Policy that is current as of the Effective Date is attached as Exhibit C. No changes to this Acceptable Use Policy shall take effect to the extent such changes are to Client's material detriment, unless agreed to in writing by Client. Client shall promptly notify Everbridge of any unauthorized use of any password or account or any other act or omission that would constitute a breach or violation of this Agreement. Client acknowledges that the Solutions are a passive conduit for the transmission of Client Data, and Everbridge has no obligation to screen, preview or monitor content, and shall have no liability for any errors or omissions or for any defamatory, libelous, offensive or otherwise unlawful content in any Client Data, or for any losses, damages, claims, or other actions arising out of or in connection with any data sent, accessed, posted or otherwise transmitted via the Solutions by Client, Users or Contacts.

**3.3 Data Privacy.** Everbridge shall abide by all applicable Privacy Laws in connection with the operation of the Solutions. "Privacy Laws" means all U.S. federal and state laws and regulations regarding consumer and data protection and privacy.

**3.4 Data Security.** Everbridge's IT security and compliance program includes the following standards generally adopted by industry leading SaaS providers: (i) reasonable and appropriate technical, organizational, and security measures against the destruction, loss, unavailability, unauthorized access or alteration of Client Data in the possession or under the control of Everbridge, including measures to ensure the availability of information following interruption to, or failure of, critical business processes; and (ii) an annual assessment of its security controls performed by an accredited third party audit firm in accordance with the Statement on Standards for Attestation Engagements No. 16 (SSAE 16). Upon request, Everbridge shall provide Client with a copy of its current SSAE 16 SOC 3 report. Everbridge's security framework is based on the security requirements and controls within US National Institute of Standards and Technology (NIST) Special Publication 800-53 – Security and Privacy Controls for Information Systems and Organizations. The NIST 800-53 security requirement standard has direct mapping to other security and data privacy frameworks, including global information security standard ISO 27001, HIPAA-HITECH, and HITRUST.

**4. TERM.** The initial term of this Agreement shall be for one year and shall commence upon the Effective Date. If a Quote contains Services added to an existing subscription, such added Services will be coterminous with the initial term or applicable renewal Service term ("**Renewal Term**"), unless otherwise agreed to by the parties. Upon issuance of a Quote by Everbridge not later than thirty (30) days prior to the then current expiration date, and acceptance by Client through the issuance of a new purchase order, this Agreement may be renewed for four (4) additional one (1) year periods. If at the end of the applicable Quote, Client intends to renew the Agreement, but has not provided a timely executed written renewal prior to the end of such term, then Everbridge, in its sole discretion, shall continue the Service(s) hereunder for thirty (30) days (the "**Grace Period**") in order to secure an executed renewal by Client, provided that Client shall pay to Everbridge the annual fee then in effect divided by twelve (12) (the "**Monthly Holdover Fee**"). Everbridge may increase the

fee for the annual renewal term by a maximum of three percent (3%). The Grace Period is provided to Client as a courtesy so that Services will not be terminated prior to the execution of a renewal. Due to insurance and liability reasons Everbridge can only provide one Grace Period and will charge the Monthly Holdover Fee. The Monthly Holdover Fee is instituted in order to protect Client from termination or suspension of the Services, and to insure that timely renewals are entered into. Monthly Holdover Fees shall not be returned or refunded to the Client as a credit towards any renewal.

## **5. TERMINATION; SUSPENSION.**

**5.1 Termination by Either Party.** Either Party may terminate this Agreement upon the other Party's material breach of the Agreement, provided that (i) the non-breaching Party sends written notice to the breaching Party describing the breach in reasonable detail; (ii) the breaching Party does not cure the breach within thirty (30) days following its receipt of such notice (the "**Notice Period**"); and (iii) following the expiration of the Notice Period, the non-breaching Party sends a second written notice indicating its election to terminate this Agreement.

**5.2 Termination or Suspension for Non-Payment.** If Client fails to pay any amounts due within thirty (30) days of their due date, Everbridge may terminate this Agreement upon thirty (30) days' prior written notice to Client. Termination for non-payment shall not relieve Client of its outstanding obligations (including payment) under this Agreement. In lieu of termination for non-payment, Everbridge may suspend Client's access to the Solutions upon written notice to Client.

**5.3 Suspension.** Everbridge may suspend Client's access to the Solutions or any portion thereof for (i) emergency network repairs, threats to, or actual breach of network security; or (ii) any legal, regulatory, or governmental prohibition affecting the Solution. Everbridge shall use its best efforts to notify Client through its Client Portal and/or via email prior to such suspension and shall reactivate any affected portion of the Solution as soon as possible.

**5.4 Sufficient Funds.** If sufficient funds are not provided in future approved budgets of the Client (or from applicable federal, state, or other sources) to permit the Client in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, Client may terminate this Agreement without further liability or obligation for payment after the termination date, by giving Everbridge not less than thirty (30) days' notice; provided, however, that if Client terminates under this provision it shall not be entitled to any refund and shall pay all amounts then due and owing.

## **6. PROPRIETARY RIGHTS.**

**6.1 Grant of License.** Subject to the terms and conditions of this Agreement, Everbridge hereby grants to Client, during the term of this Agreement, a limited, non-exclusive, non-transferable, non-sublicensable right to use the Solutions.

**6.2 Restrictions.** Client shall use the Solution solely for its internal business purposes. In particular, Client's use of the Solutions shall not include service bureau use, outsourcing, renting, reselling, sublicensing, or time-sharing. Client shall not (i) sell, transfer, assign, distribute or otherwise commercially exploit or make the Solution available to any third party except as expressly set forth herein; (ii) modify or make derivative works based upon the Solution; (iii) reverse engineer the Solution; (iv) remove, obscure or alter any proprietary notices or labels on the Solution or any materials made available by Everbridge; (v) use,

post, transmit or introduce any device, software or routine (including viruses, worms or other harmful code) which interferes or attempts to interfere with the operation of the Solution; or (vi) defeat or attempt to defeat any security mechanism of any Solution.

**6.3 Reservation of Rights.** The Solutions (including all associated computer software) (whether in source code, object code, or other form), databases, indexing, search, and retrieval methods and routines, HTML, active server pages, intranet pages, and similar materials) and all intellectual property and other rights, title, and interest therein (collectively, “**IP Rights**”), whether conceived by Everbridge alone or in conjunction with others, constitute Confidential Information and the valuable intellectual property, proprietary material, and trade secrets of Everbridge and its licensors and are protected by applicable intellectual property laws of the United States and other countries. Everbridge owns (i) all feedback (except for the Client Data) provided to Everbridge by Users, Client and Contacts in conjunction with the Services, and (ii) all transactional, performance, derivative data and metadata generated in connection with the Solutions, which are generally used to improve the functionality and performance of the Services. Except for the rights expressly granted to Client in this Agreement, all rights in and to the Solutions and all of the foregoing elements thereof (including the rights to any work product resulting from Professional Services and to any modification, enhancement, configuration or derivative work of the Solutions) are and shall remain solely owned by Everbridge and its respective licensors. Everbridge may use and provide Solutions and Professional Services to others that are similar to those provided to Client hereunder, and Everbridge may use in engagements with others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the provision of the Solutions or Professional Services to Client, provided that, in each case, no Client Data or Client Confidential Information is disclosed thereby.

## **7. CONFIDENTIAL INFORMATION.**

**7.1 Definition. “Confidential Information”** means all information of a Party (“**Disclosing Party**”) disclosed to the other Party (“**Receiving Party**”), whether orally, electronically, in writing, or by inspection of tangible objects (including, without limitation, documents or prototypes), that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Except as otherwise provided by Oregon Public Record Law, Confidential Information includes without limitation, all Client Data, the Solutions, and either Party’s business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

**7.2 Protection.** Receiving Party shall not disclose or use any Confidential Information of Disclosing Party for any purpose other than performance or enforcement of this Agreement without Disclosing Party’s prior written consent. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, including under the Freedom of Information Act, Oregon Public Records Law, or other public information request (i.e., “state sunshine” laws) it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and

reasonable assistance, at Disclosing Party’s cost, if Disclosing Party wishes to contest the disclosure. Receiving Party shall protect the confidentiality of Disclosing Party’s Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any breach of confidentiality of Disclosing Party’s Confidential Information.

**7.3 Upon Termination.** Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party’s Confidential Information and, upon request and to the extent practicable, destroy all materials containing such Confidential Information. Notwithstanding the foregoing, either Party may retain a copy of any Confidential Information if required by applicable law or regulation, in accordance with internal compliance policy, or pursuant to automatic computer archiving and back-up procedures, subject at all times to the continuing applicability of the provisions of this Agreement.

## **8. WARRANTIES; DISCLAIMER.**

**8.1 Everbridge Warranty.** Everbridge shall provide the Solutions in material compliance with the functionality and specifications set forth on the applicable Solution Documentation. Everbridge shall provide 24X7X365 customer support in accordance with its most recently published Support Services Guide. Professional Services shall be performed in a professional manner consistent with industry standards. THE FOREGOING REPRESENT THE ONLY WARRANTIES MADE BY EVERBRIDGE HEREUNDER, AND EVERBRIDGE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**8.2 Disclaimer.** EVERBRIDGE DOES NOT WARRANT THAT THE SOLUTION WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL EVERBRIDGE HAVE ANY LIABILITY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SOLUTION TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF EVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**8.3 Exception.** The limitations and exclusions outlined in Section 8.2 above shall not apply to Everbridge for claims and actions arising out of or based upon damage or injuries to persons or property caused by the negligent or intentional errors, omissions, fault or acts of Everbridge or Everbridge’s employees or agents, while on premises that are owned or controlled by the Client.

**8.4 SMS Transmission.** CLIENT ACKNOWLEDGES THAT THE USE OF SHORT MESSAGING SERVICES (“SMS”), ALSO KNOWN AS TEXT MESSAGING, AS A MEANS OF SENDING MESSAGES INVOLVES A REASONABLY LIKELY POSSIBILITY FROM TIME TO TIME OF DELAYED, UNDELIVERED, OR INCOMPLETE MESSAGES AND THAT THE PROCESS OF TRANSMITTING SMS MESSAGES CAN BE UNRELIABLE AND INCLUDE MULTIPLE THIRD PARTIES THAT PARTICIPATE IN THE TRANSMISSION PROCESS, INCLUDING MOBILE NETWORK OPERATORS AND INTERMEDIARY TRANSMISSION COMPANIES. ACCORDINGLY, EVERBRIDGE RECOMMENDS THAT SMS MESSAGING NOT BE USED AS

THE SOLE MEANS OF COMMUNICATION IN AN EMERGENCY SITUATION.

## 9. INDEMNIFICATION.

**9.1 By Client.** Up to the limits established by Article XI, Section 10 of the Oregon Constitution and Oregon Tort Claims Act (ORS 30.260 through 30.300), Client shall defend, indemnify and hold Everbridge harmless against any loss or damage incurred in connection with any third party claim, suit or proceeding (“**Claim**”) arising out of any data sent, posted or otherwise transmitted via the Solution by Client or Contacts, or any breach by Client of Sections 3 or 6.

**9.2 By Everbridge.** Everbridge shall defend, indemnify and hold Client harmless from and against any Claim against Client alleging that the Solution as contemplated hereunder infringes an issued patent or other IP Right in a country in which the Solution is provided to Client. If (x) any aspect of the Solution is found or, in Everbridge’s reasonable opinion is likely to be found, to infringe upon the IP Right of a third party or (y) the continued use of the Solution is enjoined, then Everbridge will promptly and at its own cost and expense at its option: (i) obtain for Client the right to continue using the Solution; (ii) modify such aspect of the Solution so that it is non-infringing; or (iii) replace such aspect of the Solution with a non-infringing functional equivalent. If, after all commercially reasonable efforts, Everbridge determines in good faith that options (i) - (iii) are not feasible, Everbridge will remove the infringing items from the Solution and refund to Client on a pro-rata basis any prepaid unused fees paid for such infringing element. The remedies set forth in this Section 9.2 are Client’s exclusive remedy for Claims for infringement of an IP Right. Everbridge shall have no obligation or liability for any claim pursuant to this Section to the extent arising from: (i) the combinations, operation, or use of the Solution supplied under this Agreement with any product, device, or software not supplied by Everbridge to the extent the combination creates the infringement; (ii) the unauthorized alteration or modification by Client of the Solution; or (iii) Everbridge’s compliance with Client’s designs, specifications, requests, or instructions pursuant to an engagement for Everbridge Professional Services relating to the Solution to the extent the claim of infringement is based on the foregoing.

**9.3 Indemnification Process.** The indemnifying party’s obligations under this Section 9 are contingent upon the indemnified party (a) promptly giving notice of the Claim to the indemnifying party once the Claim is known; (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying party may not settle such Claim unless such settlement unconditionally releases the indemnified party of all liability and does not adversely affect the indemnified party’s business, reputation, or service); and (c) providing the indemnifying party all available information and reasonable assistance. Notwithstanding the requirement of 9.3 above, the Client may assume its own defense in its sole determination.

**10. LIABILITY LIMITS.** To the maximum extent permitted by law, neither Party shall have any liability to the other Party for any indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Except for its indemnification obligations under Section 9.2, notwithstanding anything in this Agreement to the contrary, in no event shall Everbridge’s aggregate liability, regardless of whether any action or claim is based on warranty, contract, tort, indemnification or otherwise, exceed amounts paid or due by

Client to Everbridge hereunder during the 12-month period prior to the event giving rise to such liability. The foregoing limitations shall apply even if the non-breaching party’s remedies under this Agreement fail their essential purpose.

## 11. MISCELLANEOUS.

**11.1 Non-Solicitation.** As additional protection for Everbridge’s proprietary information, for so long as this Agreement remains in effect, and for one year thereafter, Client agrees that it shall not, directly or indirectly, solicit, hire or attempt to solicit any employees of Everbridge; provided, that a general solicitation to the public for employment is not prohibited under this section.

**11.2 Force Majeure; Limitations.** Everbridge shall not be responsible for performance under this Agreement to the extent precluded by circumstances beyond Everbridge’s reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, labor problems, regional technology interruptions, or denial of service attacks. The Solution delivers information for supported Contact paths to public and private networks and carriers, but Everbridge cannot guarantee delivery of the information to the recipients. Final delivery of information to recipients is dependent on and is the responsibility of the designated public and private networks or carriers.

**11.3 Waiver; Severability.** The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement shall in no way be considered to be a waiver of such provisions. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted or revised, and the remaining provisions shall continue in full force and effect to the maximum extent possible so as to give effect to the intent of the parties.

**11.4 Assignment.** Neither party may assign this Agreement to any third party except upon the other Party’s prior written consent, which consent shall not be unreasonably withheld or delayed; provided, that no such consent shall be required in the event of an assignment to an Affiliated Entity or to a successor-in-interest to the business of the assigning Party resulting from a merger, reorganization, or sale of all or substantially all such Party’s assets. Notwithstanding the above, neither Party shall assign this Agreement to any third party which is a competitor of the other Party.

**11.5 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. The U.N. Convention on Contracts for the International Sale of Goods shall not apply.

**11.6 Notices.** Legal notices (e.g., claimed breach or termination) to be provided under this Agreement shall be delivered in writing (a) in person, (b) by nationally recognized overnight delivery service, or (c) by U.S. certified or first class mail to the other party as set forth on the signature page hereto. All legal notices shall be deemed to have been given upon receipt or, if under (c), three (3) business days after being deposited in the mail. Either party may change its address by giving notice of the new address to the other party pursuant to this Section and identifying the effective date of such change. Everbridge may provide all other notices to Client’s billing contact on the Client Registration Form or, with respect to availability, upgrades or maintenance of the Solutions, to the Everbridge Support Center.

**11.7 Equal Employment Opportunity.** Everbridge, Inc. is a government contractor and is subject to the requirements of

Executive Order 11246, the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), sections 60-250.4(a-m), sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement.

**11.8 Export Compliant.** Neither Party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval. Client shall not permit Users to send notifications to a Contact in a U.S. embargoed country or in violation of any U.S. export law or regulation.

**11.9 U.S. Government End-Users.** The Solutions and related documentation are “commercial items” as defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, U.S. government customers and end-users acquire licenses to the Solutions and related documentation with only those rights set forth herein.

**11.10 General.** This Agreement, including its Exhibits and any Quote, constitutes the entire agreement between the Parties and supersedes all other agreements and understandings between the Parties, oral or written, with respect to the subject matter hereof, including any confidentiality agreements. This Agreement shall not be modified or amended except by a writing signed by both Parties. ANY NEW TERMS OR CHANGES INTRODUCED IN A PURCHASE ORDER OR OTHER DOCUMENT ARE VOID AND OF NO FORCE OR EFFECT. EVERBRIDGE'S ACKNOWLEDGEMENT OF RECEIPT OF SUCH DOCUMENT OR ACCEPTANCE OF PAYMENT SHALL NOT CONSTITUTE AGREEMENT TO ANY TERMS OTHER THAN THOSE SET FORTH IN THIS AGREEMENT. There are no third party beneficiaries to this Agreement. Any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive any such termination or expiration hereof. This Agreement, and any other document referencing and governed by this Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same agreement. Each Party agrees to be bound by its digital or electronic signature, whether transmitted by fax machine, in the form of an electronically scanned image (e.g., in .pdf form), by email, or by other means of e-signature technology, and each Party agrees that it shall accept the signature of the other Party transmitted in such a manner.

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

<p><b>EVERBRIDGE, INC.</b></p> <p>By: _____          Print Name: _____          Title: _____          Date: _____</p> <p>Address:          25 Corporate Drive          Burlington, Massachusetts 01803</p> <p><b>For legal notice:</b>          Attention: Legal Department</p>	<p><b>CLIENT:</b> Clackamas County _____</p> <p>By: _____          Print Name: _____          Title: _____          Date: _____</p> <p><u>Approved As To Form:</u></p> <p>_____          County Counsel _____ Date _____</p> <p><b>Client's Address:</b></p> <p>_____          _____          _____</p> <p>Attn: _____</p> <p><b>Address for Legal Notice:</b></p> <p>_____          _____          _____</p> <p>Attn: _____</p>
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EXHIBIT A  
Additional Business Terms

*The following additional business terms are incorporated by reference into the Agreement as applicable based on the particular products and services described on the Quote.*

**If Client Is Ordering Nixle® Branded Products or Community Engagement:**

1. Client grants to Everbridge a non-exclusive, royalty free, worldwide and perpetual right and license (including sublicense) to (a) use, copy, display, disseminate, publish, translate, reformat and create derivative works from communications Client sends through the Solutions for public facing communications to citizens, other public groups and public facing websites, including social media (e.g., Google®, Facebook®) (collectively, “**Public Communications**”), (b) use and display Client’s trademarks, service marks and logos, solely as part of the Public Communications to Contacts who have opted in to receive those Communications, and on other websites where Everbridge displays your Public Communications, as applicable, and (c) place a widget on Client’s website in order to drive Contact opt-in registrations. Client further acknowledges and agrees that all personal information from individuals registering through such widget is owned expressly by Everbridge and such information will be governed by the applicable Privacy Policy.

**If Client Is Ordering Everbridge Branded Products:**

1. **Data Feeds.** Notwithstanding anything to the contrary in this Agreement, to the extent that Client has purchased or accesses Data Feeds, such feeds are provided solely on an “AS IS” and “AS AVAILABLE” basis and Everbridge disclaims any and all liability of any kind or nature resulting from any inaccuracies or failures with respect to such Data Feeds. The sole and exclusive remedy for any failure, defect, or inability to access the content of such Data Feed shall be to terminate the Data Feed with no further payments due. “**Data Feed**” means data content licensed or provided by third parties to Everbridge and supplied to Client in connection with the Solution (e.g., real time weather system information and warnings, 911 data, third party maps, and situational intelligence).

**Non-Critical Messaging**

1. If Client is using the solution to send non-emergency calls, text messages or emails to consumers, Client expressly agrees to comply with the Telephone Consumer Protection Act of 1991, including its implementing regulations, the CAN-SPAM Act of 2003, and any other similar laws and regulation (collectively, “**Consumer Protection Law**”). Client shall not violate these or others applicable laws and warrants that it shall receive express consent from Contacts if its messages fall within these Consumer Protection Laws. Client shall defend, indemnify and hold Everbridge harmless from any violation by Client of Consumer Protection Law. Client further agrees that any marketing or sales related text messages will comply with the policies and guidelines of the Mobile Marketing Association found at <http://mmaglobal.com/policies/code-of-conduct>.

EXHIBIT B  
IPAWS- CMAS/WEA Addendum

*This addendum is incorporated by reference into the Agreement as applicable based on the particular products and services described on the Quote.*

1. IPAWS Authorization: Client represents and warrants to Everbridge that any employee, agents, or representatives of Client who access IPAWS-OPEN using Client's credentials provided by FEMA (each, an "IPAWS User"), are authorized by FEMA to use IPAWS-OPEN, have completed all required training, and Client has executed an IPAWS Memorandum of Agreement ("MOA") with FEMA. Client shall contact Everbridge immediately upon any change in Client or any IPAWS User's right to access IPAWS-OPEN. Client shall only access IPAWS-OPEN using its designated credentials and FEMA issued digital certificate ("Digital Certificate"). Client acknowledges and agrees that Everbridge shall not have access to its credentials and that Client assumes full responsibility for maintaining the confidentiality of any credentials issued to it. Client shall be solely responsible for any and all claims, damages, expenses (including attorneys' fees and costs) that arise from any unauthorized use or access to IPAWS-OPEN.
2. Credentials: Client shall load and maintain within its Everbridge account Organization, its Digital Certificate, COG ID, and Common Name. Client authorizes and requests Everbridge to use the foregoing stored information to connect Client to IPAWS-OPEN.
3. Messaging: Client acknowledges and agrees that: (i) upon submission of messages to IPAWS-OPEN, Everbridge shall have no further liability for the distribution of such message, and that the distribution through IPAWS-OPEN, including, but not limited to, delivery through the Emergency Alert System or the Commercial Mobile Alert System, is in no way guaranteed or controlled by Everbridge; (ii) Everbridge shall not be liable as a result of any failure to receive messages distributed through IPAWS-OPEN; (iii) IPAWS may include additional features not supported through the Everbridge system, and Everbridge shall not be required to provide such additional features to Client; and (iv) Client shall be solely responsible and liable for the content of any and all messages sent through IPAWS-OPEN utilizing its access codes.
4. Term: Client acknowledges and agrees that access to IPAWS-OPEN shall be available once Client has provided Everbridge with the Digital Certificate and any other reasonably requested information to verify access to the system. Upon termination of the Agreement access to IPAWS-OPEN shall immediately terminate. In addition, Everbridge may immediately terminate, without liability, access to IPAWS-OPEN, if Client breaches this Addendum, the MOA, or FEMA changes the IPAWS-OPEN system so that it materially change the business terms and/or feasibility for Everbridge to provide such access.

EXHIBIT C  
Acceptable Use Policy

Everbridge has prepared this Acceptable Use Policy (“AUP”) as a guide for its clients to understand the intended and permissible uses of our service. This AUP sets forth guidelines for acceptable use of the applicable Everbridge service(s) (the “Service(s)”) by Client and its users.

The Services must be used in accordance with the guidelines for each Service. The guidelines for each Service product are set forth within the applicable Product Inclusion Sheet and the Support Services Guide.

**Prohibited Uses**

You may use the Service only for lawful purposes and in accordance with this AUP. You may not:

- Use the Service in any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries)
- Use the Service for the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise
- Use the Service to transmit, or procure the sending of, any advertising or promotional material, including any “junk mail”, “chain letter”, “spam” or any other similar solicitation
- Impersonate or attempt to impersonate Everbridge, an Everbridge employee, another user or any other person or entity, including by utilizing another user’s identification, password, account name or persona without authorization from that user
- Use the Service in any manner that could disrupt, disable, overburden, damage, or impair the Service for you or others (including the ability to send timely notifications through the Service), via various means including overloading, “flooding,” “mailbombing,” “denial of service” attacks, or “crashing”
- Use any robot, spider or other automatic device, process or means to access the Service for any purpose, including monitoring or copying any of the material
- Use any manual process to monitor or copy any of the material made available through the Service or for any other unauthorized purpose without our prior written consent
- Use any device, software or routine, including but not limited to, any viruses, trojan horses, worms, or logic bombs, that interfere with the proper working of the Service or could be technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Service, the server on which the Service is stored, or any server, computer or database connected to the Service.
- Attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without Everbridge’s express written consent.
- Take any action in order to obtain services to which such client is not entitled
- Attempt any action designed to circumvent or alter any method of measuring or billing for utilization of the Service
- Otherwise attempt to interfere with the proper working of the Service

**Everbridge Rights and Remedies**

If Client becomes aware of any content or activity that violates this AUP, Client shall take all necessary action to prevent such content from being routed to, passed through, or stored on the Everbridge network and shall promptly notify Everbridge. Client’s failure to comply with this AUP may result in Everbridge taking action anywhere from a warning, to a suspension or termination of Service. Everbridge will endeavor to provide notice to Customer prior to any suspension or termination of Service, but may immediately suspend or terminate in instances where continued provision of Service may cause significant harm to Everbridge, the Service or other clients.

**Changes to the Terms of Use**

Everbridge reserves the right to modify this AUP from time-to-time, in its sole discretion, effective upon posting a revised copy of the Acceptable Use Policy on <https://www.everbridge.com/aup>. Any use of Everbridge network and Services after such modification shall constitute acceptance of such modification. Any violation shall be sent to <https://www.everbridge.com/contact-us>.

**Equal Employment Opportunity**

Everbridge, Inc., is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), sections 60-250.4(a-m), sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement.



Capt. Jenna Morrison  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
**1024 MAIN STREET • OREGON CITY • OREGON • 97045**  
**TELEPHONE 503-655-8603 • • • FAX 503-650-8942**

May 24, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval to Apply for a Grant Award between US Department of Justice and Clackamas County Community Corrections to Establish Alternatives to Incarceration for Individuals with Opioid Use Disorders.

<b>Purpose/Outcome</b>	Community Corrections would like to establish alternatives to incarceration for individuals with opioid use disorders.
<b>Dollar Amount and Fiscal Impact</b>	Maximum amount of award is \$900,000.
<b>Funding Source</b>	US Department of Justice
<b>Duration</b>	36 months
<b>Previous Board Action/Review</b>	Approval to apply for 2017 grant given April 20, 2017. Grant was not awarded to Clackamas County at that time.
<b>Strategic Plan Alignment</b>	Provide supervision, resources, intervention, and treatment services. Ensure Safe, Healthy and Secure Communities
<b>Contact Person</b>	Captain Jenna Morrison, Director, Community Corrections – 503-655-8725

**BACKGROUND:** Community Corrections has a high percentage of justice involved adults affected by opioid addiction who are high frequency utilizers of multiple systems (e.g. health care, child welfare, criminal justice, jail beds). Community Corrections’ objective for this grant funding is to support cross-system planning and collaboration with these multiple agencies. Often this population’s only early intervention is arrest and incarceration. We will develop and implement strategies to provide early assessment/evaluation, treatment and recovery support services in order to provide early intervention and treatment as an alternative to incarceration for those affected by opioid addiction. We will expand our use of Vivitrol treatment to assist in the prevention of relapse for clients in recovery and pursue treatment housing for women with children.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approves application of this Grant Award from US Department of Justice to establish alternatives to incarceration for individuals with opioid use disorders.

Respectfully submitted,

Malcolm McDonald  
Deputy Director, Community Corrections

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

*Note: The processes outlined in this form are not applicable to disaster recovery grants.*

### Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: Community Corrections Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No

Name of Funding Opportunity: Comprehensive Opioid Abuse Site-based Program FY 2018  
Funding Source:  Federal  State  Local: \_\_\_\_\_  
Requestor Information (Name of staff person initiating form): Jenna Morrison  
Requestor Contact Information: [jmorrison@clackamas.us](mailto:jmorrison@clackamas.us)  
Department Fiscal Representative: Community Corrections  
Program Name or Number (please specify): \_\_\_\_\_  
Brief Description of Project: System Level Diversion

Establish alternatives to incarceration for individuals with opioid use disorders. Link high frequency drug users with evidence-based treatment and recovery support services with the goal of reducing encounters with the criminal justice and health care systems. Medication assisted treatment will be expanded for those entering CSAP and an additional housing option will be added to the current CSAP program to allow for women to reunify sooner with their children while still being fully engaged with treatment services.

Name of Funding (Granting) Agency: U.S Department of Justice

Agency's Web Address for Grant Guidelines and Contact Information:

<https://www.bja.gov/funding/COAP18.pdf>

**OR**

Application Packet Attached:  Yes  No

Completed By: \_\_\_\_\_ Date \_\_\_\_\_

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant/Renewal  Other Notification Date: 09/30/2018  
CFDA(s), if applicable: 16.838 and 16.754  
Announcement Date: 05/07/2018 Announcement/Opportunity #: \_\_\_\_\_  
Grant Category/Title: Program Max Award Value: \$900,000  
Allows Indirect/Rate: Yes Match Requirement: none  
Application Deadline: 06/07/2018 Other Deadlines: \_\_\_\_\_  
Grant Start Date: 10/01/2018 Other Deadline Description: \_\_\_\_\_  
Grant End Date: 10/01/2021  
Completed By: Nora Jones  
Pre-Application Meeting Schedule: May 10, 2018



### Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept. Program and Fiscal Staff

#### Mission/Purpose:

1. How does the grant support the Department's Mission/Purpose/Goals?

"The mission of Clackamas County Community Corrections is to provide supervision, resources, intervention, treatment & victim services to justice involved individuals and crime victims so they can experience and contribute to a safe community" The purpose of this grant will be to identify justice involved individuals with opioid use disorders and provide intervention and treatment options early in the supervision process and expand the use of medication assisted treatment and the Corrections Substance Abuse Program (CSAP).

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

N/A

3. What, if any, are the community partners who might be better suited to perform this work?

The Corrections Substance Program (CSAP) is an intensive residential treatment program operated by Community Corrections that addresses criminal risk factors in addition to drug and alcohol addiction. CSAP partners with the Clackamas County Jail, Drug Court, Behavioral Health, Bridges to Change and CODA to identify and provide services to clients, but Community Corrections is responsible for providing treatment, housing and supervision. CSAP partners with Health Centers to provide medication assisted treatment and primary health care. Currently there are no other residential treatment programs in Clackamas County.

4. What are the objectives of this grant? How will we meet these objectives?

The objectives of the Comprehensive Opioid Site-based Program are to: Encourage  
and support comprehensive cross-system planning and collaboration among officials who work in law enforcement, pretrial services, the courts, probation and parole, child welfare, reentry, PDMPs, and emergency medical services, as well as health care providers, public health partners, and agencies that provide substance abuse treatment and recovery support services.

- Develop and implement strategies to identify and provide treatment and recovery support services to "high frequency" utilizers of multiple systems (e.g., health care, child welfare, criminal justice) who have a history of opioid abuse.
- Expand law enforcement diversion programs.
- Expand the availability of treatment and recovery support services in rural or tribal communities by expanding the use to technology-assisted treatment and recovery support services.
- Implement and enhance prescription drug monitoring programs.
- Develop and enhance public safety, behavioral health, and public health information sharing partnerships that leverage key public health and public safety data sets (e.g., de-identified PDMP data, naloxone administrations, fatal and non-fatal overdose data, drug arrests) and develop interventions based on this information.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Yes, This grant will support Residential Services(CSAP) and Parole & Probation Services

#### Organizational Capacity:

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required?

If no, can staff be hired within the grant timeframe?

The organization does have adequate and qualified staff. Staff includes Probation/Parole Officers, Corrections Counselors, Mental Health Professionals, Project Coordinator and recovery mentors.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

As noted above, CSAP partners with the Clackamas County Jail, Drug Court, Behavioral Health, Health Centers, Bridges to Change and CODA to identify and deliver services to clients. The Clackamas County Jail assists by helping to identify prospective clients and by releasing clients to alternative programs. Drug court assists by referring prospective clients that are participants in and under the supervision of the Drug Court program. Community Corrections currently contracts with Behavioral Health to provide direct treatment services to clients in the CSAP program. Community Corrections contracts with Bridges to Change to provide mentor services. Community Corrections contracts with CODA to conduct in-custody assessment of clients to determine eligibility for inpatient treatment. All of the partner agencies share the common goal of stopping the cycle of crime and addiction, and the reliance on incarceration.

3. If this is a pilot project, what is the plan for sun setting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

This is a pilot project expanding on an already existing program. If it is found to be successful, resources will be leveraged to continue the program and we may also reach out to partnering agency to ask for additional support. If found not to be successful we will continue business as usual.

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted?

*If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?*

N/A

**Collaboration**

1. List County departments that will collaborate on this award, if any.

Clackamas County Jail, Drug Court Program, Behavioral Health and Health Centers will all collaborate with the CSAP program.

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

Provide relevant data by submitting quarterly performance metrics through BJA's on line Performance Measurement Tool

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Engage a research partner to provide skills and assistance in identifying performance measure, providing subject matter expertise and guidance, and/or ensuring performance and outcome evaluations are being considered within the planning phase.

3. What are the fiscal reporting requirements for this grant?

Quarterly financial reports, final financial reports and if applicable and annual audit report in accordance with Part 200 Uniform Requirements or specific award conditions.

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

Yes

2. What other revenue sources are required? Have they already been secured?

Current State and local funding sources will be allocated toward this program.

3. Is there a match requirement? If yes, how much and what type of funding (CGF, In-kind, Local Grant, etc.)?

No

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

One time funding to study early intervention and effectiveness of treatment housing for women with children. If successful we will reallocate funding within our budget to continue the program.

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

No indirect costs. Direct admin costs of no more than 10% of budget is allowed.

Program Approval:

Name (Typed/Printed)	Date	Signature
<b>** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR **</b>		

**Section IV: Approvals**

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Malcolm McDonald		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Name (Typed/Printed)	Date	Signature

**IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT, BY EMAIL OR BY COURIER, TO FINANCE. ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.**

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**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. All grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:  Date:

OR

Policy Session Date:

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County Administration Attestation

**County Administration: re-route to department contact when fully approved.**

**Department: keep original with your grant file.**



**DAN JOHNSON**  
DIRECTOR

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

May 24, 2018

Board of County Commissioners  
Development Agency Board

Members of the Board:

Approval of a Disposition Agreement with Bottling Group, LLC

<b>Purpose/Outcomes</b>	Authorization for the Chair to execute a Disposition Agreement to convey real property from the Clackamas County Development Agency to Bottling Group, LLC
<b>Dollar Amount and Fiscal Impact</b>	The agreement stipulates sale of the property for \$3,555,000
<b>Funding Source</b>	Not Applicable. No funding considered as a part of this property transaction
<b>Duration</b>	Establishes a due diligence period of 180 days, closing within 90 days of due diligence and substantial completion of the project within 24 months
<b>Previous Board Action</b>	Executive Session
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	David Queener, Program Supervisor – Development Agency 503-742-4322 or <a href="mailto:davidque@co.clackamas.or.us">davidque@co.clackamas.or.us</a>

**BACKGROUND:**

The Development Agency owns a 12.1 acre parcel, which is part of the Clackamas Industrial Area Opportunity site. Bottling Group 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 Bottling Group 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 \$3,555,000 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 Bottling Group, 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 BOTTLING GROUP, LLC, a Delaware 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**."

The Agency and the Developer hereby agree as follows:

### RECITALS

A. This Agreement is entered into by the Agency in furtherance of its objectives under the Clackamas Industrial Area Renewal 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 July 26, 1984 by Order No. 84-1045 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. This Agreement is subject to the provisions of the Plan. 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 or have the property purchased and developed for the benefit of Developer's use in accordance with the provisions of this Agreement and the Post-Closing Agreement, and Developer desires to purchase or have the property purchased and developed for the benefit of Developer's use in accordance with the provisions of this Agreement and the Post-Closing Agreement, on and subject to the terms and conditions set forth in this Agreement.

D. Developer believes the Property is not large enough and/or configured in such a way as to fully accommodate the Developer's intended improvements and use. Developer will use its best efforts to design its site improvements within the limits of the Property. To account for the possibility that Developer cannot feasibly design its site improvements within the limits of the Property, Developer desires that Agency obtain the right for Developer or its assignee to (a) swap a certain portion of the Property depicted in black hatching and described on Exhibit I as "B-swap opportunity-parcel size to be approx. equal to A" ("**Swap Parcel B**") for an equivalent size portion of land currently owned by the neighbor to the north of the Property (the "**Northerly Neighbor**") depicted in red hatching and described on Exhibit I as "A-maximum

size needed is .33 acres (approx. 32' x 450') ("Swap Parcel A"); and (b) acquire from Clackamas County Service District #1 ("CCSD #1") a portion of CCSD #1's land depicted in blue hatching and described on Exhibit I as "C-add'l land purchase opportunity-parcels size to be approx. equal to A" ("Purchase Parcel C"), all 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 12.1 acres (and approximately 11.66 net developable acres) of land owned by the Agency located on Capps Road west of SE 120<sup>th</sup> Avenue, 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 Holdback 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 building improvement conditions and economic development 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 Beaver Creek Road  
Oregon City, OR 97045  
Attn: Dave Queener  
Email: [DavidQue@co.clackamas.or.us](mailto:DavidQue@co.clackamas.or.us)

#### Section 1.4: The Developer.

The term "**Developer**" as used in this Agreement is Bottling Group, 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:

Bottling Group, LLC  
c/o PepsiCo Global Real Estate  
1111 Westchester Avenue  
White Plains, New York 10604  
Attn: Cynthia M. Poggiogalle, Director of Real Estate  
Email: cindy.poggiogalle@pepsico.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 Insurance Company of Oregon  
10151 SE Sunnyside Rd. #300  
Clackamas, Oregon 97015  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

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

The qualifications and identity of Developer is 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 may be withheld in the Agency's sole discretion. No consent shall be required if Developer assigns to an accommodation party, including an exchange accommodation titleholder, in conjunction with a Section 1031 like-kind exchange, which is permitted below under Section 8.19. 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 a controlling change (voluntary or involuntary) in the ownership of Developer or any successor-in-interest of Developer inconsistent with this Agreement. A controlling change is a change in more than fifty percent (50%) of the members of Developer. Notwithstanding the foregoing or anything else to the contrary in this Agreement or the Post-Closing Agreement, Agency acknowledges and agrees that Developer shall have the right under this Agreement and the Post-Closing Agreement to either (i) develop the Property itself, retain ownership of the Property and use and occupy the Property pursuant to the terms of the Post-Closing Agreement; (ii) assign this Agreement to an entity which will purchase, develop and lease the Property to Developer for Developer's use and occupancy, all in accordance with the provisions of this Agreement and the Post-Closing Agreement; or (iii) develop the Property itself, then convey ownership of the Property to an entity subject to a leaseback to Developer under which Developer shall use and occupy the Property, all in accordance with the provisions of this Agreement and the Post-Closing Agreement. No such assignment of this Agreement shall release Developer from its obligations under this Agreement and/or the Post-Closing Agreement.

## **ARTICLE 2: DEVELOPER'S DUE DILIGENCE**

### Section 2.1: Title Commitment.

Within fourteen (14) days after the Effective Date, Agency will request the Title Company (defined in Section 3.3 below) furnish Developer a 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 fourteen (14) 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. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, at or before Closing Agency shall remove, in a manner satisfactory to Title Company, all mortgages, deeds of trust and other monetary liens created by or with the consent of Agency.

### Section 2.2: Survey.

Not later than July 30, 2018, Agency shall, at Agency's cost, deliver a current ALTA survey including, without limitation, delineation of all wetlands on the Property (in electronic format CAD & PDF, where available) to Developer (the "**Initial Survey**"). The Initial Survey shall be certified to Agency, Developer and Title Company. 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 receiving the last of the Preliminary Commitment, the Underlying Documents and 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 fourteen (14) 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 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 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 fourteen (14) days after the Effective Date, Agency shall deliver all documents and materials, in electronic format, which Agency has in its possession (or access to) which concern the Property or its development, including but not limited to: existing surveys, environmental assessments (Phase I and II); soils or geotechnical reports; wetland reports, analysis and permits; traffic studies; development feasibility studies; copies of use and development permits; and any 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 eighty (180) days after the Effective Date (the "**Initial Due Diligence Period**", which period, as may be extended as provided herein, 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, the amount of land available to support Developer's intended use, zoning, access, and utilities. 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 (which may, at Developer's election, include the digging of approximately ten test pits, each 3' wide, 8' long and 10' deep in the approximate locations shown on **Exhibit "D"** attached hereto, all subject to reasonable change as soil conditions dictate); 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, except that the test pits need only be backfilled with clean available fill and compacted with the bucket of a backhoe. 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 and in its sole and absolute discretion 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. Where Developer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

Agency represents that the Storm Line Easement attached hereto as **Exhibit "H"** in favor of Agency with respect to certain existing underground storm water lines located on a portion of the Property Agency shall be recorded prior to the date Agency conveys the Property pursuant to this Agreement.

Notwithstanding the foregoing, Developer shall have the right to extend the Due Diligence Period for up to two (2) separate periods of thirty (30) days each by giving notice thereof to Agency prior to the then-current expiration date and depositing with the Title Company \$25,000 for each extension; all such amounts shall be non-refundable to Developer in the event Developer does not close this transaction (except in the case of (i) default hereunder by Agency, (ii) failure of any condition in Section 4.2 to be satisfied, or (iii) the commencement or threatened commencement of any eminent domain, condemnation or similar proceeding against the Property, in whole or in part), but will be credited to the Purchase Price payable by Developer at Closing.

#### 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 "E."** 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. 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. Agency approval shall not be deemed approval by the Clackamas County Planning Division 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. 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 Three Million Five Hundred Fifty Five Thousand and no/100 Dollars (\$3,555,000.00) (the "**Purchase Price**").

Section 3.2: Earnest Money Deposit.

Developer shall, within one (1) business day after the Effective Date, deliver to the Title Company (defined below) a promissory note redeemable in the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) as earnest money (the "**Earnest Money Note**") to be held and applied in accordance with the terms of this Agreement. If Developer fails to timely deposit the Earnest Money Note as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. Upon expiration of Developer's Due Diligence Period (as same may be extended as provided above), the Earnest Money Note shall be converted to immediately available funds (the "**Earnest Money Funds**") and shall become nonrefundable except where otherwise expressly provided in this Agreement. The Earnest Money Funds 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, the Earnest Money Note shall be surrendered by the Title Company to Developer.

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 ninety (90) 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.

Section 3.4: Deed Form.

At Closing, the Agency shall convey to Developer marketable fee simple title to the Property by Bargain and Sale Deed, duly executed, acknowledged and delivered in the form of **Exhibit "F"** 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 Agency shall be responsible for the cost of any and all ALTA standard title insurance for the Property and Developer shall be responsible to obtain such ALTA standard title insurance, and for obtaining and paying the cost of any additional premiums for ALTA extended coverage and additional title endorsements required. 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 shared equally by Developer and the Agency. Developer shall be responsible for all professional fees incurred by Developer in connection with its investigation of the Property, all recording fees 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. Agency shall be solely responsible for payment of any rollback taxes which may be levied or assessed following the Closing relating to any real estate tax exemptions or abatements which may affect the Property at any time prior to Closing. The immediately preceding sentence shall survive the Closing.

3.5.3 Developer and Agency hereby acknowledge and agree that Choyce Peterson Inc. and Kidder Matthews are exclusively representing Developer and that no other broker shall be entitled to a commission with this transaction. Agency shall pay Kidder Matthews a brokerage fee of 2% of the Purchase Price.

Section 3.6: Events of Closing.

Provided the Escrow Officer has received sums equal to the Purchase Price 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 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 "G"** (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 sum of One Hundred and Twenty-Five Thousand Dollars (\$125,000) 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.

Exclusive 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 Clackamas County Planning Division 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 Clackamas County Planning Division, 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 by the Title Company 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 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 a Delaware limited liability company, duly organized and validly existing, and is qualified to do business in the State of Oregon. 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 Escrow and Development Agreement to be constructed;

6.1.4: Cynthia M. Poggiogalle, in her capacity as Director of Real Estate, 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 Escrow and Development 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 Escrow and Development 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.

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), during the time Agency has owned the Property, Agency has not released to the soil or groundwater on the Property any hazardous substances in any material concentration or quantity;

6.2.13 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.

6.2.14 Agency covenants to use commercially reasonable efforts to enter into (i) a written agreement (the “**Swap Agreement**”) with the Northerly Neighbor on or before June 30, 2018 pursuant to which Agency shall have the assignable right to swap with the Northerly Neighbor, or cause its assignee to swap with the Northerly Neighbor, marketable title to Swap Parcel B for marketable title to Swap Parcel A, and (ii) a written agreement (the “**Parcel C Agreement**”) with CCSD #1 on or before June 30, 2018 pursuant to which Agency shall have the assignable right to purchase from the Water Authority, or cause its assignee to purchase from the Water Authority for the price of \$\_\_\_\_ per square foot, marketable title to Purchase Parcel C. Agency shall provide Developer with copies of the Swap Agreement and the Parcel C Agreement on request. The Swap Agreement shall (a) permit Agency and its assignee the right to conduct such due diligence on Swap Parcel A as the Agency or such assignee may desire during the Due Diligence Period defined in Section 2.4 above and to terminate the Swap Agreement for any reason by notice delivered prior to the expiration of the Due Diligence Period, (b) provide that the swap of Swap Parcel B for Swap Parcel A shall be an equal exchange without the payment of monetary consideration by any party to any party, (c) require Agency to use commercially reasonable efforts to procure, prior to August 31, 2018, at its own cost but with the reasonable cooperation of the Northerly Neighbor, any lot line adjustment, subdivision and other municipal approvals as may be required to effect the swap of such parcels, (d) provide for a closing to occur simultaneously with the Closing under this Agreement, and (e) provide for each party to such agreement to pay its own costs arising thereunder. The Parcel C Agreement shall (a) permit Agency and its assignee the right to conduct such due diligence on Purchase Parcel C as the Agency or such assignee may desire during the Due Diligence Period defined in Section 2.4 above and to terminate the Parcel C Agreement for any reason by notice delivered prior to the expiration of the Due Diligence Period, (b) require Agency to use commercially reasonable efforts to procure, prior to August 31, 2018, at its own cost but with the reasonable cooperation of CCSD #1, any lot line adjustment, subdivision and other municipal approvals as may be required to effect the conveyance of Purchase Parcel C to Agency or its assignee, (c) provide for a closing to occur simultaneously with the Closing under this Agreement, and (d) provide for each party to such agreement to pay its own costs arising thereunder. Within fourteen (14) days after the effective date of the Swap Agreement or the Parcel C Agreement, Agency will request the Title Company furnish Developer a preliminary title report on either Swap Parcel A or Purchase Parcel C, as the case may be. The timelines set forth in Section 2.1 shall govern the review and approval of any title exceptions noted in the preliminary title report. Failure by Agency to enter into the Swap Agreement and/or the Parcel C Agreement, or to obtain lot line adjustment, subdivision or other municipal approvals as may be required to effect the transactions in either or both of such agreements, shall not be a default under this Agreement.

For the purposes of this Agreement, "Agency's knowledge" is defined as the knowledge of 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.

## **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; or

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

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.

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 fifteen (15) 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, 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 in such 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, (ii) delivered in person or by local or national courier, or sent by electronic mail.

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, (ii) delivered in person or by local or national courier shall be deemed served or given upon receipt or refusal of delivery, and (iii) sent by electronic mail shall be deemed served or given upon transmission subject to confirmation of receipt. 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, 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: 1031 Like-Kind Exchange.

If Developer intends for this transaction to be a part of a Section 1031 like-kind exchange, then the Agency agrees to cooperate in the completion of the like-kind exchange so



long as the like-kind exchange can be completed within the timelines set forth herein, Agency incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the Agency that are related only to the exchange are paid or reimbursed to the Agency at or prior to closing.

#### **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.

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: \_\_\_\_\_, 2018

**"DEVELOPER"**

BOTTLING GROUP, LLC, a Delaware limited  
liability company

By: \_\_\_\_\_

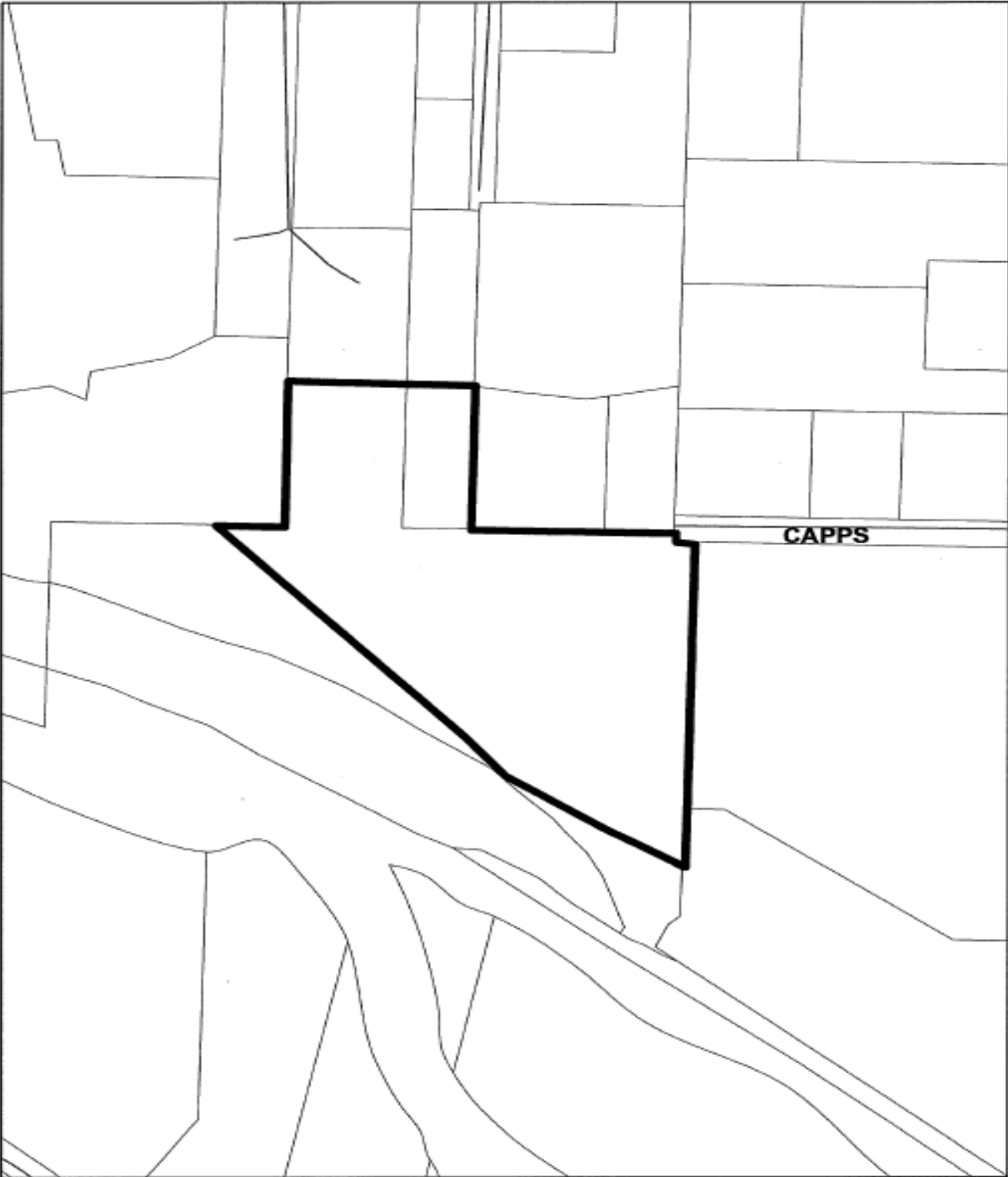
Date: \_\_\_\_\_, 2018

**LIST OF EXHIBITS**

EXHIBIT A	Property Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Post-Closing Agreement
EXHIBIT D	Test Pit Locations
EXHIBIT E	Scope of Development
EXHIBIT F	Form of Bargain and Sale Deed
EXHIBIT G	Memorandum of Post-Closing Agreement
EXHIBIT H	Storm Line Easement Agreement
EXHIBIT I	Map of Swap Parcels A and B and Purchase Parcel C

**EXHIBIT A**

**Property Map**



## **EXHIBIT B**

### **Legal Description - Property**

#### PARCEL 1

That tract of land described as Parcel IX, and a portion of Parcel VI, Statutory Warranty Deed Document No. 2009-071163, Clackamas County Deed Records. Said tract of land being situated in the Northeast one-quarter of Section 15, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, and more particularly described as follows:

Commencing at the one-quarter corner common to Sections 15 and 10 of said Township and Range, said point being marked by a 3-1/4" bronze disk; thence, along the North line of said Section 15, North 89°50'46" East 662.95 feet; thence, leaving said North line and along the East line of that tract of land described in Deed Document No. 88-011699, Clackamas County Deed Records, South 0°01'11" West 620.00 feet to the Southeast corner thereof, said point also being the Northeast corner of said Parcel IX tract, said point being the point of beginning for the herein described tract; thence, along the East line of said Parcel IX tract, South 0°08'53" West 696.91 feet to the Southeast corner thereof, said point also being on the North line of the Southwest one-quarter of the Northeast one-quarter of said Section 15; thence, along said North line, North 89°58'22" East 533.96 feet to the Southeast corner of Parcel II, Deed Document No. 2009-015937, Clackamas County Deed Records; thence, leaving said North line, South 0°08'24" West 20.08 feet; thence, along the South right of way line of Capps Road, County Road No. 3393, North 89°57'49" East 40.05 feet to the Northwest corner of that tract of land described as Tract 1, Property Line Adjustment Deed Document No 2016-010914, Clackamas County Deed Records; thence, along the West line of said Tract 1, South 0°27'22" West 758.69 feet; thence, leaving said West line, North 58°58'28" West 393.44 feet; thence, North 45°37'34" West 822.92 feet to a point on the North line of the Southwest one-quarter of the Northwest one-quarter of said Section 15; thence, along said North line, North 89°58'22" East 124.44 feet to the Southwest corner of said Parcel IX tract; thence, leaving said North line and along the West line of said Parcel IX tract, North 0°05'53" East 696.40 feet to the Northwest corner thereof, said point also being the Southwest corner of that tract of land described in Deed Document No. 88-011699, Clackamas County Deed Records; thence, along the South line of said Document No. 88-011699 tract, North 89°50'46" East 233.61 feet to the point of beginning.

#### PARCEL 2

A part of the Northeast one-quarter of Section 15, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the North one-quarter corner of section; thence South  $86^{\circ}56'55''$  East along the North line of said section, 663.05 feet; thence continuing East along said North line 133.45 feet; thence South  $3^{\circ}24'10''$  West 604.36 feet to the most Easterly Southeast corner of Deed to Don A. Bufton by Deed recorded January 16, 1974 as Recorder's Fee No. 74 1289, Film Records and the True Point of Beginning; thence North  $86^{\circ}56'55''$  West parallel with the North line of said section and along the South line of the above mentioned Bufton tract and along the South line of a tract of land conveyed to Don A. Bufton by Deed recorded August 23, 1973, as Fee No. 73 26936, Clackamas County Records, 133.45 feet to a point on the East line of that tract conveyed to Pearl Anderson by Deed recorded October 31, 1927 in Book 190, page 465, Clackamas County Deed Records; thence South along said East line 743.14 feet to the Southeast corner thereof; thence East along the 1/16th section line, 133.45 feet to the Southwest corner of that tract conveyed to John A. Kaslin, et ux, by Deed recorded August 1, 1962 in Book 608, page 1, Clackamas County Deed Records; thence North along the West line of said Kaslin tract and the Northerly extension thereof, 743.14 feet to the true point of beginning.



## 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 **BOTTLING GROUP, LLC**, a Delaware limited liability company ("**Developer**"), and Chicago Title Insurance Company of Oregon ("**Escrow Holder**"). The latest date on which this Agreement is signed by Agency, Developer and Escrow Holder (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 \_\_\_\_\_, 2018 (the "**DA**"), Developer acquired from Agency that certain real property comprised of approximately 12.1 acres (and approximately 11.66 net developable acres) of land owned by the Agency located on Capps Road west of SE 120<sup>th</sup> Avenue 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, on and subject to the terms and conditions of this Agreement. As used herein, the "**Building Improvements**" means the industrial 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 One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) (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 provided herein.

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 satisfaction of the following development goals relating to the development of the Property (collectively, the "**Development Goals**") within the specified time periods:

**1.1 Building Improvements; Floor Area Ratio Goal.** Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion 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. As used in this Agreement, "Substantial Completion" of a work or improvement shall mean that (i) the applicable work or improvement has been completed to the point that it can be used for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called "punch list" and (ii) the final governmental permit or approval (as applicable) has been received with respect to such work or improvement. 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. The Building Improvements shall provide a floor area ratio of not less than .23 or as agreed by Agency and Developer based on reasonable standards relating to the building size layout. The goal under this Section 1.1 shall be deemed met upon Substantial Completion of the Building Improvements providing the floor area ratio in accordance with the foregoing.

**1.2 Job Quantity.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, the Developer shall meet its employment goal of 135 'Full-time' employees (the "Job Quantity"). A Full-time employee is defined as one whose position is permanent and who works a minimum of 35 hours per week, or a combination of permanent employees who together work a minimum of 35 hours per week. To be counted as a Full-time employee, the employee must be: employed by Developer and/or tenant of Developer, active and paid through the normal payroll system of the employer, for whom Federal Insurance Contribution Act ("FICA"), and federal and state income taxes are deducted from his or her gross wages and then forwarded to the appropriate agencies by employer on behalf of the worker, as to whom the employer pays federal and state unemployment insurance, and as to whom the employer contributes to FICA, and shall not include workers hired through an agency to provide temporary services to employer or workers acting as independent contractors. For purposes of audit, the Agency intends to seek relevant employee information from the Oregon Employment Department. If the Agency is not able to obtain information from the Oregon Employment Department to determine the relevant wages, the Agency may request that Developer and/or tenant of Developer seek such information as provided in Section 1.4 below. The Job Quantity shall be deemed satisfied for the Building Improvements upon the first instance of such employment goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of the Developer and/or tenant of Developer.

**1.3 Average Annual Wage.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, the Developer's and/or tenant of Developer's average annual wages for "Full-time" employees shall be a minimum of \$23.00 per hour (the "Average Annual Wages"). Average Annual Wages excludes senior executive positions (e.g., CEO, COO, CFO, etc.) and shall be exclusive of benefits. The Average Annual Wage goal shall be deemed satisfied for the building Improvements upon the first instance of such goal being met at any time during the 12-month

period after the Building Improvements are complete and the building is ready to be utilized by the employees of the Developer and/or tenant of Developer.

**1.4 Supporting Information.** In the event that Developer will not be the sole occupant of the Building, Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each tenant of the Building Improvements:

"Upon request of [Developer] or [Agency] from time to time during the first twelve (12) months of full occupancy, [Developer and/or tenant of Developer] agrees to certify in writing the total number of Full-time employees and Average Annual Wages of such employees working at the [Premise/Property] as of the date(s) requested.

If any tenant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the Developer and/or Tenant of Developer as it is willing to provide with respect to the above Development Goals. The parties may rely upon such information provided by the occupants of the Building Improvements, together with all other reasonably reliable data and estimates, for purposes of evidencing satisfaction with the Development Goals under Section 1.2 and Section 1.3 above.

**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.

POST-CLOSING 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 funds in the Account.

**5.4 Disbursement of Account Funds.** Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1, all 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. For purposes of this provision, the Agency's approval is not unreasonably withheld where a tenant or owner of property fails to confirm in writing the total number of employees and average annual wages of employees working at the Property and the Agency cannot otherwise obtain such employee information from the Oregon Employment Department or other reasonably reliable source, for purposes of determining if the Development Goals have been satisfied. The sole condition for disbursement of the Security Deposit to Developer is the Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals 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, subject to delays due to force majeure or other causes beyond the reasonable control of Developer, or if the Developer fails to satisfy any of the remaining Development Goals by the deadlines set forth in Section 1.2 or Section 1.3, the entire Security Deposit shall be disbursed to Agency, subject to the written approval of Developer, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Security Deposit to Agency is the failure to achieve any of the deadlines associated with the Development Goals set forth in Section 1 by the foregoing deadlines. 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, approved in writing by the other party. 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, 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, arbitative, 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.**

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 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.

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.



**7.5 Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

**8. DEVELOPER OBLIGATIONS UNDER THE PLAN.** Pursuant to Section 715 and 745 of the Plan, Developer agrees as follows:

The Property shall be used for the purposes designated in the Plan.

Developer shall obtain necessary approvals for the Building Improvements from all federal, state and/or local agencies that may have jurisdiction on the Property and the Building Improvements to be developed thereon.

The development of the Property shall be in accord with the regulations prescribed in the County's Comprehensive Plan, Zoning and Development Ordinance, and any other applicable local, state or federal laws regulating the development of property.

Agency acknowledges receipt of a copy of the plans and specifications for construction of the Building Improvements referenced on Exhibit A attached.

Developer shall commence and complete the Building Improvements within the period of time as provided in this Agreement.

Developer covenants that it will not discriminate against any person or group of persons on account of age, 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.

Developer shall maintain the Property in a clean, neat and safe condition.

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.**

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, or (iii) sent by email.

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, (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), and (iii) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). 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.

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 Beaver Creek Road  
Oregon City, Oregon 97045  
Attn: Dave Queener  
Email: [davidque@co.clackamas.or.us](mailto:davidque@co.clackamas.or.us)

DEVELOPER: Bottling Group, LLC  
c/o PepsiCo Global Real Estate  
1111 Westchester Avenue  
White Plains, New York 10604  
Attn: Cynthia M. Poggiogalle, Director of  
Real Estate  
Email: [cindy.poggiogalle@pepsico.com](mailto:cindy.poggiogalle@pepsico.com)

ESCROW HOLDER: Chicago Title Insurance Company of Oregon  
10151 SE Sunnyside Road, Suite 300  
Clackamas, Oregon 97015  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

**9.3 Nonliability of Officials and Employees.** No member, elected official, official or employee 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.

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**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

**9.13 Force Majeure.**

**9.13.1 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").

**9.13.2 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.

**9.13.3 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 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.

**[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:**

**Bottling Group, LLC**

a Delaware limited liability company

By: \*DRAFT- FOR INFORMATION ONLY\*

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: \*DRAFT- FOR INFORMATION  
ONLY\*  
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:**

By: \*DRAFT- FOR INFORMATION ONLY\*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

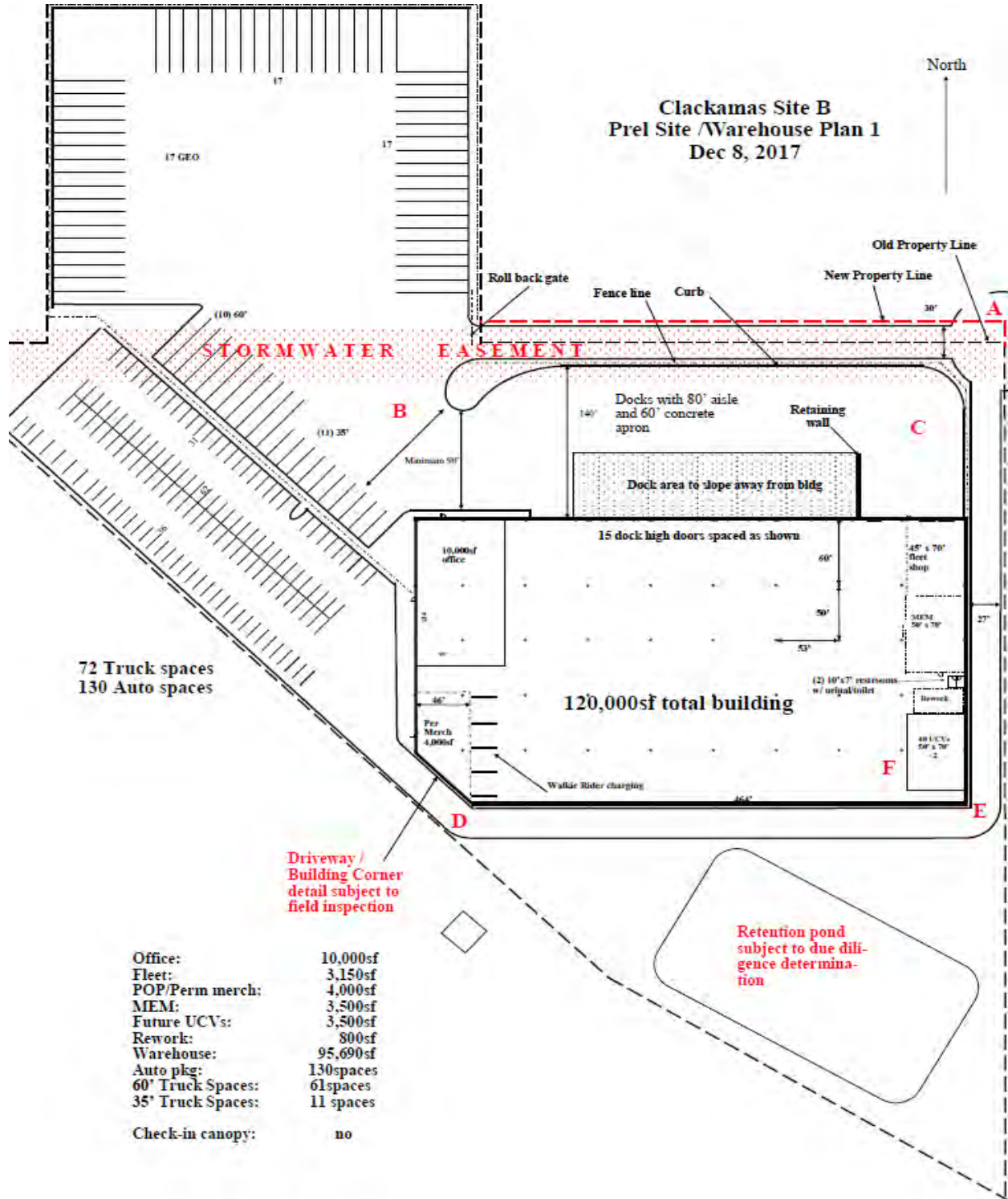
Date of Execution: \_\_\_\_\_

List of Exhibits

Exhibit A      Scope of Development  
Exhibit B      Schedule of Performance

# EXHIBIT A to Post-Closing and Escrow Agreement

## Scope of Development



Office:	10,000sf
Fleet:	3,150sf
POP/Perm merch:	4,000sf
MEM:	3,500sf
Future UCVs:	3,500sf
Rework:	800sf
Warehouse:	95,690sf
Auto pkg:	130spaces
60' Truck Spaces:	61spaces
35' Truck Spaces:	11 spaces
Check-in canopy:	no

**EXHIBIT B to Post-Closing and Escrow Agreement**

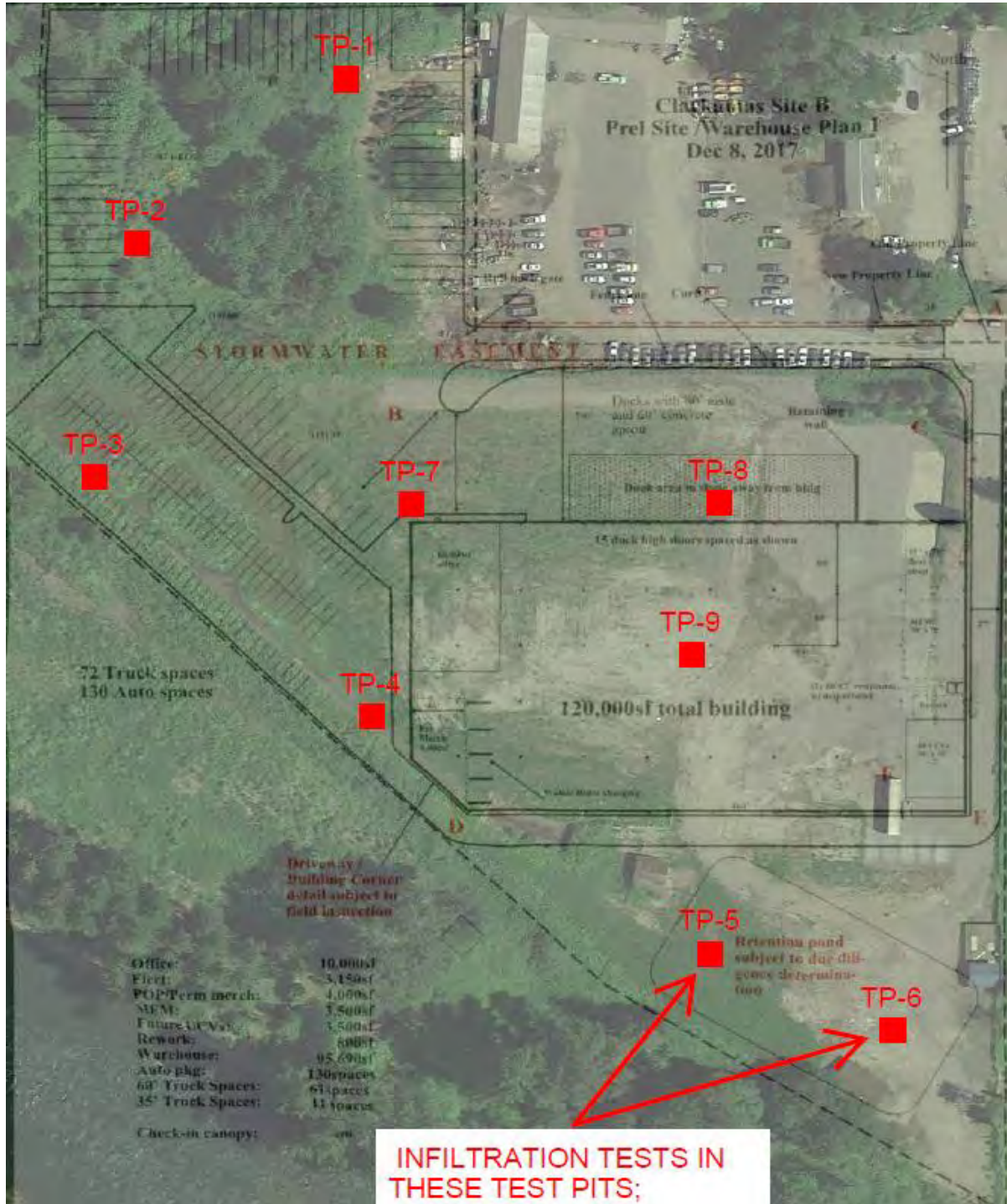
**Schedule of Performance**

Preliminary Design	24 weeks	May 2018 - October 2018
Design Review Approval Process	17 weeks	October 2018 – February 2019
Final Design	6 weeks	November 2018 – December 2018
Permitting and Bidding	12 weeks	December 2018 – February 2019
Construction	34 weeks	February 2019 – October 2019



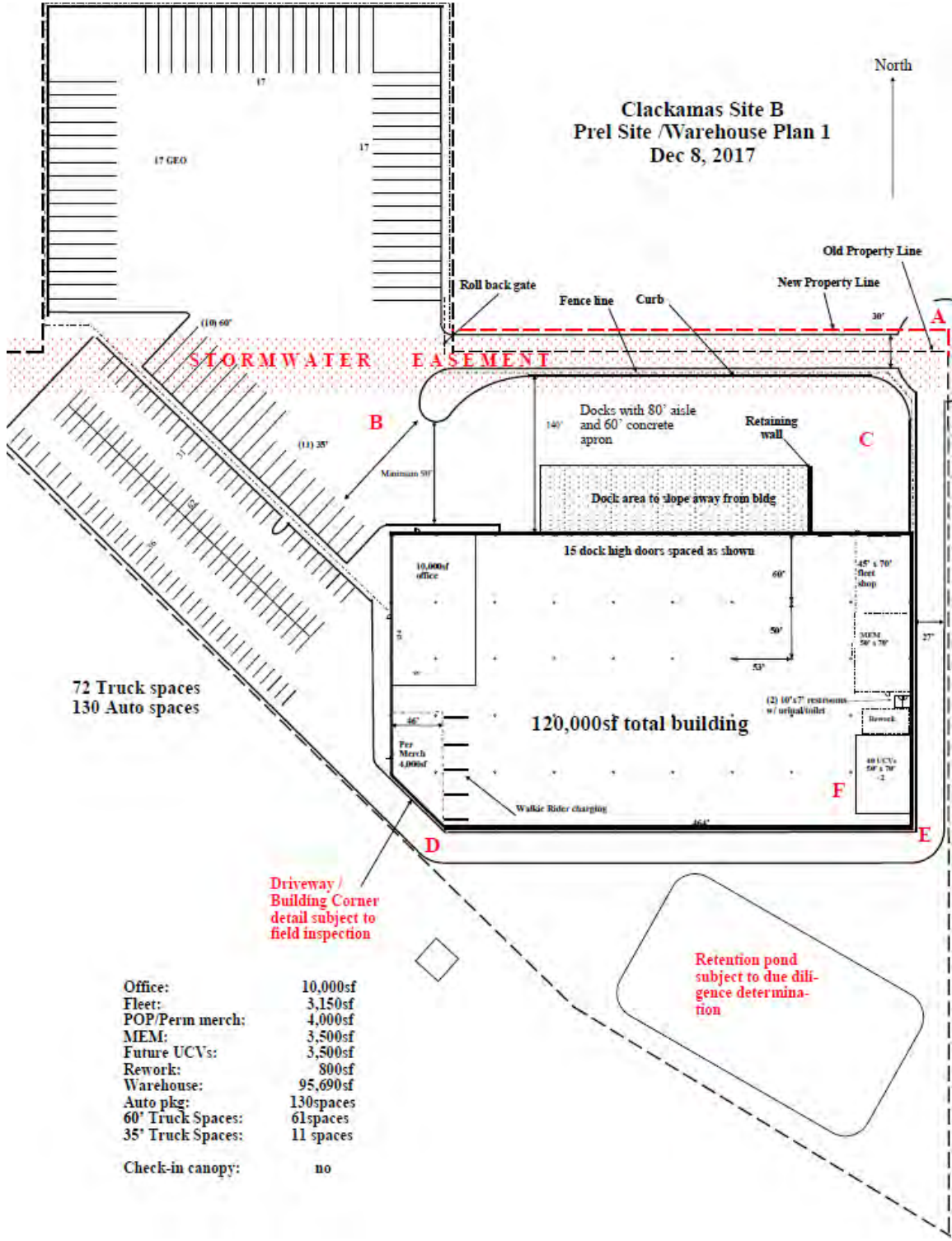
# EXHIBIT D

## Test Pit Locations



# Exhibit E

## Scope of Development



1.

**Exhibit F**

**Form of Bargain and Sale Deed**

**AFTER RECORDING SEND TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**UNTIL A CHANGE IS REQUESTED  
ALL TAX STATEMENTS SHALL  
BE SENT TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**STATUTORY BARGAIN AND SALE DEED**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic ("Grantor") conveys to **BOTTLING GROUP, LLC**, a Delaware 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 Three Million Five Hundred Fifty Five Thousand and no/100 Dollars (\$3,555,000.00).

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: \*DRAFT- FOR INFORMATION ONLY\*  
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**

#### **PARCEL 1**

That tract of land described as Parcel IX, and a portion of Parcel VI, Statutory Warranty Deed Document No. 2009-071163, Clackamas County Deed Records. Said tract of land being situated in the Northeast one-quarter of Section 15, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, and more particularly described as follows:

Commencing at the one-quarter corner common to Sections 15 and 10 of said Township and Range, said point being marked by a 3-1/4" bronze disk; thence, along the North line of said Section 15, North 89°50'46" East 662.95 feet; thence, leaving said North line and along the East line of that tract of land described in Deed Document No. 88-011699, Clackamas County Deed Records, South 0°01'11" West 620.00 feet to the Southeast corner thereof, said point also being the Northeast corner of said Parcel IX tract, said point being the point of beginning for the herein described tract; thence, along the East line of said Parcel IX tract, South 0°08'53" West 696.91 feet to the Southeast corner thereof, said point also being on the North line of the Southwest one-quarter of the Northeast one-quarter of said Section 15; thence, along said North line, North 89°58'22" East 533.96 feet to the Southeast corner of Parcel II, Deed Document No. 2009-015937, Clackamas County Deed Records; thence, leaving said North line, South 0°08'24" West 20.08 feet; thence, along the South right of way line of Capps Road, County Road No. 3393, North 89°57'49" East 40.05 feet to the Northwest corner of that tract of land described as Tract 1, Property Line Adjustment Deed Document No 2016-010914, Clackamas County Deed Records; thence, along the West line of said Tract 1, South 0°27'22" West 758.69 feet; thence, leaving said West line, North 58°58'28" West 393.44 feet; thence, North 45°37'34" West 822.92 feet to a point on the North line of the Southwest one-quarter of the Northwest one-quarter of said Section 15; thence, along said North line, North 89°58'22" East 124.44 feet to the Southwest corner of said Parcel IX tract; thence, leaving said North line and along the West line of said Parcel IX tract, North 0°05'53" East 696.40 feet to the Northwest corner thereof, said point also being the Southwest corner of that tract of land described in Deed Document No. 88-011699, Clackamas County Deed Records; thence, along the South line of said Document No. 88-011699 tract, North 89°50'46" East 233.61 feet to the point of beginning.

#### **PARCEL 2**

A part of the Northeast one-quarter of Section 15, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:



Beginning at the North one-quarter corner of section; thence South  $86^{\circ}56'55''$  East along the North line of said section, 663.05 feet; thence continuing East along said North line 133.45 feet; thence South  $3^{\circ}24'10''$  West 604.36 feet to the most Easterly Southeast corner of Deed to Don A. Bufton by Deed recorded January 16, 1974 as Recorder's Fee No. 74 1289, Film Records and the True Point of Beginning; thence North  $86^{\circ}56'55''$  West parallel with the North line of said section and along the South line of the above mentioned Bufton tract and along the South line of a tract of land conveyed to Don A. Bufton by Deed recorded August 23, 1973, as Fee No. 73 26936, Clackamas County Records, 133.45 feet to a point on the East line of that tract conveyed to Pearl Anderson by Deed recorded October 31, 1927 in Book 190, page 465, Clackamas County Deed Records; thence South along said East line 743.14 feet to the Southeast corner thereof; thence East along the 1/16th section line, 133.45 feet to the Southwest corner of that tract conveyed to John A. Kaslin, et ux, by Deed recorded August 1, 1962 in Book 608, page 1, Clackamas County Deed Records; thence North along the West line of said Kaslin tract and the Northerly extension thereof, 743.14 feet to the true point of beginning.

**EXHIBIT G**

**Memorandum of Post-Closing Agreement**

**When Recorded Return To:**

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**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 **BOTTLING GROUP, LLC**, a Delaware 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 Holdback 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 one building of approximately 120,000 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.





**EXHIBIT A to Memorandum of  
Post-Closing Agreement**

**Property Description**

PARCEL 1

That tract of land described as Parcel IX, and a portion of Parcel VI, Statutory Warranty Deed Document No. 2009-071163, Clackamas County Deed Records. Said tract of land being situated in the Northeast one-quarter of Section 15, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, and more particularly described as follows:

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PARCEL 2

A part of the Northeast one-quarter of Section 15, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:



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## EXHIBIT H

### Storm Line Easement Agreement

#### AFTER RECORDING RETURN TO:

Nathan Boderman  
Assistant County Counsel, Clackamas County  
2051 Kaen Road, 2<sup>nd</sup> Floor  
Oregon City, Oregon 97045

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#### DECLARATION OF OUTFALL EASEMENT

This Declaration of Outfall Easement (this "**Agreement**") is executed as of \_\_\_\_\_, 2018, by **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic ("**Agency**"), with respect to the following recitals:

#### BACKGROUND

**A.** Agency owns certain real property situated in Clackamas County, Oregon legally described in the attached Exhibit A (the "**West Parcel**"), Exhibit B (the "**Center Parcel**"), Exhibit C (the "**East Parcel**"), and Exhibit D (the "**South Parcel**") (collectively, the "**Property**"). Each parcel of the Property is referred to herein as a "**Parcel**" and collectively as "**Parcels**." The West Parcel, Center Parcel and East Parcel are collectively referred to herein as the "**Development Parcels**." The owner of each Parcel is referred to herein as an "**Owner**."

**B.** To facilitate the future sale and development of each of the Development Parcels, Agency constructed certain storm water facilities and related improvements on a portion of the Property including without limitation pipe lines, catch basins, treatment ponds and outfall (all such storm water lines, facilities and improvements are collectively referred to herein as the "**Storm Facilities**"), all of which are generally located as shown on the attached Exhibit E.

C. The Agency desires to create an easement covering the portion of the Storm Facilities located on the South Parcel for the use and benefit of the Development Parcels, on and subject to the terms and conditions of this Agreement. The area of the South Parcel containing such portion of the Storm Facilities is legally described on Exhibit F and depicted on Exhibit G (the "Easement Area").

D. The Agency intends to subject the Property to the easements, covenants, conditions, restrictions and provisions set forth in this Agreement for the benefit of the Property and the subsequent owners of all or part of the Property, as provided herein.

## TERMS AND PROVISIONS

1. **Declaration.** The Agency hereby declares that the Property and every part thereof is and shall be held, owned, hypothecated, encumbered, sold, leased, occupied, improved, used, transferred and conveyed subject to all of the easements, covenants, conditions, restrictions and provisions set forth in this Agreement, each of which shall run with the Property and every part thereof and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and all heirs, successors and assigns of such parties, and shall inure to the benefit of and run in favor of all parties having or acquiring any right, title or interest in the Property or any part thereof, and all heirs, successors and assigns of such parties.

2. **Storm Outfall Easement.** Agency hereby creates and grants for the benefit of each Owner of the Development Parcels, a perpetual non-exclusive easement (the "Easement") in, on, over, under, across and through the Easement Area for the purpose of improving, inspecting, monitoring, maintaining, repairing, replacing, altering, operating and using the Storm Facilities located on the South Parcel for the conveyance of storm and other water originating from or passing through the Development Parcels, subject to the terms and conditions of this Agreement. In addition, the Easement includes the perpetual right of all such water discharged from the outfall at the end of the Storm Facilities on the South Parcel to continue thereafter to naturally flow in, on, over, under, across and through the South Parcel.

3. **Use.** The Owner of the South Parcel will have the right to use the Easement Area for all lawful purposes consistent with this Agreement; provided that such Owner will not use, or permit to be used, the Easement Area in any manner that would materially interfere with the Easement and other rights granted hereunder to the Owners of the Development Parcels. Each Owner of a Development Parcel will have the right (at its cost) to cut and remove any vegetation that may interfere with such Owner's rights under this Agreement. The Owner of the South Parcel may not construct or maintain a building in any part of the Easement Area.

### 4. Storm Water Management

4.1 **Storm Water Management.** Each Owner, at its expense, will manage all water associated with the Parcel owned by it prior to discharge into the Storm Facilities as required by all applicable Environmental Laws (defined below), industrial storm water permit(s) (if applicable), and any applicable requirements of the Oregon Department of Environmental Quality and any other federal, state or local agency with jurisdiction (including, for example, Clackamas County Water Environment Services) (collectively, the "Legal Requirements").



Neither Agency nor any Owner shall discharge storm or other water (including without limitation wash water and industrial waste water) into or through any of the Storm Facilities except in strict compliance with all applicable Legal Requirements. Each Owner and its employees, agents, contractors, successors and assigns shall conduct all its activities pursuant to this Agreement in accordance with all Legal Requirements, and in a manner that does not result in any flooding at or other damage to a Parcel, nor results in a Hazardous Substance Release (defined below) in, on or about the Property or any part thereof (including the Storm Facilities) or to any other areas.

4.2 Definitions. For purposes of this Agreement:

(i) **"Environmental Laws"** shall mean any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances, orders of any governmental agency, and legally enforceable guidance documents, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law (including common or case law), which govern materials, substances, regulated wastes, emissions, pollutants, contaminants, petroleum or petroleum products, water, storm water, ground water, wellfield and wellhead protection, cultural resources protection, animals or plants, noise, or products and relate to the protection of health, safety, the environment, or natural resources including land, sediments, water, storm water and ground water.

(ii) **"Hazardous Substance"** shall mean any and all substances, contaminants, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum derived products, biofuels derived in whole or part from plant oils and any other corrosive, reactive, ignitable or toxic substance, regardless of whether it is designated as hazardous under any Environmental Law.

(iii) **"Hazardous Substance Release"** shall mean the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, placing, migrating, leaching and seeping of any Hazardous Substance into the air or into or on any land, sediment or waters, including but not limited to a release in an improvement, except as explicitly authorized by Environmental Laws, including without limitation a current and valid permit under applicable Environmental Laws with which the applicable Owner is in compliance at the time of such release.

**5. Maintenance and Repair.** As owner of the East Parcel and the Storm Facilities, the Owner of the East Parcel shall perform all alterations, improvements, repairs, replacements and maintenance and take such other necessary actions with respect to the Storm Facilities to keep the same in good working order and condition and in compliance with all Legal Requirements, except as otherwise expressly provided herein and subject to reimbursement by each Connecting Owner of its Applicable Share to the extent expressly provided herein. Except as otherwise expressly provided in this Agreement, all costs and expenses associated with the installation, construction, repair, maintenance, reinstallation, removal, alteration, improvement, replacement, operation, compliance and use of the Storm Facilities located on the South Parcel



shall be borne by the Owner of the East Parcel. Notwithstanding the foregoing, on and after the date of connection to the Storm Facilities by the Owner(s) of the West Parcel and/or the Center Parcel (each such Owner is referred to herein as a "Connecting Owner"), each Connecting Owner will reimburse the Owner of the East Parcel for such Connecting Owner's Applicable Share (defined below) of the costs of maintenance and repair incurred by the Owner of the East Parcel for any portions of the Storm Facilities located on the South Parcel; provided, however, that (i) the Connecting Owners have no obligation to pay any such costs of maintenance or repairs to the extent necessitated by a violation of applicable law or Legal Requirements, breach of this Agreement, or negligence or willful misconduct committed or caused by another party, (ii) such costs payable by each Connecting Owner are limited solely to ordinary maintenance and repairs, (iii) such costs payable by each Connecting Owner exclude legal and regulatory compliance costs, and (iv) all costs and expenses associated with lateral facilities exclusively serving a Connecting Owner's Parcel shall be borne by the Connecting Owner that owns such Parcel. Notwithstanding the foregoing, each Connecting Owner shall be solely responsible for any costs to repair or modify the Storm Facilities, or any costs or expenses related to legal and regulatory compliance, that are directly attributable to the development, redevelopment, or intensification of use of its respective parcel. Upon request by a Connecting Owner, the Owner of the East Parcel shall provide reasonable documentation evidencing the costs for which it seeks reimbursement from Connecting Owner. As used herein, the "Applicable Share" of such repair and maintenance costs to the extent payable by a Connecting Owner as provided above means (i) fifty percent (50%) of such costs incurred on the portion of the Storm Facilities located on the South Parcel during the period on and after the date only one Connecting Owner has initially connected to the Storm Facilities, and (ii) thirty-three and 33/100 percent (33.33%) of such costs incurred on the portion of the Storm Facilities located on the South Parcel during the period on and after the date both Connecting Owners have initially connected to the Storm Facilities. Notwithstanding any other provision herein, if the Center Parcel or West Parcel are lawfully subdivided or partitioned, the obligations of the owners of each lot or parcel that formerly comprised the Center Parcel or West Parcel, as applicable, under this Agreement shall be several (but not joint) obligations, and shall be allocated among them proportionally based on the square footage that each parcel or lot represents to the total square footage of the Center Parcel or West Parcel, as applicable, of which it is a part.

## 6. Indemnification.

6.1 To the maximum extent permitted by law, each Owner (the "Indemnifying Owner") hereby agrees to indemnify, defend and hold harmless Agency and the other Owners, and their respective members, managers, shareholders, partners, agents, officers, directors, elected officials, employees, licensees, contractors, lessees, invitees, successors and assigns (collectively, the "Indemnified Parties"), for, from and against all claims, actions, demands, damages, losses, liens, liabilities, costs and expenses whatsoever (including reasonable attorneys' fees) (collectively, "Loss"), to the extent arising out of or in any way related to (i) any breach of this Agreement in any material respect by such Indemnifying Owner, or (ii) any negligence or willful misconduct of such Indemnifying Owner or its agents, employees and contractors in, at, upon or from the Easement Area, or (iii) the Indemnifying Owner's use of the Easement or the exercise of any other rights granted to such Indemnifying Owner in this Agreement; except, in each case, to the extent the Loss arises out of the negligence or willful misconduct of any Indemnified Party. If any action or proceeding is brought against any of the



Indemnified Parties by reason of any Loss, the Indemnifying Owner, upon notice from the applicable Indemnified Parties, will defend the same, at the Indemnifying Owner's expense, by counsel reasonably satisfactory to such Indemnified Parties.

6.2 To the maximum extent permitted by applicable law, Agency hereby agrees to indemnify, defend and hold harmless each Owner and its members, managers, shareholders, partners, officers, directors, employees, agents, invitees, lessees, licensees, contractors, subcontractors, successors and assigns (collectively, "Owner Parties"), for, from and against all Loss to the extent arising out of or in any way related to (i) any breach of this Agreement in any material respect by Agency, or (ii) any negligence or willful misconduct of Agency or its agents, employees or contractors in, at, upon or from the Easement Area; except, in each case, to the extent the Loss arises out of the negligence or willful misconduct of any of the Owner Parties. If any action or proceeding is brought against any of the Owner Parties by reason of any Loss, Agency, upon notice from the applicable Owner Parties, will defend the same, at Agency's expense, by counsel reasonably satisfactory to such Owner Parties.

6.3 The provisions of this Section 6 will survive any termination of this Agreement.

7. **Estoppel Certificate.** Within ten (10) days after written request by a Connecting Owner, the Owner of the East Parcel shall execute and deliver a certificate prepared by the requesting Connecting Owner regarding the status of this Agreement and such other confirmations regarding this Agreement or the Easement as may be reasonably requested, including without limitation whether or not this Agreement has been modified and is in full force and effect and specifying any modifications or alleged breaches by any Connecting Owner and the amounts, if any, due and payable by any Connecting Owner under this Agreement. Failure to deliver the certificate within the specified time shall be conclusive upon the Owner of East Parcel that the facts as stated in the requested certificate is true and accurate in all material respects. If any or all of the Development Parcels are lawfully subdivided or partitioned, each owner of a lot or parcel within any of the Development Parcels may request such certificate, and each owner of the parcels or lots comprising the East Parcel are likewise required to deliver such certificate as provided herein.

8. **Character of Easement; Binding Effect.** The Easement and all of the limitations, covenants, conditions, and restrictions contained in this Agreement will attach to and run with and will be appurtenant to the Property (and each and every portion or subdivision thereof), and will inure to the benefit of and be binding upon the Agency and its respective successors and assigns, provided, however, that upon Agency's transfer of ownership in a Parcel, Agency shall be released from all obligations under this Agreement arising on and after the date of transfer with respect to the Parcel so transferred (which obligations shall be binding on the transferee on and after the date of transfer). Except as otherwise expressly provided herein, all obligations of an owner of a Parcel under this Agreement shall be joint and several obligations of all future owners of a Parcel or any portion thereof.

9. **Default and Remedies.** If any party under this Agreement fails to perform any obligation due hereunder within thirty (30) days after notice of such failure given by another party, the notified party shall be in default hereunder and the non-defaulting party shall at its



option thereafter have the right to pursue any and all rights and remedies available under applicable law, including recovery of damages, temporary or permanent injunction, specific performance, and other equitable and legal remedies; provided, however, the non-defaulting party may at its option immediately pursue such rights and remedies without any such notice or cure period if in the reasonable opinion of such non-defaulting party the nature of the breach constitutes or creates an immediate threat of death or injury to persons or damage to property (including the environment) or otherwise is reasonably considered to be an emergency, and provided, further that the non-defaulting party so acting shall notify the other of such action contemporaneously therewith or as soon as reasonably practicable thereafter. The foregoing rights in the event of a default include the right (but not the obligation) of the non-defaulting party to perform any of the defaulting party's obligations under this Agreement, and the defaulting party shall pay upon demand the resulting costs thereof plus interest thereon at the rate of twelve percent (12%) per annum from the date incurred until paid. The payment obligations of each party under this Agreement is secured by a lien against the parcel owned by such party as of the date of assessment and payment demand of such payment obligation, which lien may be foreclosed or otherwise enforced by another party in accordance with applicable law. Further, all rights and remedies specified in the Agreement are intended to be non-exclusive and cumulative with all other rights and remedies available under applicable law.

10. **Term.** The term of this Agreement and the Easement commences on the date hereof and will remain in effect in perpetuity.

11. **Notices.** All notices or other communications required or provided to be sent by any party must be in writing with all applicable postage or delivery charges prepaid and must be sent by: (a) United States Postal Service, registered or certified mail, return receipt requested; (b) any nationally known overnight delivery service; or (c) courier service or hand delivery. All notices will be deemed to have been on the earlier of actual delivery or refusal of a party to accept delivery thereof. All notices must be addressed to the party at the address below:

To the Agency at: Clackamas County Development Agency  
c/o Development Agency Manager  
150 Beaverrock Road  
Oregon City, Oregon 97045  
Attention: Dan Johnson

To any Owner (other than Agency): To the address at which the public records indicate the property tax bills are sent with respect to the applicable Parcel.

Any address or name specified above may be changed by notice given to the other Owners in accordance with this Section 11. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

12. **Third Party Beneficiaries.** Except as expressly provided herein, nothing in this



Agreement, express or implied, is intended or may be construed to confer on any person or entity (including the public), other than the Owners subject to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

13. **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without giving effect to the conflicts of law provisions thereof. Venue shall be in Clackamas County, Oregon with respect to any dispute or action under this Agreement.

14. **Attorneys' Fees.** The Owners shall each bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

15. **Modifications.** This Agreement may not be amended or modified except in a writing signed by each Owner.

16. **Nonliability of Officials and Employees.** No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative of any of the Owners shall be personally liable to any Owner or any successor-in-interest thereto, in the event of any default or breach by any Owner or for any amount that may become due to any Owner or its successor, or any obligations under the terms of this Agreement.

17. **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 sale, development, operation and use of the improvements to be constructed on the Property (or any part thereof), including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

18. **Miscellaneous.** Subject to the notice and cure periods set forth in Section 9 above, time is of the essence as to all provisions of this Agreement. Upon execution and acknowledgment by the Agency, this Agreement shall be recorded in the official real estate records of Clackamas County, Oregon. The Owners hereby waive the right to trial by jury in connection with any dispute under this Agreement. This Agreement is the entire, final and complete agreement with respect to the matters set forth herein. If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby, and the Owners shall amend this Agreement to substitute for the provision at issue a valid and enforceable provision as similar as possible to the provision at issue and to otherwise give effect to the provision at issue as much as possible. Each party agrees to take such actions and to execute, acknowledge and deliver any and all documents and instruments as may be reasonably requested from time to time by another party to carry out the intent and purposes of this Agreement more effectively. 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. 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.

In witness whereof, the Agency has executed this Agreement as of the date first written above.

"AGENCY"

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporation body politic

By: \*DRAFT – FOR INFORMATION ONLY\*  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Oregon                    )  
  ) ss.  
County of Clackamas            )

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by \_\_\_\_\_ as the \_\_\_\_\_ of **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT A to Declaration of Outfall Easement**

**Legal Description of West Parcel**

That tract of land described as Parcel IX, and a portion of Parcel VI, Statutory Warranty Deed Document number 2009-071163, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the one quarter corner common to Sections 15 and 10 of said Township and Range, said point being marked by a 3-1/4" bronze disk;

Thence, along the north line of said Section 15, North 89°50'46" East, 662.95 feet;

Thence, leaving said north line and along the east line of that tract of land described in Deed Document Number 1988-11699, Clackamas County Deed Records, South 0°01'11" West, 820.00 feet to the southeast corner thereof, said point also being the northeast corner of said Parcel IX tract, said point being the point of beginning for the herein described tract;

Thence, along the east line of said Parcel IX tract, South 0°08'53" West, 696.91 feet to the southeast corner thereof, said point also being on the north line of the southwest one quarter of the northeast one quarter of said Section 15;

Thence, along said north line, North 89°58'22" East, 533.96 feet to the southeast corner of Parcel II, Deed Document Number 2009-015937, Clackamas County Deed Records;

Thence, leaving said north line, South 0°08'24" West, 20.08 feet;

Thence, along the south right of way line of Capps Road, County Road Number 3393, North 89°57'49" East, 10.05 feet to the northwest corner of that tract of land described as Tract 1, Property Line Adjustment Deed Document Number 2016- 010914, Clackamas County Deed Records;

Thence, along the west line of said Tract 1, South 0°27'22" West, 758.69 feet; Thence, leaving said west line, North 58°58'28" West, 393.44 feet;

Thence, North 45°37'31" West, 822.92 feet to a point on the north line of the southwest one quarter of the northwest one quarter of said Section 15;

Thence, along said north line, North 89°58'22" East, 124.44 feet to the southwest corner of said Parcel IX tract



Thence, leaving said north line and along the west line of said Parcel EX tract, North 0°05'53" East, 696.40 feet to the northwest corner thereof, said point also being the southwest corner of that tract of land described in Deed Document Number 1988- 11699, Clackamas County Deed Records;

Thence, along the south line of said Document Number 1988-11699 tract, North 89°50'16" East, 233.61 feet to the point of beginning.

Said tract of land contains 12.8978 acres more or less.

Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (OCRS) and Record of Survey Number SN 2017-120, Clackamas County Surveyor's Office.

**EXHIBIT B to Declaration of Ourfall Easement**

Legal Description of Center Parcel

That tract of land described as Tract 1, Property Line Adjustment Deed Document number 2015-079459 together and with a portion of that tract of land being described as Tract 2, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter and the southeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the north one sixteenth section corner between sections 15 and 14 of said Township and Range, said point being marked by a 1-1/4" inside diameter iron pipe:

Thence, South 42°13'50" West, 104.67 feet to a point of tangency, said point being on the east line of said Parcel 2 tract, said point also being on the west right of way line of Wilde Road, County Road No. 3093:

Thence, along the east line of said tract and along said west right of way line, South 0°21'32" West, 1284.77 feet to the intersection of said west right of way line and the north right of way line of Vernon Avenue, Local Access Road No. P2089, said point also being the southeast corner of said tract,

Thence, along said north right of way line, North 89°40'18" West, 250.34 feet to a point on the west line of that tract of land described in Deed Document Number 2007-085791, Clackamas County Deed Records:

Thence, along the east line of said Document Number 2007-085791 tract, North 0°23'38" East, 118.25 feet to the northeast corner thereof;

Thence, along the north line of said tract, South 89°58'06" West, 189.55 feet:

Thence, North 0°21'32" East, 315.80 feet to the northeast corner of that tract of land described as Tract 1, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records, said point also being the true point of beginning of the herein described tract;

Thence, along the north line of said tract, South 89°58'06" West, 374.12 feet to an angle point therein;

Thence, North 57°17'18" West, 537.00 feet to an angle point said line;

Thence, continuing along said line, North 89°33'48" West, 79.05 feet to the southwest corner of that tract of land described as Tract 1 in Deed Document Number 2015-079459, Clackamas County Deed Records:

Thence, along the west line of said tract, North 0°27'22" East, 615.55 feet to the northwest corner of said tract, said point also being on the south right of way line of Capps Road, County Road No. 3393;

Thence, along said south right of way line, North 89°57'49" East, 847.57 feet;

Thence, South 0°07'16" West, 30.00 feet;

Thence, continuing along the south right of way line of Capps Road, County Road No. 88, South 89°08'27" East, 58.98 feet;

Thence, leaving said line, South 0°21'32" West, 875.81 feet to true point of beginning.

Said tract of land contains 16.7933 acres more or less.

Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (OCRS) and Record of Survey Number SN 2016-038, Clackamas County Surveyor's Office.



## EXHIBIT C to Declaration of Outfall Easement

### Legal Description of Last Parcel

A portion of that tract of land being described as Tract 2, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter and the southeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the north one sixteenth section corner between sections 15 and 14 of said Township and Range, said point being marked by a 1-1/4" inside diameter iron pipe;

Thence, South 42°13'50" West, 104.67 feet to a point of tangency, said point being on the east line of said Parcel 2 tract, said point also being on the west right of way line of Wilde Road, County Road No. 3093, said point also being the true point of beginning of the herein described tract;

Thence, along the east line of said tract and along said west right of way line, South 0°21'32" West, 1284.77 feet to the intersection of said west right of way line and the north right of way line of Vernon Avenue, Local Access Road No. P2089, said point also being the southeast corner of said tract;

Thence, along said north right of way line, North 89°40'18" West, 250.34 feet to a point on the west line of that tract of land described in Deed Document Number 2007-085791, Clackamas County Deed Records;

Thence, along the east line of said Document Number 2007-085791 tract, North 0°23'38" East, 118.25 feet to the northeast corner thereof;

Thence, along the north line of said tract, South 89°58'06" West, 189.55 feet;

Thence, leaving said line, North 0°21'32" East, 1191.61 feet to a point on the south right of way line of Capps Road, County Road Number 88;

Thence, along said south line, South 89°08'27" East, 420.02 feet to a point of curve;

Thence along the arc of a tangent curve to the right, having a radius of 20.00 feet, a delta angle of 89°29'50", an arc length of 31.24 feet, the chord of which bears South 44°23'32" East, a chord length of 28.15 feet to the true point of beginning;

Said tract of land contains 12.6793 acres more or less.

Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (O CRS) and Record of Survey Number SN 2016-038, Clackamas County Surveyor's Office.



**EXHIBIT D to Declaration of Outfall Easement**

Legal Description of South Parcel

Tract 1 (Tax Lot 2200 adjusted)

A portion of that tract of land being described as Tract 2, Property Line Adjustment Deed Document Number 2015-079459, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter and the southeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the north one sixteenth section corner between sections 15 and 14 of said Township and Range, said point being marked by a 1-1/4" inside diameter iron pipe;

Thence, South 42°13'50" West, 104.67 feet to a point of tangency, said point being on the east line of said Parcel V tract, said point also being on the west right of way line of Wilde Road County Road No. 3093;

Thence, along the east line of said Parcel V tract and along said west right of way line, South 0°21'32" West, 1284.77 feet to the intersection of said west right of way line and the north right of way line of Vernon Avenue, Local Access Road No. P2089, said point also being the southeast corner of said Parcel V tract;

Thence, along said north right of way line, North 89°40'18" West, 250.34 feet to a point on the west line of that tract of land described in Deed Document Number 2007-085791, Clackamas County Deed Records;

Thence, along the east line of said Document Number 2007-085791 tract, North 0°23'38" East, 118.25 feet to the northeast corner thereof;

Thence, along the north line of said tract, South 89°58'06" West, 189.55 feet to the true point of beginning of the herein described tract.

Thence, continuing along the north line of said Document Number 2007-085791 tract, South 89°58'06" West, 110.00 feet to the northwest corner thereof;

Thence, along the west line of said tract, South 0°26'47" West, 350.85 feet more or less to a point on the right bank of the Clackamas River;

Thence, downstream along said right bank, North 53°41'23" West, 1042.53 feet to the southwest corner of Tract 2, said Document Number 2015-079459;

Thence, along the most westerly line of said Tract 2, North 21°21'57" East, 58.03 feet;

Thence, continuing along said west line, North 49°46'22" East, 29.77 feet;

Thence, continuing along said west line, North 0°30'49" East, 104.77 feet;

Thence, continuing along said west line, North 0°27'22" East, 143.14 feet to the southwest corner of Tract 1, Deed Document Number 2015-079459, Clackamas County Deed Records;

Thence, along the south line of said Tract 1, South 89°33'18" East, 79.95 feet;

Thence, continuing along said south line and the southeasterly projection thereof, South 57°17'18" East, 537.00 feet;

Thence, North 89°58'06" East, 374.12 feet;

Thence, South 0°21'32" East, 313.80 feet to the true point of beginning.

Said tract of land contains 9.3073 acres more or less.

Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (OCRS) and Record of Survey Number SN 2015-243, Clackamas County Surveyor's Office.

#### Tract 2 (Tax Lot 1800 & 1890 adjusted)

A portion of that tract of land described as Parcel VI, Statutory Warranty Deed Document number 2009-071163, Clackamas County Deed Records, said tract of land being situated in the northeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the one quarter corner common to Sections 15 and 10 of said Township and Range, said point being marked by a 3-1/4" bronze disk;

Thence, along the north-south centerline of said Section 15, South 0°12'42" East, 1315.45 feet to the center north one-sixteenth corner of said Section 15, being the northwest corner of said Parcel VI tract, said point being marked by a 3/4" inside diameter iron pipe, said point also being the true point of beginning of the herein described tract of land;

Thence, along the north line of said Parcel VI tract also being the north line of the southwest one quarter of the northeast one quarter of said Section 15, North 89°58'22" East, 298.63 feet;

Thence, leaving said north line, South 45°37'34" East, 822.92 feet;

Thence, South 58°58'28" East, 393.44 feet to a point on the east line of said Parcel VI tract;

Thence, along said east line also being the west line of that tract of land described as Tract I, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records; South  $0^{\circ}30'49''$  West, 104.77 feet to an angle point therein;

Thence, South  $49^{\circ}46'22''$  West, 29.77 feet to an angle point therein;

Thence, South  $24^{\circ}21'57''$  West, 58.03 feet more or less to the right bank of the Clackamas River;

Thence, downstream along said right bank, North  $61^{\circ}04'03''$  West, 1343.17 feet more or less to the west line of said Parcel VI tract;

Thence, along said west line, North  $0^{\circ}09'49''$  West, 405.20 feet more or less to the point of beginning.

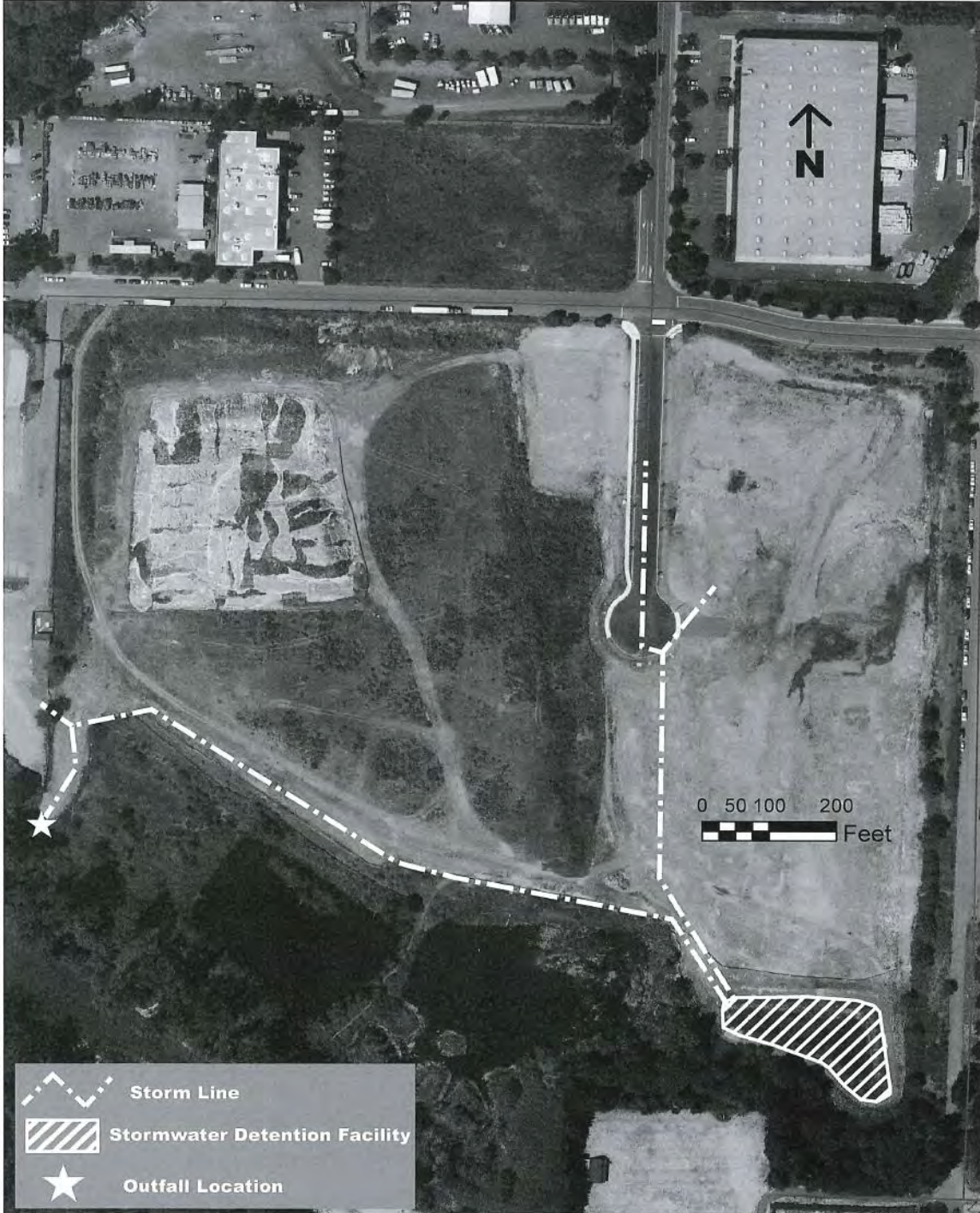
Said tract of land contains 8.8799 acres more or less.

Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (O CRS) and Record of Survey Number SN 2017-120, Clackamas County Surveyor's Office.



**EXHIBIT E to Declaration of Outfall Easement**

**Depiction of Storm Line Location**



## EXHIBIT F to Declaration of Outfall Easement

### Legal Description of Easement Area

#### Storm Sewer Easement Description

March 4, 2018

NWS Project Number 1700

A 15.00 foot wide easement being a portion of that property described as Tract 1 in a property line adjustment deed recorded as Document Number 2015-082415, Clackamas County Deed Records, and Parcel VI of that property conveyed to The Clackamas County Development Agency recorded on October 8, 2009 as Document Number 2009-071163, Clackamas County Deed Records, located in the northeast one-quarter of Section 15, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

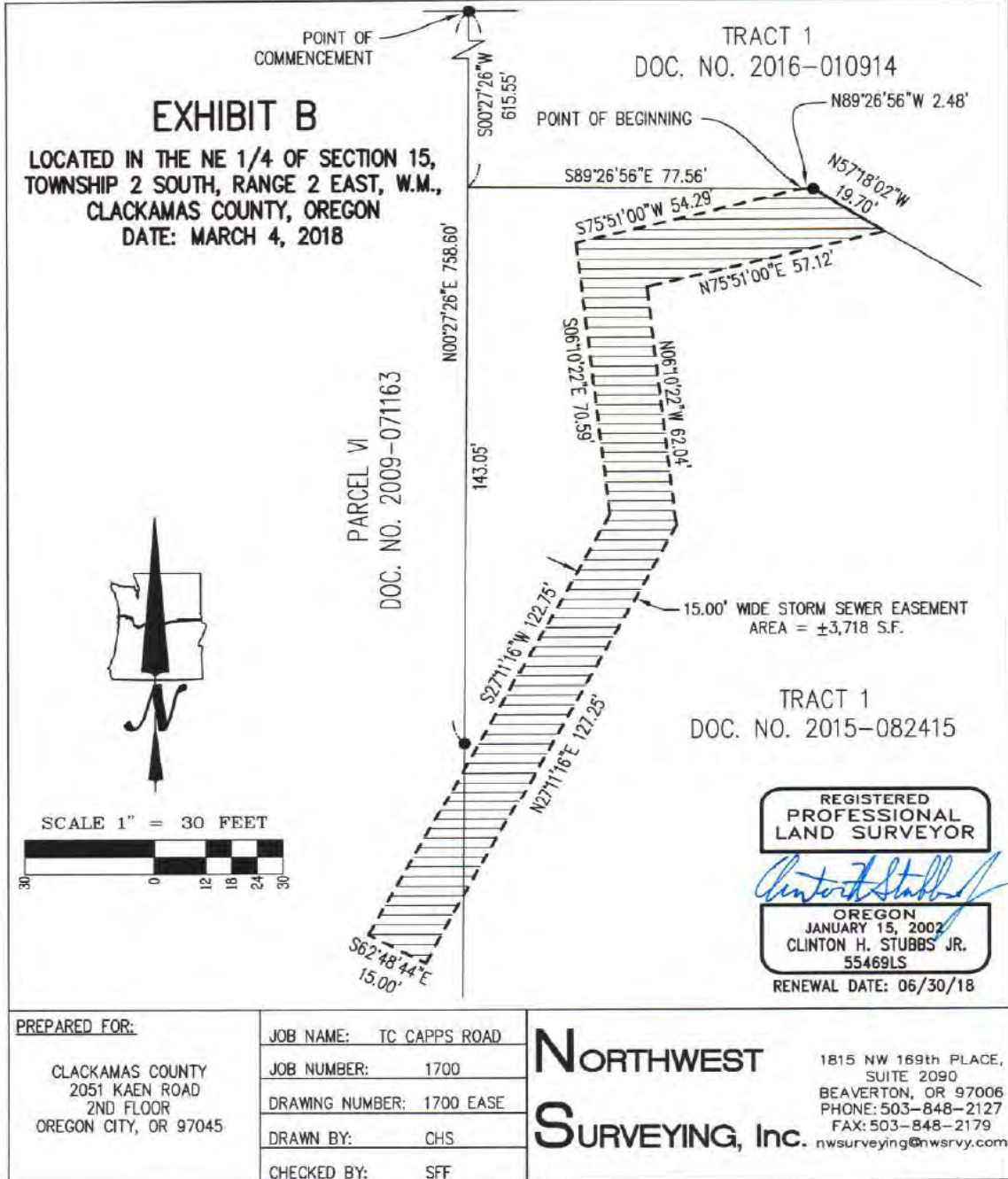
Commencing at a 5/8 inch iron rod with a yellow plastic cap stamped "Clackamas Co. DTD" located at the northeast corner of said Parcel VI, said point bearing North 00°27'26" East 758.60 feet from a 3/4 inch iron pipe located on the east boundary of said Parcel VI; Thence along the easterly boundary of said Parcel VI, South 00°27'26" West 615.55 feet to the northwest corner of said Tract 1; Thence along the northerly boundary of said Tract 1, South 89°26'56" East 77.56 feet to the Point of Beginning;

Thence departing said northerly boundary, South 75°51'00" West 54.29 feet; Thence South 06°10'22" East 70.59 feet; Thence South 27°11'16" West 122.75 feet; Thence South 62°48'44" East 15.00 feet; Thence North 27°11'16" East 127.25 feet; Thence North 06°10'22" West 62.04 feet; Thence North 75°51'00" East 57.12 feet to a point on the northerly boundary of said Tract 1; Thence along said northerly boundary, North 57°18'02" West 19.70 feet to a 5/8 inch iron rod with a yellow plastic cap stamped "Clackamas Co. DTD" located at an angle point thereon; Thence continuing along said northerly boundary, North 89°26'56" West 2.48 feet to the Point of Beginning.

The above described easement contains 3,718 square feet, more or less.

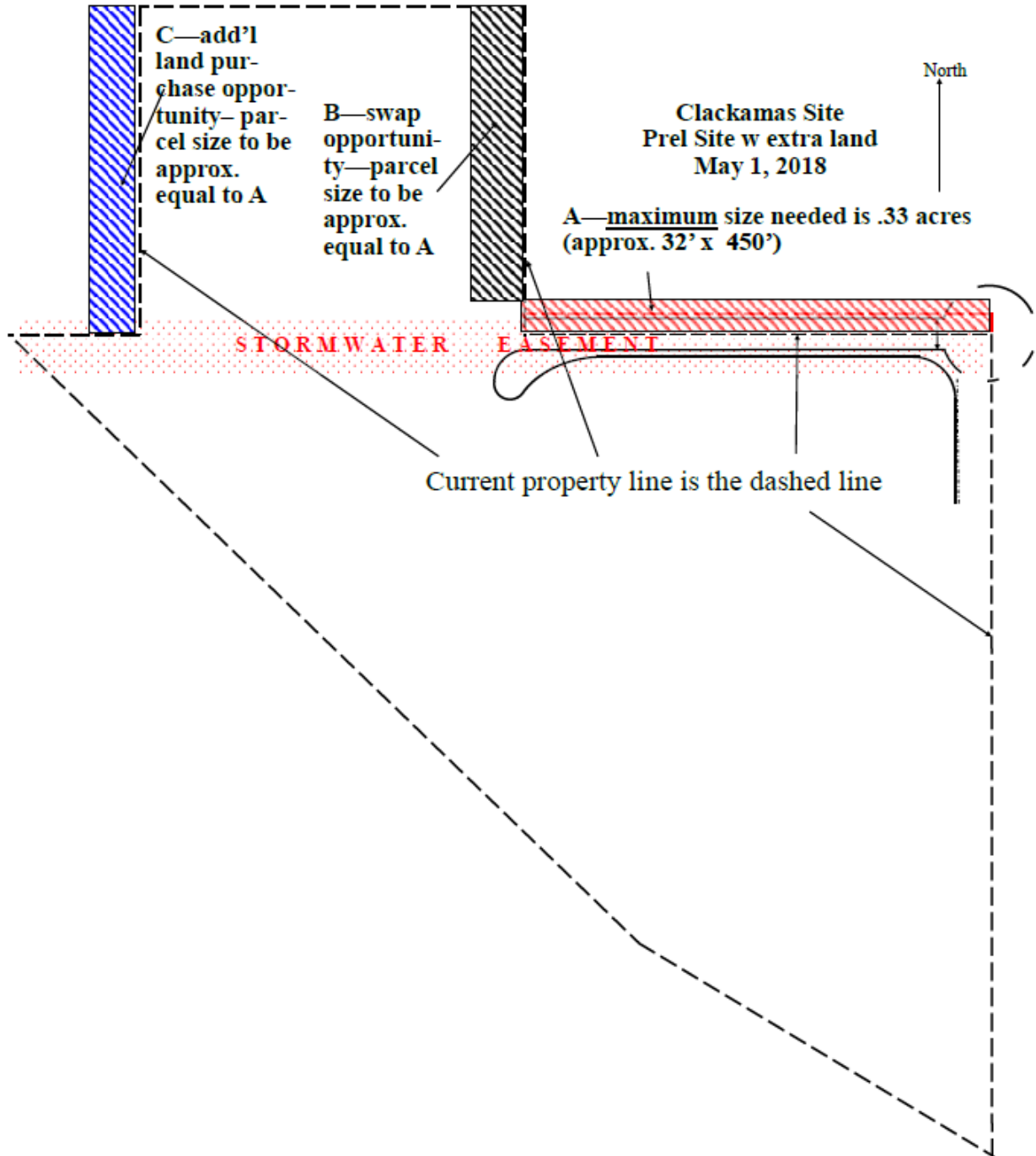


**EXHIBIT G to Declaration of Outfall Easement**  
**Depiction of Easement Location**



**EXHIBIT I**

**Map of Swap Parcels A and B and Purchase Parcel C**





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

**Amendment No. 3 to the Contract Documents between Clackamas County Service District No.1 and Brown and Caldwell for On-Call Surface Water Technical Services - 2015**

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District No. 1 budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District's strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County's goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Clackamas County Service District No. 1 ("District") entered into a contract with Brown and Caldwell to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor's expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County received fourteen (14) proposals. Five (5) consulting firms were chosen to extend on-call contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera

Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Brown and Caldwell and Clackamas County Service District No. 1 for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

**Amendment No. 3 to the Contract Documents between Clackamas County Service District No.1  
and Otak, Inc. for On-Call Surface Water Technical Services - 2015**

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District No. 1 budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District's strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County's goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Clackamas County Service District No. 1 ("District") entered into a contract with Otak, Inc. to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor's expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County received fourteen (14) proposals. Five (5) consulting firms were chosen to extend on-call Contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera



Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Otak, Inc. and Clackamas County Service District No. 1 for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Amendment No. 3 to the Contract Documents between Clackamas County Service District No.1 and Parametrix, Inc. for On-Call Surface Water Technical Services - 2015

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District No. 1 budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District’s strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County’s goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Clackamas County Service District No. 1 (“District”) entered into a contract with Parametrix, Inc. to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor’s expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County received fourteen (14) proposals. Five (5) consulting firms were chosen to extend on-call Contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera

Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Parametrix, Inc. and Clackamas County Service District No. 1 for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Amendment No. 3 to the Contract Documents between Clackamas County Service District No.1 and Waterways Consulting, Inc. for On-Call Surface Water Technical Services - 2015

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District No. 1 budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District’s strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County’s goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Clackamas County Service District No. 1 (“District”) entered into a contract with Waterways Consulting, Inc. to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor’s expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County received fourteen (14) proposals. Five (5) consulting firms were chosen to extend on-call Contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera

Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Waterways Consulting, Inc. and Clackamas County Service District No. 1 for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract  
between Clackamas County Service District No. 1 and Water Environment Services  
and Kennedy/Jenks Consultant, Inc.

<b>Purpose/Outcomes</b>	Execution of the contract between Clackamas County Service District No. 1 and Water Environment Services and Kennedy/Jenks Consultant, Inc. for a Resident Project Representative for Kellogg Creek Water Resource Recovery Facility
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is not to exceed \$1,132,968.00.
<b>Funding Source</b>	119-01-20100-481020-P112139
<b>Duration</b>	Through August 31, 2020 or project completion, whichever is later.
<b>Previous Board Action</b>	None
<b>Strategic Plan Assignment</b>	1. This project supports the WES Strategic Plan to provide partner communities with reliable waste water infrastructure to serve existing customers and support future growth. 2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers.
<b>Contact Person</b>	Randy Rosane, 503-742-4573

**BACKGROUND:**

Clackamas County Service District No. 1 ("CCSD1") and Water Environment Services ("WES") have selected a qualified engineering consultant/firm to provide construction management and inspection services and oversee the District's Kellogg Creek Water Resource Recovery Facility Improvements Project.

The work to be done will be at the following location:

- Kellogg Creek Water Resource Recovery Facility (Kellogg) located at 11525 SE McLoughlin Blvd. Milwaukie, OR 97222

The District has competed pre-construction services with the construction contractor selected through an RFQ/RFP process in 2017 to provide the District with a Guaranteed Maximum Price ("GMP") for construction of the Kellogg Creek Water Resource Recovery Facility ("KCWRRF") Improvements Project. The GMP has been established and the District is prepared to begin construction.

The refurbishment of the KCWRRF will encompass 10 distinct projects:

- Yard piping Replacement
- RAS Pump Station Improvements

- Peak Plant Design Capacity Reclamation
- Process Air Blower Replacement
- Electrical Phase I & Phase III
- Electrical Phase II
- Influent Pump Station Phase I
- WAS Thickening / Polymer Upgrades
- W2 Water Pump screen Replacement
- Aeration Basin Zone 2 Covers

This scope of services provides the District with a highly qualified construction manager/inspector to oversee the construction. The construction period is scheduled to last from FY 2017 -2018 to FY 2019-2020.

**PROCUREMENT PROCESS:**

This project was requested by Randy Rosane. This project was advertised in accordance with ORS and LCRB Rules On June 7, 2017. On June 29, 2017, Three (3) proposals were recieved: Akana, CH2M Hill, and Kennedy/Jenks Consultants, Inc. After initial evaluation of the proposals, a competitive range was determined and the top two candidates were invited for an interview and oral presentation. Final evalautions determined that Kennedy/Jenks was determined to be the highest ranking proposer and can meet the needs of the District. The total contract amount is not to exceed \$1,132,968.00.

The contract was reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1 and Water Environment Services, approve and execute the Contract between Clackamas County Service District No. 1 and Water Environment Services and Kennedy/Jenks Consultants, Inc. for a Resident Project Representative for Kellogg Creek Water Resource Recovery Facility.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the BCC agenda \_\_\_\_\_ by Procurement.



PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Kennedy/Jenks Consultants, Inc. ("Contractor"), and Clackamas County Service District No. 1 and Water Environment Services, both political subdivisions of the State of Oregon (collectively referred to as "District").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on August 31, 2020. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Resident Project Representative for Kellogg Creek Water Resource Recovery Facility ("Work"), further described in Article A.

3. Consideration. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed One Million One Hundred Thirty-Two Thousand Nine Hundred Sixty-Eight Dollars (\$1,132,968.00), for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Article A.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Articles A, B, C, D, E, and F.

6. Contractor Data.

Kennedy / Jenks Consultants, Inc.

Address: 421 SW 6th
Portland, Oregon 97204

Contractor Contract Administrator: Dean Wood

Phone No.: 503-423-4000

Email: deanwood@kennedyjenks.com

MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** District certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any wrongful act, omission, or neglect of Contractor, its subcontractors, agents or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property and to the extent caused by the negligent acts, errors, or omissions of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Article C)

At present, the Contractor certifies that he or she, if an individual is not a program, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Article B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal



delivery, email, or mailing the same, postage prepaid, to the District at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** Except for Contractor's preexisting intellectual property, all work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Any use the District makes of the materials referred to in Paragraph 13 hereof, except for purposes of the work contemplated by this Agreement, shall be at the District's risk.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the ordinary standard of care exercised by a professional in the Contractor's field; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor 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 Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor'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 District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous

amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District 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 the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under



**ARTICLE A  
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall perform resident project representation for the Kellogg Creek Water Resource Recovery Facility as described in the Request for Proposals #2017-32, issued June 7, 2017, hereby included as **Article D**; the Vendor response, hereby included as **Article E**; and the vendors Fee Proposal, hereby included as **Article F**.

The District Contract administrator for this Contract is: Randy Rosane.

**CONSIDERATION**

- a. Consideration Rates –Time and Material as detailed in Article F.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of \$1,132,968.00. Invoices shall be submitted to the District Contract Administrator at: 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at [RandyRos@co.clackamas.or.us](mailto:RandyRos@co.clackamas.or.us).
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.



**ARTICLE B  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by District of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by District     Not required by District**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

**3.  Required by District     Not required by District**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4.  Required by District     Not required by District**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to District acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the District at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [purchasing@clackamas.us](mailto:purchasing@clackamas.us).

**ARTICLE C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the District to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the District; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

## ARTICLE D

## ARTICLE E

## ARTICLE F





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Amendment No. 3 to the Contract Documents between Surface Water Management Agency of  
Clackamas County and Brown and Caldwell for  
On-Call Surface Water Technical Services - 2015

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Surface Water Management Agency of Clackamas County budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District’s strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County’s goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Surface Water Management Agency of Clackamas County (“District”) entered into a contract with Brown and Caldwell to perform on-call surface water technical services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor’s expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County

received fourteen (14) proposals. Five (5) consulting firms were chosen to extend on-call contracts: Brown and Caldwell, Parametrix, Inc., Otak, Inc, Waterways Consulting, and Herrera Environmental Consulting, Inc. Each firm was given a one-year on-call contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the contract documents with Brown and Caldwell and Surface Water Management Agency of Clackamas County for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist  
Director, WES

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.

**AMENDMENT #3**

**TO THE CONTRACT DOCUMENTS WITH BROWN AND CALDWALL, INC. FOR  
ON-CALL SURFACE WATER TECHNICAL SERVICES - 2015**

This Amendment is entered into between **Brown and Caldwell, Inc.** (“Contractor”) and Clackamas County Service District No. 1 and the Surface Water Management Agency of Clackamas County (collectively referred to as “Districts”) and it shall become part of the Contract documents entered into between both parties on July 14, 2015.

The Purpose of Amendment #3 is to make the following changes to the Contract:

1. Section I. Compensation is hereby changed as follows:  
The Contract expiration date is hereby changed from June 30, 2018 to **June 30, 2019**. Districts is hereby exercising the option to Renew for one additional year. This is renewal number three (3) out of the original three (3) available. The maximum annual compensation is \$125,000.00. The maximum compensation authorized under this contract is \$500,000.00.

Original Contract	\$	125,000.00
Amendment #1 / Renewal #1	\$	125,000.00
Amendment #2	\$	125,000.00
<b><u>Amendment #3</u></b>	<b>\$</b>	<b>125,000.00</b>
<b>Total Amended Contract</b>	<b>\$</b>	<b>500,000.00</b>

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. This Amendment may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**SIGNATURE PAGE FOLLOWS**

By signature below, the parties agree to this Amendment #3 effective upon the date of the last signature below.

Brown and Caldwell, Inc.  
6500 SW Macadam Ave., Ste. 200  
Portland OR 97239

**Clackamas County Service District No. 1**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

503-977-6618  
Telephone/Fax Number

**Surface Water Management Agency of  
Clackamas County**

015248-26  
Oregon Business Registry #

FBC / California  
Entity Type / State of Formation

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Amendment No. 3 to the Contract Documents between Surface Water Management Agency of Clackamas County and Otak, Inc. for  
On-Call Surface Water Technical Services - 2015

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Surface Water Management Agency of Clackamas County budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Surface Water Management Agency of Clackamas County Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District's strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County's goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Surface Water Management Agency of Clackamas County ("District") entered into a contract with Otak, Inc. to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor's expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County received fourteen (14) proposals. Five (5) consulting firms were chosen to extend On-Call



Contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Otak, Inc. and Surface Water Management Agency of Clackamas County for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Amendment No. 3 to the Contract Documents between Surface Water Management Agency of  
Clackamas County and Parametrix, Inc. for  
On-Call Surface Water Technical Services - 2015

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Surface Water Management Agency of Clackamas County budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Surface Water Management Agency of Clackamas County Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District’s strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County’s goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Surface Water Management Agency of Clackamas County (“District”) entered into a contract with Parametrix, Inc. to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor’s expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County

received fourteen (14) proposals. Five (5) consulting firms were chosen to extend On-Call Contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Parametrix, Inc. and Surface Water Management Agency of Clackamas County for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.







Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Amendment No. 3 to the Contract Documents between Surface Water Management Agency of  
Clackamas County and Waterways Consulting, Inc. for  
On-Call Surface Water Technical Services - 2015

<b>Purpose/Outcomes</b>	Provide On-Call Surface Water Technical Services to support the Watershed Protection (Surface Water) Program in engineering services, restoration support, and general program support.
<b>Dollar Amount and Fiscal Impact</b>	Surface Water Management Agency of Clackamas County budgeted funds of \$125,000 for FY 2018-2019, with a contract cumulative total of \$500,000.
<b>Funding Source</b>	Surface Water Management Agency of Clackamas County Operating fund. No County General Funds are involved.
<b>Duration</b>	July 1, 2018 to June 30, 2019
<b>Previous Board Action/Review</b>	Amendment #2 approval: 042417 VII 1 and 6
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the District's strategic plan that residents of the service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. Supports the County's goal of ensuring safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Program manager, 503-742-4581

**BACKGROUND:**

On June 2, 2015, Surface Water Management Agency of Clackamas County ("District") entered into a contract with Waterways Consulting, Inc. to perform On-Call Surface Water Technical Services to support the Surface Water Program in engineering services, restoration support and general program support.

The Director, on behalf of the District, executed the original contract dated June 3, 2015, which provided \$125,000 in compensation for the first year with the option of three additional one-year renewals. On August 18, 2016, the Board of County Commissioners approved and executed Amendment/Renewal #1; and on April 24, 2017, the Board of County Commissioners approved and executed Amendment #2.

The District wishes to amend the contract and utilize the final optional renewal in order to continue utilizing the vendor's expertise in providing surface water program support. Execution of the amendment will provide another \$125,000 for FY 18-19, resulting in a cumulative contract total of \$500,000.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS 279B and LCRB Rules on March 18, 2015 as a Request for Qualifications. Proposals were publically opened April 14, 2015. The County

received fourteen (14) proposals. Five (5) consulting firms were chosen to extend On-Call Contracts: Brown and Caldwell, Parametrix Inc., Otak Inc., Waterways Consulting, and Herrera Environmental Consulting, Inc. Each firm was given a one-year On-Call Contract with three (3) optional one-year renewals.

This Amendment has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board approve Amendment #3 to the Contract Documents with Waterways Consulting, Inc. and Surface Water Management Agency of Clackamas County for On-Call Surface Water Technical Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement Division.





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract  
between Clackamas County Service District No. 1 and Water Environment Services  
and Kennedy/Jenks Consultant, Inc.

<b>Purpose/Outcomes</b>	Execution of the contract between Clackamas County Service District No. 1 and Water Environment Services and Kennedy/Jenks Consultant, Inc. for a Resident Project Representative for Kellogg Creek Water Resource Recovery Facility
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is not to exceed \$1,132,968.00.
<b>Funding Source</b>	119-01-20100-481020-P112139
<b>Duration</b>	Through August 31, 2020 or project completion, whichever is later.
<b>Previous Board Action</b>	None
<b>Strategic Plan Assignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan to provide partner communities with reliable waste water infrastructure to serve existing customers and support future growth.</li> <li>2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers.</li> </ol>
<b>Contact Person</b>	Randy Rosane, 503-742-4573

**BACKGROUND:**

Clackamas County Service District No. 1 ("CCSD1") and Water Environment Services ("WES") have selected a qualified engineering consultant/firm to provide construction management and inspection services and oversee the District's Kellogg Creek Water Resource Recovery Facility Improvements Project.

The work to be done will be at the following location:

- Kellogg Creek Water Resource Recovery Facility (Kellogg) located at 11525 SE McLoughlin Blvd. Milwaukie, OR 97222

The District has competed pre-construction services with the construction contractor selected through an RFQ/RFP process in 2017 to provide the District with a Guaranteed Maximum Price ("GMP") for construction of the Kellogg Creek Water Resource Recovery Facility ("KCWRRF") Improvements Project. The GMP has been established and the District is prepared to begin construction.

The refurbishment of the KCWRRF will encompass 10 distinct projects:

- Yard piping Replacement
- RAS Pump Station Improvements

- Peak Plant Design Capacity Reclamation
- Process Air Blower Replacement
- Electrical Phase I & Phase III
- Electrical Phase II
- Influent Pump Station Phase I
- WAS Thickening / Polymer Upgrades
- W2 Water Pump screen Replacement
- Aeration Basin Zone 2 Covers

This scope of services provides the District with a highly qualified construction manager/inspector to oversee the construction. The construction period is scheduled to last from FY 2017 -2018 to FY 2019-2020.

**PROCUREMENT PROCESS:**

This project was requested by Randy Rosane. This project was advertised in accordance with ORS and LCRB Rules On June 7, 2017. On June 29, 2017, Three (3) proposals were recieved: Akana, CH2M Hill, and Kennedy/Jenks Consultants, Inc. After initial evaluation of the proposals, a competitive range was determined and the top two candidates were invited for an interview and oral presentation. Final evalautions determined that Kennedy/Jenks was determined to be the highest ranking proposer and can meet the needs of the District. The total contract amount is not to exceed \$1,132,968.00.

The contract was reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1 and Water Environment Services, approve and execute the Contract between Clackamas County Service District No. 1 and Water Environment Services and Kennedy/Jenks Consultants, Inc. for a Resident Project Representative for Kellogg Creek Water Resource Recovery Facility.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the BCC agenda \_\_\_\_\_ by Procurement.





PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Kennedy/Jenks Consultants, Inc. ("Contractor"), and Clackamas County Service District No. 1 and Water Environment Services, both political subdivisions of the State of Oregon (collectively referred to as "District").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on August 31, 2020. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Resident Project Representative for Kellogg Creek Water Resource Recovery Facility ("Work"), further described in Article A.

3. Consideration. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed One Million One Hundred Thirty-Two Thousand Nine Hundred Sixty-Eight Dollars (\$1,132,968.00), for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Article A.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Articles A, B, C, D, E, and F.

6. Contractor Data.

Kennedy / Jenks Consultants, Inc.

Address: 421 SW 6th
Portland, Oregon 97204

Contractor Contract Administrator: Dean Wood

Phone No.: 503-423-4000

Email: deanwood@kennedyjenks.com

MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** District certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any wrongful act, omission, or neglect of Contractor, its subcontractors, agents or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property and to the extent caused by the negligent acts, errors, or omissions of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Article C)

At present, the Contractor certifies that he or she, if an individual is not a program, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Article B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal

delivery, email, or mailing the same, postage prepaid, to the District at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** Except for Contractor's preexisting intellectual property, all work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Any use the District makes of the materials referred to in Paragraph 13 hereof, except for purposes of the work contemplated by this Agreement, shall be at the District's risk.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the ordinary standard of care exercised by a professional in the Contractor's field; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor 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 Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor'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 District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous



amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District 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 the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under



**ARTICLE A  
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall perform resident project representation for the Kellogg Creek Water Resource Recovery Facility as described in the Request for Proposals #2017-32, issued June 7, 2017, hereby included as **Article D**; the Vendor response, hereby included as **Article E**; and the vendors Fee Proposal, hereby included as **Article F**.

The District Contract administrator for this Contract is: Randy Rosane.

**CONSIDERATION**

- a. Consideration Rates –Time and Material as detailed in Article F.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of \$1,132,968.00. Invoices shall be submitted to the District Contract Administrator at: 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at [RandyRos@co.clackamas.or.us](mailto:RandyRos@co.clackamas.or.us).
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**ARTICLE B  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by District of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by District     Not required by District**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

**3.  Required by District     Not required by District**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4.  Required by District     Not required by District**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to District acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the District at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [purchasing@clackamas.us](mailto:purchasing@clackamas.us).

**ARTICLE C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the District to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the District; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_



## ARTICLE D

## ARTICLE E

## ARTICLE F



Gregory L. Geist  
Director

May 27, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Contract with Brown and Caldwell, Inc. for the  
WES Sanitary Sewer and Stormwater Rules and Standards Update

<b>Purpose/Outcomes</b>	This contract will hire a consultant to comprehensively update the rules and standards for the Water Environment Services municipal partnership.
<b>Dollar Amount and Fiscal Impact</b>	Maximum Contract Value: \$294,323.00
<b>Funding Source</b>	Water Environment Services Sanitary and Stormwater Operating Funds.
<b>Duration</b>	Contract will terminate on June 30, 2019.
<b>Previous Board Action/Review</b>	WES municipal partnership was created on November 3, 2016 (Ordinance Nos. 05-2016 & 06-2016), and amended on May 18, 2017 (Ordinance Nos. 07-2017, 08-2017, & 09-2017). Interim WES Rules and Standards adopted June 22, 2017 (Ordinance No. 10-2017) and amended on April 12, 2018 (Ordinance No. 03-2018).
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This supports the WES Strategic Plan that customers will continue to benefit from a well-managed utility.</li> <li>2. This project supports the County Strategic Plan to build public trust through good government.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Environmental Services Manager, 503-742-4581 Greg Geist, WES Director, 503-742-4560
<b>Contract No.</b>	N/A

**BACKGROUND:**

Water Environment Services (WES) has established Rules and Regulations (Rules) and Design Standards (Standards), which are periodically revised to incorporate changes in permits and to reflect new technologies, approaches, and development patterns. Services are provided under the terms, conditions, and rates set within the Rules and Standards.

On June 22<sup>nd</sup>, 2017, the Board of County Commissioners, acting as the governing body of WES, adopted a set of Rules and Standards for WES. At that time, they consisted of the existing rules and regulations for Tri City Service District and the Surface Water Management Agency of Clackamas County. In order to accomplish the integration of Clackamas County Service District No. 1 (CCSD1) into WES, the existing sanitary sewer and surface water management rules and regulations covering CCSD1 were added to the current WES Rules and Standards on April 12, 2018. This was done to ensure WES' compliance with its National Pollutant Discharge Elimination System Permits issued under the Federal Clean Water Act, relating to both sewer and surface water services.

Because the amended Rules and Standards are merely a compilation of those from the individual districts in the WES Partnership, new WES Rules and Standards need to be authored and specifically designed to function efficiently under the WES partnership model. The result of this comprehensive update will ensure ease of use and clear interpretation for all ratepayers and County staff. Thusly, WES is seeking to hire a consultant team to lead the Sanitary and Stormwater Rules and Standards update. The anticipated deliverable is a consolidated and rewritten document that includes design standards, standard details, administrative procedures, standard forms, agreements, and new policies encompassing storm design, fiscal practices, and rules for the public's use of WES properties.

As a part of this project, the consultant team will research background on key components for impact and inclusion in WES policies and consolidate and update the WES Rules and Standards. This research will examine similar agencies' practices in the region for applicability to WES. There is also a robust public involvement process proposed, including stakeholder interviews with developers, engineers, and planners that utilize the rules and standards, a task force of developers and municipal partners to discuss technical and fiscal policies, community meetings various interest groups, hearings to adopt the rules, and trainings after adoption on new policies and standards.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS and LCRB Rules on November 22, 2017. Proposals were opened on January 2, 2018. One Proposal was received and notice of intent to award after a full evaluation of the received Proposal was publicly posted on January 17, 2018. The total contract amount is not to exceed \$294,323.00.

The project specifications require a contract expiration date of June 30, 2019.

County Counsel has reviewed and approved this contract.

**RECOMMENDATION:**

District Staff respectfully recommends that the Board of County Commissioners, acting as the Board of Water Environment Services, approve and sign the contract with Brown and Caldwell for the Sanitary and Stormwater Rules and Standards Update project.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Purchasing Division





**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Personal/Professional Services Contract (this “Contract”) is entered into between **Brown and Caldwell, Inc.** (“Contractor”), and Clackamas County Service District No. 1 and Water Environment Services, both political subdivisions of the State of Oregon (both referred to collectively as “District”).

**ARTICLE I.**

**1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2019**. However, such expiration shall not extinguish or prejudice the District’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

**2. Scope of Work.** This Contract covers the Scope of Work as described in RFP #2017-105 Sanitary and Stormwater Rules and Standards Update, issued December 19, 2017, and inclusive of Addenda 1, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, the Contractor’s Proposal attached and hereby incorporated by reference as Exhibit “B”, the Scope Services attached and hereby incorporated by reference as Exhibit “C”, and Work shall be performed in accordance with a schedule approved by the District.

The Contractor shall meet the ordinary standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Leah Johanson.

**3. Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **two hundred ninety-four thousand three hundred twenty-three dollars (\$294,323.00)**, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

**4. Travel and Other Expense.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

**5. Contract Documents.** This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, and C.

**6. Contractor Data.**

**Name:** Brown and Caldwell, Inc.

**Address:** 6500 SW Macadam Avenue #200, Portland, Oregon 97239

**Contractor Contract Administrator:** Alissa Maxwell

**Phone No.:** 503-977-6664

**Email:** [amaxwell@brwncald.com](mailto:amaxwell@brwncald.com)

**MWESB Certification:**  DBE #  MBE #  WBE #  ESB #

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

## ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** District certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal

delivery, email, or mailing the same, postage prepaid, to the District at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of District. District and Contractor intend that such Work Product be deemed “work made for hire” of which District shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the ordinary standard of care exercised by persons in the Contractor’s industry; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor 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 Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor'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 District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall



pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District 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 the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the District with such Key Person's services unless the District provides prior written consent to such reassignment or transfer.

**29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Brown and Caldwell

Water Environment Services:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone/Fax Number

Clackamas County Service District No. 1:

\_\_\_\_\_  
Oregon Business Registry #

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Entity Type / State of Formation

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date

**ARTICLE III  
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall work with Water Environment Services to identify and research local, regional and national examples of effective municipal administrative rules and standards pertaining to wastewater and stormwater design standards, water quality BMP's, volume reduction stormwater incentives, stormwater BMP maintenance requirements, fee and charge calculations, and asset ownership/easements applicable to WES as further described in Exhibits A, B, and C hereby attached and incorporated by reference.

The District Contract administrator for this Contract is: Leah Johanson.

**CONSIDERATION**

- a. Consideration Rates – Time and Material Rates as further described in Exhibit C, hereby attached and incorporated by reference.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of two hundred ninety-four thousand three hundred twenty-three dollars (\$294,323.00). Invoices shall be submitted to: Leah Johanson, 150 Beaver Creek Road, Oregon City, OR 97045, or via email at [LJohanson@clackamas.us](mailto:LJohanson@clackamas.us).
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**ARTICLE IV  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by District of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by District     Not required by District**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

**3.  Required by District     Not required by District**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4.  Required by District     Not required by District**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the District and Clackamas County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to District acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the District at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).



**ARTICLE V**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the District to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the District; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT A**  
**RFP #2017-105 Sanitary and Stormwater Rules and Standards Update**



**REQUEST FOR PROPOSALS #2017-105**

**FOR**

**Sanitary and Stormwater Rules and Standards Update**

**BOARD OF COUNTY COMMISSIONERS**

**JIM BERNARD, Chair**

**SONYA FISCHER, Commissioner**

**KEN HUMBERSTON, Commissioner**

**PAUL SAVAS, Commissioner**

**MARTHA SCHRADER, Commissioner**

---

**Donald Krupp  
County Administrator**

**George Marlton  
Procurement Division Director**

**Abigail Churchill  
Analyst**

**PROPOSAL CLOSING DATE, TIME AND LOCATION**

**DATE: December 19, 2017**

**TIME: 2:00 PM, Pacific Time**

**PLACE: Clackamas County Procurement Division  
Clackamas County Public Services Building  
2051 Kaen Road, Oregon City, OR 97045**

**SCHEDULE**

Request for Proposals Issued.....	November 22, 2017, 5:00 PM, Pacific Time
Protest of Specifications Deadline.....	November 28, 2017, 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	December 12, 2017, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	December 19, 2017, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award
Anticipated Contract Start Date.....	February, 2018

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**SECTION 1**  
**NOTICE OF REQUEST FOR PROPOSALS**

Notice is hereby given that Clackamas County through its Board of County Commissioners Water Environment Services (“WES”) on behalf of Clackamas County Service District No. 1 (“CCSD #1”) will receive sealed Proposals per specifications until **2:00 PM, December 19, 2017** (“Closing”), to provide Sanitary and Stormwater Rules and Standards Update. No Proposals will be received or considered after that time.

Proposal packets are available from 7:00 AM to 6:00 PM Monday through Thursday at Clackamas County Procurement Division, Clackamas County Public Services Building, 2051 Kaen Road, Oregon City, OR 97045, telephone (503) 742-5444 or may be obtained at <http://www.clackamas.us/bids/>. Sealed Proposals are to be sent to Clackamas County Procurement Services – Attention George Marlton, Director at the above Kaen Road address.

Sealed Proposals may be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us) or sent to Clackamas County at the above Kaen Road address.

Contact Information

Procurement Process and Technical Questions: Abigail Churchill, 503-742-5449,  
[ACHurchill@clackamas.us](mailto:ACHurchill@clackamas.us) .

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

Clackamas County encourages bids from Minority, Women, and Emerging Small Businesses.

## SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

**2.1 Modification or Withdrawal of Proposal:** Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

**2.2 Requests for Clarification and Requests for Change:** Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. County will provide reasonable notice of its decision to all Proposers that have provided an address to the Procurement Division for this procurement. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

**2.3 Protests of the RFP/Specifications:** Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

**2.4 Addenda:** If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check the Bids and Contract Information page at <http://www.clackamas.us/bids/> for any published Addenda or response to clarifying questions.

**2.5 Submission of Proposals:** All Proposals must be submitted in a sealed envelope bearing on the outside, the name and address of the Proposer, the project title, and Closing date/time. Proposals must be submitted in accordance with Section 5.

All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Response form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

**2.6 Post-Selection Review and Protest of Award:** County will name the apparent successful Proposer in a “Notice of Intent to Award” letter. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers will be notified in writing of the selection of the apparent successful Proposer(s) and shall be given seven (7) calendar days from the date on the “Notice of Intent to Award” letter to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for award, i.e. the protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

**2.7 Acceptance of Contractual Requirements:** Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

**2.8 Public Records:** Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.501(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

**“This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.500(1). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

**2.9 Investigation of References:** County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

**2.10 RFP Proposal Preparation Costs and Other Costs:** Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

**2.11 Clarification and Clarity:** County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

**2.12 Right to Reject Proposals:** County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

**2.13 Cancellation:** County reserves the right to cancel or postpone this RFP at any time or to award no contract.

**2.14 Proposal Terms:** All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

**2.15 Oral Presentations:** At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

**2.16 Usage:** It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

**2.17 Review for Responsiveness:** Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

**2.18 RFP Incorporated into Contract:** This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

**2.19 Communication Blackout Period:** Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

**2.20 Prohibition on Commissions and Subcontractors:** County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

**2.21 Ownership of Proposals:** All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

**2.22 Clerical Errors in Awards:** County reserves the right to correct inaccurate awards resulting from its clerical errors.

**2.23 Rejection of Qualified Proposals:** Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

**2.24 Collusion:** By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

**2.25 Evaluation Committee:** Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

**2.26 Commencement of Work:** The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

**2.27 Best and Final Offer:** County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial Proposal received. Therefore, each Proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

**2.28 Nondiscrimination:** The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

**2.29 Intergovernmental Cooperative Procurement Statement:** Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any Proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public



agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

## SECTION 3 SCOPE OF WORK

### 3.1. INTRODUCTION

Clackamas County is Clackamas County Water Environment Services (“WES”), on behalf of Clackamas County Service District No. 1 (“CCSD #1) seeking Proposals to hire a consultant team to lead the Sanitary and Stormwater Rules and Standards update. WES is seeking a highly functional team of engineers, scientists, planners, and public involvement professionals to review current policies, practices, and standards. WES needs to consolidate rules and standards from its various service districts into a single set of documents for all of WES’s programs and facilities. The anticipated deliverable is a consolidated and rewritten rules and standards document that includes design standards, standard details, administrative procedures, standard forms, agreements, and new policies encompassing storm design, fiscal practices, and rules for the public’s use of WES properties. This project also pertains to goals identified by the Clackamas County Board of Commissioners in the department’s strategic plan, which can be viewed at: <http://www.clackamas.us/performance/documents/wesplan.pdf>

The objectives of this project are as follows:

1. Research background on key components for impact and inclusion in WES policies: Investigate, study, and propose applicable components of industry business practices to mitigate stormwater runoff including flow control, water quality and retention standards. These mitigation components shall address the post construction runoff as specified in the MS4 permit. Research and recommend the most effective water quality best management practices (“BMPs”), volume reduction incentives for stormwater, storm BMP maintenance requirements, and develop a suite of proposed practices that protect water quality, minimize hydromodification effects, and result in aesthetically pleasing landscaped amenities that will also be acceptable to the development community. Review and recommend fiscal practices (system development charge calculations, wastewater strengths, industrial discharges, incentive programs), and asset ownership or easement dedications.
2. Consolidate and Update the WES Rules and Standards: Revise, update, clarify, and aggregate pertinent components of internal rules and regulations, storm standards, sanitary sewer standards, and administrative procedures. Updated rules and standards should be clear to the public and support consistent practices within public utilities of similar jurisdiction. The rules and regulations should be simple and readable for the widest possible audience, with the exception of the design standards, which should be written for technical audiences, such as plan reviewers or design consultants. The rules and regulations should be clear to assure consistency in how the requirements are applied and enforced. The rules and standards must meet state and federal regulatory requirements, such as the Clean Water Act and Safe Drinking Water Act. New rules are needed to describe allowable public uses of WES-owned properties, mainly natural areas, similar to rules adopted by North Clackamas Parks and Recreation District Ordinance No. 07-2004.

**Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.**

## **3.2 BACKGROUND**

Clackamas County Service District No. 1 and Water Environment Services (collectively “WES”), Clackamas County, Oregon, was organized pursuant to Oregon Revised Statutes Chapter 451 for the purpose of providing sewerage, surface water, and stormwater management. It is the policy of WES to provide and offer sewage disposal service for incorporated or other areas adjacent to WES. Services are provided under the terms, conditions, and rates set within the Rules and Regulations (Rules) and Design Standards (Standards). The Rules and Standards are periodically revised to incorporate changes in permits and to reflect new technologies, approaches, and development patterns.

## **3.3. SCOPE OF WORK**

### **3.3.1. Detailed scope of work**

The consultant team will work with WES staff to identify and research local, regional, and national examples of effective municipal administrative rules and standards pertaining to wastewater and stormwater design standards, water quality BMPs, volume reduction stormwater incentives, stormwater BMP maintenance requirements, fee and charge calculations, and asset ownership/easements applicable to WES. The resultant rules and standards should be consistent with language, structure, and intent of WES revision practices.

#### **1. Internal Administrative Rules Aggregation / Revision**

WES desires to make the appropriate updates and aggregation of various internal administrative rules without making the resultant rules and standards over burdensome or overwhelming to the reader. The consultant team will be charged with revising and aggregating the following topics (but not limited to) within the administrative rules and standards:

- a. Design Standards and standard detail drawings for sanitary and stormwater facilities, including water quality BMPs
- b. Stormwater Volume Reduction Requirements or Incentives
- c. Stormwater BMP Maintenance Requirements
- d. Fee and charge calculations – EDU equivalents, extra strength, industrial, and incentives
- e. Asset Ownership/Easements, Provisions for Construction
- f. Rules for the public’s use of WES natural area properties

WES anticipates that the work will include:

- a. Hold meetings with WES staff to review the existing rules and standards, identify which policies WES desires to address in this project, identify changes to the rules structure and organization, and administrative changes; and to get input at various stages of the project.
- b. Help organize, facilitate and lead meetings for a task force(s) of municipal, development, business, and industry professionals, such as design engineers, in an advisory capacity. Prepare materials to present to the task force.
- c. Conduct a robust public outreach and comment period on proposed changes alongside WES Staff, meeting with major WES stakeholders such as regional watershed councils, and community planning organizations.
- d. Research examples and model code/standards from comparable municipalities (e.g. Clark County, Wash., Clean Water Services of Washington County, Ore., City of Salem Ore., City of Oregon City, Ore.)
- e. Develop an outline(s) of the rules and standards documents

- f. Write, edit, and format the final documents. Final deliverable documents shall be formatted in Microsoft Word, and drawings provided in both AutoCAD and PDF formats.

District responsibilities (what we will supply, what will we do)

WES will supply:

- Electronic files of existing rules, regulations, and standards
- Example rules for public use of WES properties
- Draft BMP sizing tool
- Draft 2009 LIDA design details
- GIS data or maps upon request

WES staff will:

- Provide recommended names for task force membership

**3.3.2. Term of Contract:**

The term of the contract shall be from the effective date through **June 30, 2018**.

**3.3.3 Sample Contract:** Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Professional Services Contract for this RFP can be found at:  
<http://www.clackamas.us/bids/terms.html>.

Professional Services Contract (unless checked, item does not apply)

The following paragraphs of the Professional Services Contract will be applicable:

- Article I, Paragraph 4 – Travel and Other Expense is authorized
- Article II, Paragraph 29 – Confidentiality
- Article II, Paragraph 29 – Criminal Background Check Requirements
- Article II, Paragraph 30 – Key Persons
- Exhibit A – On-Call Provision

The following insurance requirements will be applicable:

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

**SECTION 4  
EVALUATION PROCEDURE**

**4.1** An evaluation committee will review all Proposals that are initial deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

**4.2 Evaluation Criteria**

<u>Category</u>	<u>Points available:</u>
Proposers General Background & Qualifications	0-40
Project Understanding and Approach	0-40
Fees	0-10
References	0-10
<b>Available points</b>	<b>0-100</b>

**4.3** Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.



**SECTION 5  
PROPOSAL CONTENTS**

**5.1. Vendors must observe submission instructions and be advised as follows:**

**5.1.1.** Complete Proposals may be mailed to the below address or emailed to [Procurement@clackamas.us](mailto:Procurement@clackamas.us). The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal. If the Proposal is mailed, an original copy and an electronic copy (on compact disk or jump drive) must be included. The Proposal (hardcopy or email) must be received by the Closing Date and time indicated in Section 1 of the RFP.

**5.1.2.** Mailing address including Hand Delivery, UPS and FEDEX:

Clackamas County Procurement Division – Attention George Marlton, Director  
Clackamas County Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045

**5.1.3.** County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

**Provide the following information in the order in which it appears below:**

Page limits listed below are desired targets, not hard limits. The consultant's response should include:

**5.2. Proposer's General Background and Qualifications:**

1. Introductory (or cover) letter (1 page limit): A cover letter detailing the consultant team's interest in this project and indicating the specific project manager's contact name, phone number, address, and email address for all correspondence regarding this project.
2. Key Personnel & Qualifications (16 page limit): Key personnel and team members available to be assigned to the project, their specific qualifications and experience on similar projects and the proportion of their time available for the project. The consultant team should have the following qualifications:
  - Experience and regional examples of the type of work proposed in this RFP.
  - Experience in regional stormwater and sanitary sewer internal agency rules development and revisions.
  - Experience in regional stormwater design manual development and implementation.
  - Experience in the use of plain language in government writing.
  - Public relations as they relate to stormwater, surface water, and sanitary sewer deliverables in this RFP.

**5.3. Project Understanding and Approach**

1. Project Understanding and Approach (8 page limit): A statement that reflects the consultant team understanding of the project, approach to address key elements, anticipated timeline and any suggested modifications to the preliminary scope of work. These comments may be related to scope clarifications, scope improvements, or budget.
2. Project examples and references (10 page limit): Relevant specific experience and references on similar projects.

3. A statement that indicates consultant team's recent, current, and projected work load, and capacity to meet the project schedule (1 page limit).
4. Provide a schedule of tasks outlining the anticipated scope of work and showing staff hours associated with each task.
5. The maximum compensation authorized for this contract shall be three hundred thousand dollars (\$300,000.00). By providing the funding information, it should not be construed by Proposers as the default fee proposal. The County endeavors to obtain the best value it can for the quality and quantity of the work to be provided under the resulting contract.

The target maximum page limit is 36 pages. All submittals shall be printed in black ink on double-sided, recycled-content products.

Consultant shall also provide a proposed fee for all team members who will be assigned to the project. Final Scope of Work and fees will be negotiated.

**5.4. Fees**

Fees and fee schedules should outline all estimated expenses, hourly rates for all key persons assigned, anticipated travel, other reimbursable expenses.

**5.5. References**

Provide three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references.

**5.6. Completed Proposal Certification (see the below form)**

**PROPOSAL CERTIFICATION**  
**RFP #2017-105 Sanitary and Stormwater Rules and Standards Update**

Submitted by: \_\_\_\_\_  
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agent or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
  3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer fully understands and submits its Proposal with the specific knowledge that:
1. The selected Proposal must be approved by the Board of Commissioners.
  2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.

**(h)** That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

**(i)** That the Proposer is legally qualified to contract with the County.

**(j)** That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

**(k)** The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

Resident Bidder, as defined in ORS 279A.120

Non-Resident Proposer, Resident State \_\_\_\_\_  
Oregon Business Registry Number \_\_\_\_\_

Contractor's Authorized Representative

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ Phone: (     ) \_\_\_\_\_

e-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

Contract Manager:

Name \_\_\_\_\_ Title: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email Address: \_\_\_\_\_



**GEORGE MARLTON, JD**  
PROCUREMENT DIVISION DIRECTOR

**PROCUREMENT DIVISION**  
**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

REQUEST FOR PROPOSALS #2017-105  
Sanitary and Stormwater Rules and Standards Update  
ADDENDUM NUMBER #1  
December 11, 2017

On November 22, 2017, Clackamas County (“County”) published Request for Proposals #2017-105 Sanitary and Stormwater Rules and Standards Update (“RFP”). Except as expressly amended below, all other terms and conditions of the original RFP shall remain unchanged.

1. The Proposal Due Date is hereby changed from December 19, 2017, 2:00PM to **January 2, 2018, 2:00PM.**
2. Section 3.3.2. Term of Contract is hereby changed from June 30, 2018 to **December 31, 2018.**

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End of Addendum



**EXHIBIT B**  
**Contractor's Proposal**



PROPOSAL | Prepared for  
Clackamas County

# Sanitary and Stormwater Rules and Standards Update

December 22, 2017 | RFP# 2017-105

**Planning process** Development thresholds/exemptions Proprietary  
 Material specifications **Stormwater management strategy** treatment devices  
 Source control and pretreatment Design tools and facility sizing  
 Infiltration Site planning principles Regulatory compliance Credits and  
 feasibility Erosion control incentives  
 Maintenance responsibility **Conveyance standards**



Create.



Execute.



Deliver.

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6500 SW Macadam Avenue, Suite 200  
Portland, OR 97239

T: 503.244.7005  
F: 503.244.9095

December 22, 2017



Abigail Churchill, Procurement Division Director  
Clackamas County Procurement Division  
Clackamas County Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045

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Subject: Proposal for Clackamas County Sanitary and Stormwater Rules and Standards Update (2017-105)

Dear Ms. Churchill and members of the selection committee:

The merger of services for the Tri-City Service District (TCSD), Clackamas County Service District No. 1 (CCSD1), and the Surface Water Management Agency of Clackamas County (SWMACC) took place to provide long-term certainty and stability for ratepayers under Clackamas County (County) Water Environment Services (WES). However, this change necessitates a comprehensive examination of the district-specific sanitary and stormwater rules and standards to provide consistent technical and financial requirements. To support you in this effort, Brown and Caldwell (BC) will:

- **Create a collaborative process to engage internal and external stakeholders.** Our proposed approach includes a process to facilitate and engage WES staff and external stakeholders, to identify and resolve key policy issues in the early stages of the project. Our tested process builds consensus and understanding among stakeholders and creates a clear road map for development of the rules and standards.
- **Deliver clear, concise rules and standards.** BC's extensive local and regional experience in developing and implementing design standards allows us to create high-quality documents, tailored to fit the specific needs of the service districts. We understand the importance of clear language and clarity to communicate standards and reduce the need for interpretation by WES staff and development engineers, resulting in greater accuracy in built facilities.
- **Execute a streamlined process that meets the schedule.** Our team has unmatched local knowledge and experience with municipal permitting, code review, and design standards. We have already completed the regional background research to understand your policy options and impacts of technical decisions, allowing us to dive directly into the project and deliver updated documents within your schedule.

Alissa Maxwell will manage efforts from BC's Portland office. She has played a lead role in the success of design standard efforts for Oregon City, Wilsonville, Corvallis, and seven agencies in central Oregon. Alissa will serve as our primary point of contact. If you have any questions, please contact her at 503.977.6664 or [amaxwell@brwncald.com](mailto:amaxwell@brwncald.com). Bryan Paulson is authorized to represent BC, participate in contract negotiations, and sign any contract that may result. We look forward to this opportunity to work with you.

Very truly yours,

Brown and Caldwell,

Handwritten signature of Alissa Maxwell in blue ink.

Alissa Maxwell, P.E.  
Project Manager

Handwritten signature of Bryan Paulson in black ink.

Bryan Paulson, P.E.  
Authorized Representative



# Key Personnel and Qualifications

RFP Section 5.2.2



## Project Team

For 70 years, Brown and Caldwell (BC) has been helping municipalities solve complex environmental issues with cost-effective, science-based solutions. BC is a multidisciplinary environmental engineering and consulting firm that provides scientific and engineering design and planning services. Established in 1947, BC is an employee-owned corporation.

BC Portland staff have unmatched local experience with municipal stormwater permitting. The team has assisted all Oregon Phase I communities, including Clackamas County Service District No. 1 (CCSD1), the Surface Water Management Agency of Clackamas County (SWMACC), Clackamas County (County) Water Environment Services (WES), and other jurisdictions. Additionally, we have worked with communities across the state with National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit compliance and negotiations, including post-construction stormwater design standards.

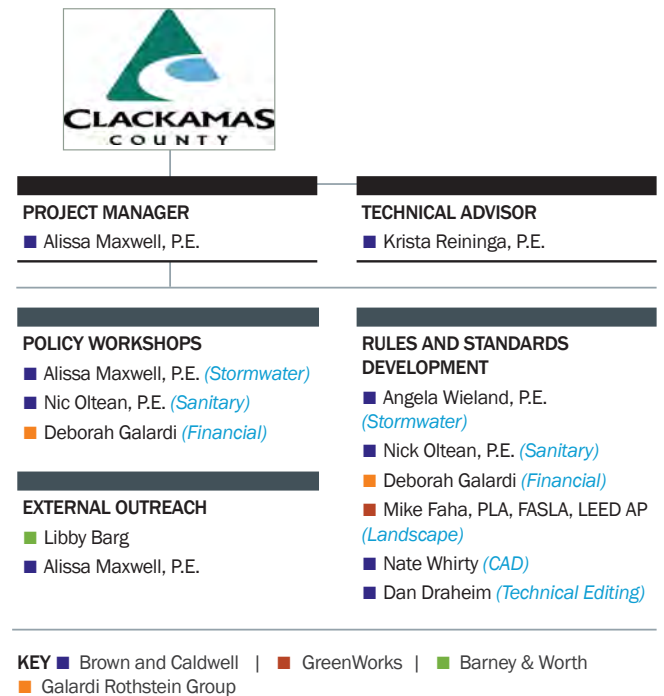
For your project, we have assembled a locally-based project team to facilitate a collaborative process with stakeholders. We will leverage our knowledge of local and regional post-construction programs to streamline the development of clear and concise rules and standards.

BC Portland staff have significant experience in the development of design standards to address NPDES and sanitary regulations in Oregon. The project team recently assisted Oregon City, Corvallis, and Wilsonville with development of municipal code and standards. We are deeply familiar with local and regional standards for stormwater management, including flow controls, hydromodification, water quality, retention, infiltration standards, and associated design tools. This familiarity will allow us to streamline the research phase of the project and dive directly into policy presentations with WES staff.

BC staff also have hands-on experience serving in a design review capacity for municipalities such as WES, Lake Oswego, and Oregon City. We understand the challenges in implementing design standards and the importance of clear language that eliminates the need for interpretation.

Our teaming partners include GreenWorks, Barney & Worth, and Galardi Rothstein Group (GRG), all based in the Portland area. Each team member brings extensive knowledge of the County’s existing standards through years of work. Key staff, shown in Figure 1, will be supported by additional personnel as needed to meet the project schedule.

GreenWorks is a landscape firm that has applied green infrastructure solutions to address stormwater quality standards throughout Oregon, providing creative solutions with multiple community benefits. GreenWorks is adept at working with clients, regulators, and stakeholders to provide standards for livable, sustainable communities. GreenWorks will develop landscape standards and planting guidelines for the WES rules and standards update.



**FIGURE 1**  
 Our key staff are prepared to immediately engage with project stakeholders and facilitate a collaborative process to help you make informed policy and technical decisions.



**Barney & Worth** has managed communications for hundreds of infrastructure projects, including for municipal water supply, sewer and stormwater collection systems, wastewater treatment facilities, environmental assessments, and watershed/wellfield protection. Libby Barg will lead the external outreach activities for this project, coordinating a task force of local developers to review the proposed rules and standards.

**GRG** provides strategic financial and management consulting services to government agencies and special districts worldwide. The firm provides sound solutions to management, economic, and financial challenges associated with the development and delivery of major infrastructure services. Deborah Galardi developed the original rate structure for CCSD1 and TCSD. She will be reviewing and recommending updated financial policies.

Coordinating the efforts of multiple subconsultants requires extensive communication and building a cohesive team. Alissa Maxwell will use BC's project management toolbox, the WorkSmart project delivery system, to manage subconsultants, track project metrics, and develop invoices. These consistent and proven methods for managing projects have helped BC maintain high standards of care.

## Team Qualifications

The BC team has a variety of project experience that will help support the development of the WES Sanitary and Stormwater Rules and Standards Update. As detailed in Section 5.3.2, BC has written, reviewed, and/or revised rules and standards for more than 20 communities in Oregon over the past decade. Our project manager, Alissa Maxwell, played a key role in development of stormwater design standards/manuals for Oregon City, Corvallis, Wilsonville,

and seven agencies in central Oregon. She is also familiar with Washington stormwater standards and developed a Stormwater Pollution Prevention and Facility Maintenance Manual template for NPDES Phase II communities across eastern Washington.

In 2009, BC (teamed with GreenWorks) completed a preliminary update of the County's stormwater design standards for water quality, hydromodification, and flood control. WES currently uses the associated stormwater and BMP sizing tool in areas where infiltration is not feasible.

Deborah Galardi has worked with communities throughout Oregon to develop system development charges (SDCs). She recently completed a project to develop the County's new transportation SDC methodology. Other key team qualifications are detailed below.

## Rules and Design Manual Development and Implementation

BC understands the regulatory environment. Our work routinely includes the review of existing sanitary and stormwater codes, policies, and standards to assess compliance with state and federal requirements. BC staff are in frequent and consistent coordination and communication with the Oregon Department of Environmental Quality (DEQ) and the Association of Clean Water Agencies (ACWA) to assess how to best comply with permits.

BC staff have provided ongoing services in permit support of Phase I and Phase II NPDES MS4 jurisdictions. As part of the most recent Phase I permit negotiation efforts, BC staff participated in and facilitated meetings with permittees and DEQ related to proposed permit language, documenting agreed-upon findings as part of the ACWA Phase I Stormwater Committee. BC is currently serving on the ACWA



Project Manager Alissa Maxwell has helped many Oregon municipalities navigate the ever-changing regulatory environment.

Phase II subcommittee, reviewing and providing feedback on the draft Phase II NPDES permit language. Our in-depth knowledge of permit requirements and DEQ direction will allow us to meet compliance-related needs.

In addition to the development of municipal code and technical standards described previously, BC staff currently support development review efforts in Lake Oswego, Oregon City, and WES. In this capacity, Alissa Maxwell and Angela Wieland have direct experience in applying design standards and interpreting municipal code. Nic Oltean has worked as a project engineer for municipal agencies, managing projects and reviewing development plans for Bend, Seattle, and Washington County. As a result of this experience, our staff understand the challenges in implementing standards that may be ambiguous or open to interpretation. A key objective of this project is to develop rules and standards that are clear and precise, giving direct guidance to both the development community and the County’s review staff.

### Government Writing

BC Portland staff have significant local experience in the development of plain-language documents for municipal governments. Krista, Alissa, and Angela support multiple local agencies with NPDES MS4 permit compliance, which requires writing permit applications, stormwater management plans (SWMPs), hydromodification assessments, water quality assessments, and annual reports.

BC staff regularly conduct and document reviews and audits of municipal code and standards. We have conducted code audits for the cities of Fairview, Gladstone, Oregon City, Troutdale, West Linn, and Wilsonville and have previously done similar work for Portland, Gresham, and Clean Water Services (CWS). These code audits include an evaluation of regulatory compliance, identification of redundant or conflicting code sections, and recommendations for draft language to update codes and ordinances.

**TABLE 1.** Key Personnel Technical Experience

Team Member/Role	Areas of Expertise							
	Sanitary/stormwater rules and revisions	Stormwater design manual development and implementation	LID/surface water design	Plain language and technical writing	Regulatory compliance	Hydromodification analysis tool development	Staff and stakeholder workshops and outreach	Financial assessments
Alissa Maxwell, P.E., Project Manager and Policy Lead	✓	✓	✓	✓	✓	✓	✓	✓
Krista Reininga, P.E., Technical Advisor	✓	✓	✓	✓	✓	✓	✓	✓
Angela Wieland, P.E., Design Standards (Stormwater)	✓	✓	✓	✓	✓	✓	✓	✓
Nic Oltean, P.E., Policy and Design Standards (Sanitary)	✓	✓	✓	✓			✓	
Mike Faha, PLA, FASLA, LEED AP, Design Standards (Landscape)	✓		✓	✓	✓			
Deborah Galardi, Financial Policy Lead	✓			✓			✓	✓
Libby Barg, External Outreach	✓			✓			✓	
Nate Whirty, Design Standards (CAD)	✓	✓	✓	✓	✓			
Dan Draheim, Design Standards (Technical Editing)		✓		✓				

Our team includes a dedicated technical editor, Dan Draheim, to provide consistent and thorough review of all written documents. His high-quality technical editing will result in consistency across the policy and technical documents produced for your project.

### Public Relations

Barney & Worth’s team of public-relations experts have worked with municipalities to organize educational outreach to large communities to increase awareness of code updates. Outreach plans strategically engage key stakeholders (code users, property owners, councils, etc.) using tools such as the establishment of advisory committees, newsletters, website and video updates, communications partnerships, and media outreach. Objectives include enhancing public education and involvement opportunities, providing easy access to the most up-to-date information, and reinforcing credibility to deliver projects.

In addition, BC staff have extensive experience in developing and conducting training for municipal staff and the development/engineering community. We have provided training related to erosion and sediment control, technical design standards, best management practice (BMP) sizing tools, and water quality protection in municipal operations. BC staff also routinely give polished presentations to local government officials.

## Key Personnel

Key project members’ expertise is presented in Table 1 below. Brief team member biosketches follow.

# Alissa Maxwell, P.E.

Project Manager and Policy Lead



**Alissa's understanding of development processes will result in rules and standards that include clear direction and practical tools to assist developers in translating standards into engineered facilities.**

Alissa is a water resources engineer and stormwater planner with 17 years of engineering experience. Alissa led the development of the *Stormwater and Grading Design Standards* manual for Oregon City, the Public Works stormwater standards for Wilsonville, and a stormwater design manual for Corvallis. Each of those projects focused on compliance with NPDES MS4 permit requirements.

Alissa is skilled in leading workshops that bring together planning, engineering, and maintenance staff to make policy decisions. This collaborative process is focused on identifying key issues early and developing widespread support for the proposed rules and standards.

Alissa was also the lead author in preparing a comprehensive stormwater design manual to guide development projects throughout central Oregon. Alissa led policy workshops with engineering and planning staff from seven different municipalities and the resulting *Central Oregon Stormwater Manual* received a concurrence letter from DEQ to become the design standard throughout the region. Alissa has also prepared stormwater ordinances to consolidate municipal code and adopt new standards.

In addition to her policy experience, Alissa has more than 17 years of experience designing stormwater facilities to support development projects. She has prepared countless design reports and submittals to document how proposed facilities will meet the intent of municipal stormwater standards. Alissa currently provides development review services for the cities of Lake Oswego and Oregon City. She understands the challenges of interpreting and applying design standards under real site constraints.

Alissa's experience gives her a practical perspective to apply when developing design standards, planning requirements, submittal checklists, and maintenance standards.

## Relevant experience

- Stormwater and Grading Design Standards, Oregon City, Oregon
- Stormwater Public Works Standards and Low Impact Development (LID) Guidebook, Wilsonville, Oregon
- Stormwater Design Standards, Corvallis, Oregon
- Stormwater Permitting Review, Lake Oswego, Oregon
- NPDES MS4 Phase I permit compliance and support services for Fairview, Gladstone, Gresham, Lake Oswego, Milwaukie, Oregon City, Portland, West Linn, Wilsonville, and Clackamas County WES, Oregon
- Central Oregon Stormwater Manual and Update, Central Oregon Intergovernmental Council, Oregon\*
- Drainage Master Plans, Multnomah County Drainage District (MCDD), Oregon\*
- Stormwater Master Plan, Oregon City, Oregon\*
- Operations and Maintenance (O&M) Plan Template, Wenatchee Area, Washington\*
- Stormwater Management Code Update, Shoreline, Washington\*
- Stormwater Management Code Update, Newcastle, Washington\*

\* projects with a prior firm

**“... very proud of the results so far. I feel we are on track to a clean, concise product and good value for the money spent with our consultant.”**

— Jonathan Archibald, Oregon City  
(regarding the City's Stormwater Master Plan)

# Krista Reininga, P.E.

Technical Advisor



**Krista's recent experience managing and facilitating internal stakeholder processes for the City of Gresham and other design standards projects will result in clear key issues and efficient decisions for a streamlined development of your design standards manual.**

Krista has 30 years of experience assisting municipal clients with stormwater management and regulatory compliance issues. Krista managed the stormwater design standards update for the City of Gresham under its Healthy Watersheds project and has worked on design standard updates and reviews for WES, Oregon City, Wilsonville, Eugene, Portland, and CWS. Krista has also led many efforts to conduct rainfall analyses for design storm development and she is currently managing a project to address climate resiliency for the City of Portland.

Krista has significant experience working with the various regional BMP sizing tools. She has made several presentations to clients summarizing the advantages and disadvantages of various tools from simple spreadsheet sizing tools to sophisticated continuous-simulation tools.

Krista brings in-depth expertise of regulatory issues related to stormwater management to all of her projects. She has been working with Oregon NPDES MS4 permits since their inception and routinely provides training for municipal staff and elected officials about the changing regulatory environment.

Krista has participated in ACWA committees for Phase I and Phase II NPDES MS4 permit negotiations and is currently serving on the Phase II MS4 NPDES permit advisory committee to DEQ. Krista has provided ongoing support for County NPDES MS4 permittees, convening work groups to highlight upcoming permit deadlines and assisting permittees with annual reports, water quality assessments, and permit renewal applications.

Krista's experience also includes stormwater quality monitoring, stormwater and water quality data evaluations, pollutant source identifications, hydrologic and hydraulic modeling, implementation of municipal NPDES stormwater permit conditions, TMDL development, and multiple-objective storm drainage master planning.

## Relevant experience

- Sanitary and Stormwater System Resiliency Master Plan, City of Portland, Oregon
- Stormwater Design Standards, Corvallis, Oregon
- Stormwater Design Standards Update (under Healthy Watersheds project contract), City of Gresham, Oregon
- Stormwater and Grading Design Standards, Oregon City, Oregon
- Stormwater Public Works Standards and LID Guidebook, Wilsonville, Oregon
- Design Standards and Hydromodification BMP Sizing Tool Development and Implementation, Clackamas County WES, Oregon
- Support for Stormwater Design Standards, City of Portland, Oregon
- Rainfall Analysis, City of Salem, Oregon
- Rainfall Analysis, CWS, Oregon
- NPDES MS4 support for 17 Oregon Phase I jurisdictions
- NPDES MS4 permit compliance and support services for five Oregon Phase II jurisdictions, including the cities of Bend, Keizer, Springfield, Troutdale, and Lane County
- Participant on DEQ's Phase II MS4 NPDES Advisory Committee



# Angela Wieland, P.E.

Rules and Standards Documentation: Stormwater



**Angela's recent work on stormwater design standards, in conjunction with her NPDES MS4 permit experience, ensures efficient development of a design manual that addresses regulatory drivers and that is regionally and locally consistent.**

Angela has 15 years of experience in the assessment, planning, and management of water quality and quantity. Her work includes evaluating the effectiveness of BMPs for stormwater quality and quantity control, assessing and planning for water quality improvements, and conducting hydrologic and hydraulic analysis of drainage systems.

Angela is well-versed with the various stormwater design criteria being implemented in Oregon, including design storms, thresholds, and facility standards. She is currently managing design review and support contracts for Lake Oswego, Wilsonville, and WES. She recently assisted in stormwater design standard updates for the City of Gresham under its Healthy Watersheds project and the cities of Wilsonville and Corvallis. Activities included facilitation of key issues workshops; standards and code review; and analysis of impacts associated with changing standards with respect to water quality, facility sizing, and programmatic activities. She was involved in the earlier WES development standards update and is currently helping WES with development-specific applications of the BMP sizing tool.

Angela has worked on NPDES MS4 permit compliance for 19 of the 22 Phase I jurisdictions and 4 Phase II jurisdictions in Oregon. She recently managed technical deliverables and/or the Phase I permit renewal applications for WES, Eugene, Portland, Salem, Fairview, and County co-permittees.

Angela's other experience includes stormwater master planning and stormwater design, specifically modeling, cost estimation, and integrated flood control and water quality facility design.

## Relevant experience

- Design Standards and Hydromodification BMP Sizing Tool Implementation, Clackamas County WES, Oregon
- NPDES MS4 permit compliance and support services for four Oregon Phase II jurisdictions, including the cities of Bend, Springfield, Troutdale, and Lane County
- Stormwater Design Standards, Corvallis, Oregon
- Stormwater LID Guidebook, Wilsonville, Oregon
- Stormwater Permitting Review, Lake Oswego, Oregon
- Stormwater Design Standards Update (under Healthy Watershed project contract), City of Gresham, Oregon
- LID and Regional Stormwater Management in the Pleasant Valley Plan District, City of Gresham, Oregon
- NPDES MS4 permit compliance and services for the cities of Eugene, Fairview, Gladstone, Gresham, Lake Oswego, Milwaukie, Oregon City, Portland, Salem, West Linn, and Wilsonville; Clackamas County WES; CWS; and Oak Lodge Water Services District (OLWSD)
- Coordinated County monitoring for the cities of Oregon City, Wilsonville, Gladstone, Milwaukie, West Linn, Happy Valley, and Rivergrove; OLWSD; and the County (CCSD1 and SWMACC)



# Nic Oltean, P.E., PMP

## Rules and Standards Documentation: Sanitary



**Nic has served as project engineer for several municipalities, which provides a unique reviewer perspective to provide WES with a practical and implementable update.**

Nic is a civil engineer with more than 7 years of experience reviewing and developing construction specifications and design standards for stormwater, water, and sewer infrastructure. Nic was a part of the standards and specifications committee for the cities of Seattle and Bend, providing recommendations for sewer and water requirements. He worked closely with operations staff to revise sewer and water sections of the design standards.

As a project engineer, Nic provided design guidance, engineering services, planning, and regulation for water, sewer, and stormwater facilities, for the City of Bend, one of the fastest-growing cities in Oregon. He worked closely with planners, developers, engineers, and city construction and operation staff on permitting, submittals, drainage reports, inspections, testing, acceptance, code interpretations, and design requirements for water, sewer, and stormwater infrastructure. Nic provided water, sewer, and stormwater modeling analysis and reporting to determine code requirements, master plan integration, and land use requirements for large subdivisions, commercial buildings, apartments, and mixed-use developments and other large infrastructure projects.

Nic also provided project and design requirements to developers for an array of infrastructure and communicated these requirements through issuing land use decisions and developing technical documentation and reports to inform the project applicants and representatives. Nic carefully measured the nexus and proportionality of each land use requirement and met continually with developers, engineers, contractors, builders, planners, and city staff.

As part of his role, Nic reviewed all engineering and development services provided by the City of Bend Community Development Department and updated code, processes, standards, and workflows to better serve the community.

Nic's experience allows him to view municipal standards with implementation in mind. He will focus on crafting rules and standards in plain language that provide clarity to developers and County review staff.

### Relevant experience

- Project Manager from design to construction, Washington County Transportation, Hillsboro, Oregon
- Stormwater Regulation and Permitting, City of Bend, Oregon
- Sewer and Water Modeling Analysis, City of Bend, Oregon
- Project Management, City of Bend, Oregon
- Legal Documentation Development, City of Bend, Oregon
- Project Manager and Project Engineer, City of Seattle, Washington
- Hydraulic Model and Software, City of Seattle, Washington
- Program and Process Management, NFN Investments, Portland, Oregon
- Assistant Engineer, City of Burbank, California

# Mike Faha, PLA, FASLA, LEED AP

Rules and Standards Documentation: Landscape



**Mike has provided aesthetically pleasing landscape design recommendations for communities throughout Oregon that appeal to a range of stakeholders, from developers to homeowners.**

Mike is a Fellow of the American Society of Landscape Architects (FASLA) and founding principal of GreenWorks, PC. He is a Registered Landscape Architect in Oregon and a Leadership in Energy and Environmental Design (LEED) Accredited Professional (AP) with the U.S. Green Building Council. Mike focuses on creating livable, sustainable communities that balance economic, ecological, and social needs. He leads planning and design project teams that integrate urban ecology, green infrastructure, and urban design on a variety of project types. These include civic and institutional, recreation and open space, public infrastructure, housing and mixed use, and urban revitalization.

Mike brings extensive background in sustainable stormwater approaches and habitat enhancements to this project. His most significant professional achievement has been his promotion of urban stormwater planning and design as an important role of landscape architects. He is adept at working with clients, regulators, and stakeholders in creating projects with broad support. Taking a collaborative approach to leadership, Mike integrates various professional disciplines on his projects to help his clients meet broad-based community design objectives.

In recent years, Mike has worked with various agencies in the Portland Metro Region and statewide developing stormwater design guidelines, manuals, and educational materials emphasizing green infrastructure solutions. Mike has worked on the stormwater manual for Portland BES; the Low Impact Development Approaches (LIDA) Handbook for Clean Water Services; and previous versions of Clackamas County's stormwater standards. Mike is currently working with METRO to redevelop their Livable Street's design Guidelines with an emphasis on green street applications. GreenWorks developed a comprehensive rewrite for the City of Albany's stormwater design guidelines and public works construction standards. Mike continues to help the City of Albany with periodic consultation as they implements the new standards.

## Relevant experience

- Stormwater Quality Program and Standards, Albany, Oregon
- Johnson Creek Alsop/Brownwood Site Restoration Master Plan, City of Portland Bureau of Environmental Services (BES), Oregon
- 2010 Combined Sewer Overflow (CSO) Facilities Plan, City of Portland BES, Oregon
- Stormwater Manual, City of Portland BES, Oregon
- LIDA Handbook, CWS, Oregon
- Underground Injection Control (UIC) Study, City of Portland BES, Oregon
- Gabriel Park Stormwater Strategies/Implementation, City of Portland BES, Oregon

# Deborah Galardi

Financial Policy Lead



**Deborah brings more than 25 years of experience in regional rate development to your rules and standards update for financial policies that can be clearly communicated and result in stakeholder buy-in.**

Deborah has more than 25 years of experience in infrastructure finance, with particular expertise in developing financial, rate, and SDC policies and methodologies for water, wastewater, and stormwater systems. Deborah was a primary author of the Water Environment Federation's (WEF's) standard practice manual: *Financing and Charges for Wastewater Systems*, and she currently serves on the International Water Association's Economic and Statistics Specialist Group Management Committee. Deborah's leadership in SDCs is demonstrated by her involvement with boards and committees responsible for establishing standard industry practices related to SDC calculation and administration, and promoting education of SDC issues. She served on the board of the Growth and Infrastructure Consortium (formerly the National Impact Fee Roundtable) and has been a regular speaker on these issues at infrastructure finance conferences. Regionally, Deborah was the project manager for the benchmark study *Promoting Vibrant Communities with System Development Charges*, commissioned by Metro.

Deborah has extensive experience working in Clackamas County—most recently she assisted the County in development of a new transportation SDC methodology, project list, and ordinance. The ordinance update included significant revisions to a number of policies and procedures, including SDC assessment categories, credits, and inflation indexing.

Deborah has assisted numerous Oregon communities in development of policy documents related to fees and charges for infrastructure systems. Recent examples include the cities of Portland, Salem, Albany, Eugene, Springfield, and Tigard; Eugene Water & Electric Board; Springfield Utility Board; and CWS.

## Relevant experience

- Water, Wastewater, and Stormwater Rate and SDC Studies, Salem, Oregon
- Water, Wastewater, and Stormwater Financial Studies, Albany, Oregon
- Wastewater and Stormwater SDC Studies, CWS, Oregon
- Promoting Vibrant Communities with System Development Charges, Metro, Oregon
- Transportation SDCs, Clackamas County WES, Oregon
- Industrial Pretreatment Rate Study, Clackamas County WES, Oregon
- Rates and SDC Development, CCSD1, Oregon

# Libby Barg

External Outreach Lead



**Libby's 17 years of experience designing and facilitating meetings will help clarify issues and allow us to guide WES quickly toward decisions.**

Libby has more than 17 years of experience in planning and communications for stormwater, wastewater, and drinking water utilities. She specializes in developing strategies and programs that support clients' initiatives, including planning studies, facility upgrades and expansions, funding, and customer communications.

Libby is currently leading communications for Washington County's major initiative to develop the mid-Willamette River as a source for drinking water, the Willamette Water Supply Program. In her role, she is facilitating discussions around the timeline, required infrastructure, and quality.

Previously, Libby led public education efforts for the Lake Oswego-Tigard Water Partnership to upgrade and expand six major drinking water facilities. While a senior utility planner with the City of Salem's Public Works Department, Libby managed stormwater program permitting and communications. Her recent experience includes facilitating a 12-member citizen advisory group in Bend working on financial policies and programs to sewer a large area in southeast Bend currently served by septic systems. She is also working with the City of Gladstone on outreach for its new stormwater utility along with recent sewer and water rate increases.

Previously, Libby worked with WES on the evaluation of its stormwater design tool with the construction and development communities. Tasks included stakeholder interviews to learn more about their knowledge of the tools, benefits, and constraints of using them, and gaining an understanding of what promotions or incentives would increase participation. Results were documented in a recommendation memorandum shared with WES staff. The review process and outcomes were presented at the 2015 WEFTEC Conference in Chicago by WES's staff.

## Relevant experience

- Stormwater Utility Public Education and Outreach Program, City of Gladstone, Oregon
- Willamette Water Supply Program, City of Hillsboro, Oregon
- Oak Lodge Sanitary District (now OLWSD) Public Engagement, Clackamas County, Oregon
- CCSD1 Industry Outreach and Engagement, Clackamas County, Oregon
- Lake Oswego-Tigard Water Partnership, Cities of Lake Oswego and Tigard, Oregon
- Development Code Cleanup, City of Salem, Oregon
- Former Senior Utility Planner, City of Salem, Oregon
- Sewer Infrastructure Advisory Group (SIAG), City of Bend, Oregon

**“Libby's facilitation was important to moving individual meetings and the overall process along, helping to clarify issues, ensuring they got addressed, and then moving to conclusions/decisions.”**

— Bend's 18-member Sewer Infrastructure Advisory Group

## Dan Draheim

Rules and Standards Documentation:  
Technical Editing

**Dan's familiarity with other rules and standards documents for Oregon utilities will allow him to eliminate superfluous narrative and help develop a document focused on graphics and fact sheets.**

Dan is an exceptionally organized, methodical, and resourceful technical writer/editor with a background in environmental engineering and consulting, law, and journalism. Dan has more than 23 years of progressive experience succinctly conveying complex ideas to diverse audiences through multiple document formats, including technical memoranda, reports, facility plans, scopes of work, proposals and other marketing materials, user guides, instruction manuals, and procedures.

Dan is regularly called upon by many of BC's 60 offices nationwide to perform readability reviews of the company's highest-profile deliverables and proposals. He reviews draft and final client deliverables for clarity, conciseness, consistency, accuracy, and grammatical correctness. He applies writing and editing best practices and company standards to a wide variety of content, serving as an advocate for the client and looking at material from the audience's perspective. The projects listed below are a small fraction of the work Dan has completed, focused primarily on the projects most relevant to WES's Sanitary and Stormwater Rules and Regulations Update.

### Relevant experience

- NPDES MS4 Phase I permit compliance and support services for Fairview, Gladstone, Gresham, Lake Oswego, Milwaukie, Oregon City, Portland, West Linn, Wilsonville, and Clackamas County WES
- CSO Long-Term Control Plan Report, Seattle Public Utilities, Washington
- NPDES Permit Compliance, Mount Vernon, Oregon
- Wastewater Division Rate Study, County of Kauai, Hawaii
- Code Support, City of Puyallup, Washington
- 2015 NPDES Assistance, City of Salem, Oregon

## Nate Whirty

Rules and Standards Documentation:  
CAD

**Nate has reviewed computer-aided design (CAD) design standards for communities throughout the Portland area and will use this expertise to deliver clear, concise CAD standards and details for WES.**

Nate is a senior designer with 12 years of experience using various AutoCAD platforms in creating, editing, and reviewing civil engineering drawings for a variety of projects. Nate also assists in the supervision of geographic information system (GIS) efforts in the Portland office. His responsibilities include GIS data management, file organization, workload distribution, and GIS map-making and analysis.

Nate has worked on a number of stormwater-related design projects in the Portland metro area, and he has experience with creating and modifying CAD standards and detail content for a variety of local agencies.

Most recently, he worked on detail drawings for the draft WES manual and the Oregon City, Wilsonville, and Corvallis standards.

### Relevant experience

- Stormwater Manual, City of Oregon City, Oregon
- Stormwater Design Standards, City of Corvallis, Oregon
- Stormwater BMP Design, Waste Management Inc., California
- NPDES Permit Compliance, City of Wilsonville, Oregon
- Design Standards and Hydromodification BMP Sizing Tool Development and Implementation, Clackamas County WES, Oregon
- Multnomah Boulevard Green Streets, City of Portland, Oregon



# Project Understanding and Approach

## RFP Section 5.3.1



Our understanding of the background and objectives of this project is based on our team members' active engagement with WES in many aspects of wastewater and surface water management. Our experience includes ongoing assistance with MS4 permitting, current assistance with development review, experience developing stormwater design standards, and assisting with design of the Kellogg Creek Water Resource Recovery Facility Improvements project. In addition, we have discussed the objectives and key issues of this project with you directly. In the following sections, we summarize our understanding of your key objectives, along with our project approach to meeting those objectives.

### Project Understanding

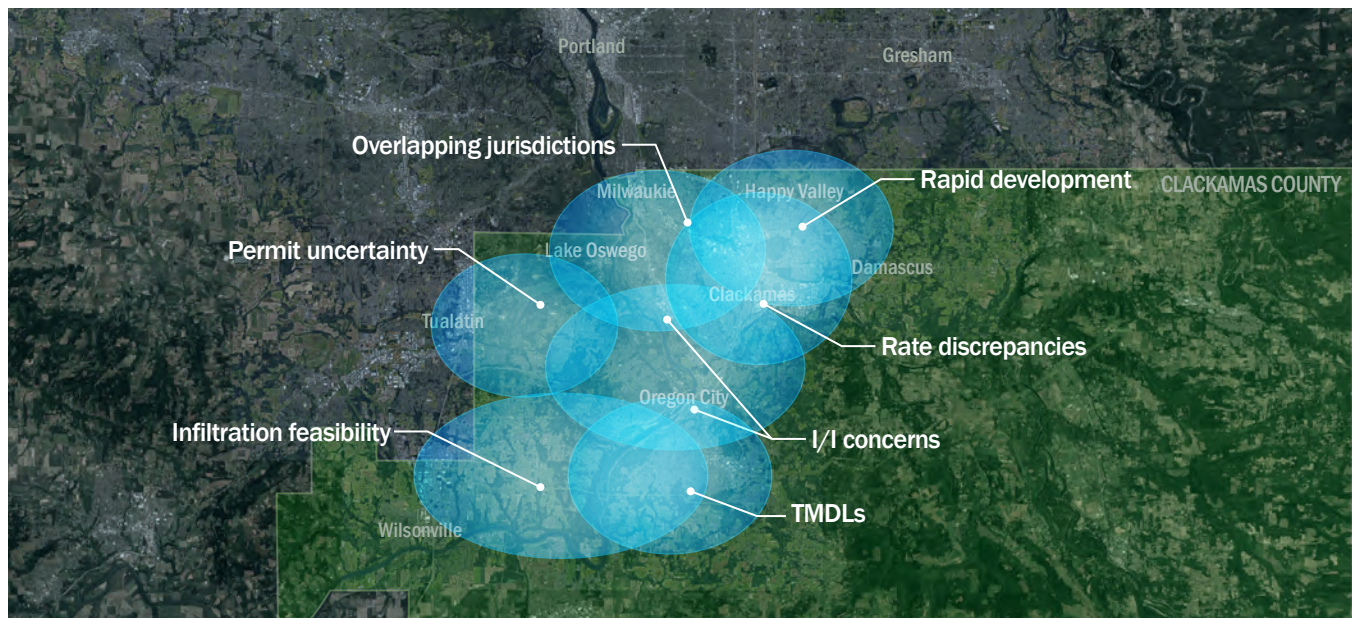
WES has a unique relationship with municipal agency partners and sanitary and stormwater service districts. Historically, sanitary services have been provided by TCSD and CCSD1. TCSD covers the cities of Gladstone, Oregon City and West Linn. CCSD1 serves Happy Valley, Johnson

City, Milwaukie, Boring, Fischer's Forest Park, Hoodland, and unincorporated Clackamas County.

In 2016 the Board of County Commissioners (BOCC) looked to merge TCSD and CCSD1 to operate under WES to provide wastewater services for cities and unincorporated areas of the county. In 2017, the BOCC also included SWMACC operations under WES.

Stormwater services within incorporated areas of the county are provided by the individual cities or by special districts (e.g., OLWSD). CCSD1, under WES, provides stormwater services in Happy Valley and other small communities, while SWMACC generally covers unincorporated areas in the Tualatin River watershed.

There is a sense of overlapping jurisdiction, which results in different levels of oversight for projects across the county (Figure 2). In some areas, the County relies on municipal partners to review and enforce sanitary sewer and stormwater standards and, in other areas, the County has



**FIGURE 2**

The rules and standards update needs to incorporate many overlapping issues affecting Clackamas County service districts into one clear, concise document.

intergovernmental agreements to conduct all development review, applying local agency standards. Differences in sanitary and stormwater policies and design standards can lead to confusion for both County/WES staff conducting reviews and development engineers who are designing projects.

While Clackamas County communities operate separated sanitary and stormwater systems, infiltration and inflow (I/I) concerns in communities like Oregon City and Gladstone demonstrate that the two services cannot operate in isolation. Areas with high I/I concerns for the sanitary system may not be ideal locations to promote LID stormwater facilities that focus on infiltration for stormwater disposal.

### Merging Rules and Standards

Two primary goals in merging districts are to provide long-term certainty and stability for ratepayers and a streamlined approach to regulatory compliance. With the merger, WES will operate the NPDES permits for both wastewater and stormwater discharges. The districts will now be able to share resources and prioritize projects to maximize capacity and water quality protections.

The merger means that the districts now share equipment, resources, and staff. This project involves a comprehensive look at the districts' individual rules and standards, with a goal of updating policies for sanitary and stormwater. The updated rules will provide consistent technical and financial requirements across all WES programs and districts.

In 2017, WES staff developed "WES Rules" to merge the rules of TCSD and SWMACC. However, CCSD1 still operates under independent rules that will need to be merged into the WES Rules. Primary challenges with the current rules include:

- Inconsistent rate structures
- Ambiguous stormwater standards

**This project aims to consolidate policies, standards, and rate structures for the districts to provide consistency for property owners and projects in the county.**

### Fiscal Policies

The current rules have differing rate structures among districts and within individual communities. WES has identified needs for significant infrastructure investment and needs to establish equitable fiscal practices that can be applied across the districts. The fiscal review will consider SDC calculations, wastewater strengths, industrial discharges, and incentive programs. The resulting policies will need to include a long-term funding strategy that reflects WES's priorities.

### Stormwater Standards

Stormwater design standards were originally established independently for CCSD1 and SWMACC. In 2009, WES worked to develop a draft stormwater management manual and software program to size stormwater management facilities. These drafts were developed to align with anticipated NPDES MS4 Phase I permit requirements and to provide detailed guidance to land use applicants and County review staff. Because of a challenging economic and political climate, the draft standards were not completed or formally adopted.

CCSD1 most recently adopted stormwater standards in July 2013, though the standards differ from those in the Clackamas County Zoning and Development Ordinance. In 2017, SWMACC rules were merged under WES, but the SWMACC design requirements have not been updated since 2002 and still refer to an outdated technical manual.

**A goal of the updated design standards is to reduce the amount of interpretation required to implement the standards.**

WES staff have been allowing land use applicants to use elements of the 2009 draft manual and sizing tool when a variance to the current infiltration standard is requested. This approach can be burdensome for staff in terms of staying on top of design and submittal regulations. In addition, the need for clear and consistent standards is highlighted by rapid growth in areas like Happy Valley. Development engineers are looking for clarity in the planning process and a well-defined set of consistent sanitary and stormwater standards.

## WES Strategic Plan

The County’s updated rules and standards need to target a number of technical and policy issues. Technical issues focus on topics such as how and when facilities should be constructed. Policy issues relate to land use planning and the interpretation and application of standards by WES staff. In addition to addressing these technical and policy issues, the updated design standards will need to reflect the County’s overall vision for sanitary and stormwater management.

Updating the rules and standards will help WES achieve numerous goals that are identified in the 2015 WES Strategic Plan. Table 2 demonstrates the connections between this project and the targeted results that are outlined in the strategic plan.

**TABLE 2. Strategic Plan Project Goals and Connections**

Target Result (from WES Strategic Plan)	Project Connection
By the end of fiscal year 2017/2018, WES will establish a rate-setting strategy that ensures no more than a 10% rate increase in any given year	The County merged service districts to provide long-term stability and certainty for ratepayers. This project will update the rules with an equitable rate structure, consistent across all districts.
By the end of fiscal year 2017/2018, WES’s priorities and recommendations will reflect optimum economies of scale, defined as lowest rate per user per district, to achieve the 20-year comprehensive plan	The rate structure evaluation must outline alternatives that align with the “lowest rate per user per district” standard and communicate that objective to decision makers.
90% of inspected businesses are in compliance with discharge rules	The rules will include clear lists of allowable and prohibited discharges and give WES staff authority to inspect and enforce discharge rules.
90% of development review submittals are responded to within 15 days	The short review timeline requires clear design standards and submittal requirements, so that reviewers receive the information they need to conduct efficient and timely reviews.
90% of maintenance performed is preventive versus corrective 90% of scheduled maintenance is performed on time	Facility design guidelines must make maintenance a priority and set strict standards for facilities that will be maintained by WES.
20% of conveyance system pipes receive preventive maintenance on an annual basis	Consistent design standards result in consistent infrastructure installations, allowing for standardized maintenance operations.
30% of district streams meet or exceed water quality standards. 50% of streams are healthy, as defined by the stream health index.	Water quality standards must include protections that reduce total maximum daily load (TMDL) and 303(d) listed pollutants. In Clackamas County, the 303(d) list of pollutants includes E. coli, nutrient eutrophication, water temperature, and water pH, among others.



# Project Approach

BC will assist WES in the development of clear and implementable sanitary and stormwater rules and standards that meet regulatory obligations and reflect the character and needs of the urbanizing areas of the county. Our project approach is provided below. It defines challenges to consider while developing the rules, standards, and supporting documents and our approach to help WES efficiently address these challenges.

We have identified three key objectives as part of an overall project approach strategy. These are summarized in the table below and are described in greater detail on the following pages.

Objective			
<b>Create a collaborative process to engage internal and external stakeholders</b>	<b>Deliver clear, concise rules and standards</b>	<b>Execute a streamlined process that meets WES’s schedule</b>	
Challenge	Standards must have widespread support from diverse groups of stakeholders for successful implementation	Developers and review staff need well-defined standards that are consistent across districts	WES desires to have new rules and standards in place before the start of the next fiscal year
Approach	Use a tested, collaborative process of facilitated workshops with WES decision makers to identify key issues and policy decisions early in the schedule	Develop standards that are rich in graphics, fact sheets, and checklists, eliminating superfluous narrative and background information	Build upon BC’s previous work, conducting assessments of standards for other local municipalities  Implement a three-track schedule so that the financial assessment, stormwater policy decisions, and stakeholder outreach are conducted concurrently
Benefit	<ul style="list-style-type: none"> <li>• Rules and standards are viewed as an asset for development, not an impediment</li> <li>• All stakeholders buy in to the resulting standards because they understand the rationale behind decisions made</li> </ul>	<ul style="list-style-type: none"> <li>• Consistency across districts</li> <li>• Equity in fiscal policy</li> <li>• Easy to implement—everyone understands the technical and submittal requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Policies from local agencies have already been evaluated and can be presented to WES decision makers early in the schedule</li> <li>• Streamlined process to meet WES schedule</li> </ul>



# Planning process

Material specifications

# Stormwater management strategy

Proprietary treatment devices

# Source control and pretreatment

# Design tools and facility sizing

Credits and incentives

# Infiltration feasibility

Site planning principles

# Regulatory compliance

Erosion control

# Maintenance responsibility

# Conveyance standards

**FIGURE 3**

BC understands the myriad issues that must be considered when updating sanitary and stormwater rules and standards.



## Create a Collaborative Process

Identifying elements of WES’s existing rules and standards for revision requires a detailed understanding of community needs, developer needs, regulatory needs, and WES staff needs. Without a clearly defined process that engages internal and external stakeholders, it may be challenging to implement the updated rules and associated technical standards. The issues, summarized in Figure 3, need to be well understood by all stakeholders so that the team can rapidly make sound decisions.

Our project manager is skilled in leading workshops that bring together planning, engineering, and maintenance staff to make policy decisions. Alissa has successfully facilitated these workshops for Oregon City, Wilsonville, and central Oregon communities. This collaborative process is focused on identifying key issues early and developing widespread support for the proposed rules and standards.

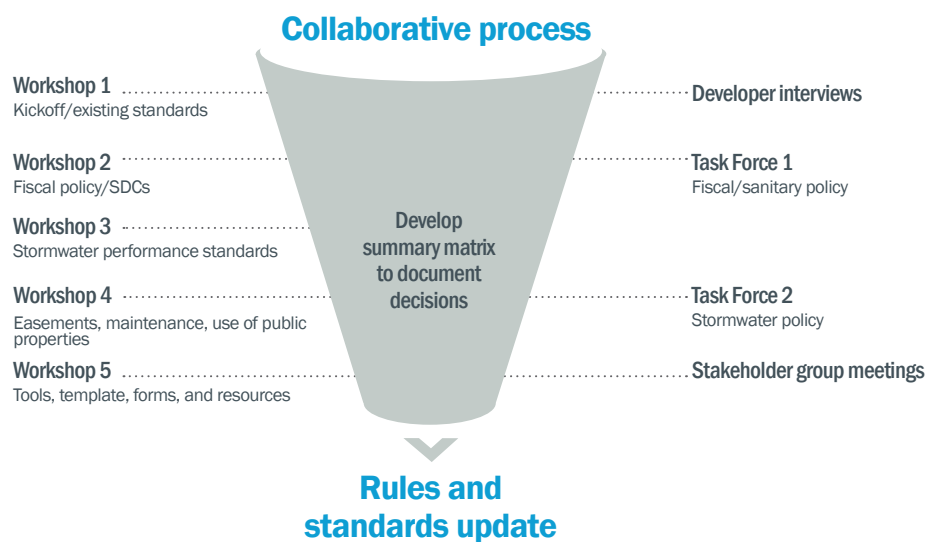
The decision-making process to reach sound decisions is critical to development of the rules and standards in a timely and economical way. As shown in Figure 4, the process will include workshops with WES staff and external outreach to engage a task force of development representatives.

**Internal workshops:** Policy workshops for WES staff bring all decision makers into the room to review the current standards, regional examples, and alternatives. BC staff will assist in laying out advantages and disadvantages of various alternatives. Key decisions

are presented at each subsequent workshop, so that there is continual review of prior decisions and opportunities for ongoing refinement. Our team’s direct experience designing sanitary and stormwater infrastructure and conducting development review gives us a detailed understanding of how each policy option may impact later site planning and design choices.

The outcome of the policy workshops will be a summary matrix of key policy and technical decisions. The summary matrix then guides the development of the written rules and supporting technical documents. The matrix will also function as a valuable tool for outreach and BOCC presentations, because it consolidates all policy and technical decisions in a single document.

**External outreach:** Our outreach approach will include a collaborative process to identify key opportunities and issues with the current sanitary and stormwater rules as perceived



**FIGURE 4**

Our team will simultaneously engage key WES staff and external stakeholders to reach a decision.



by the development community and other interested parties. Libby Barg will lead our efforts to make sure that external stakeholders have meaningful input to the policy choices early in the process, so that they are active participants, not “end of project” reviewers.

The outreach process will include multiple methods to gain feedback:

- Developer interviews: 10 to 15 interviews will be held with developers/engineers who apply the rules as part of their everyday work.
- Task force workshops: two to three workshops will be held with invited participants to dive deeper into the existing rules and provide feedback on policy alternatives being considered by WES staff. Task force participants will be selected from the developer interview list as well as previous permit applicants. The workshops will likely include facilitated discussions for 2 hours, held over the lunch hour, to make efficient use of the participants’ time.
- Online feedback: A “virtual advisory panel” of four to six seasoned development professionals will be enlisted as volunteers to review the draft rules and standards. The new standards will also be posted online and made accessible for review by other interested persons using an online code review instrument.
- Stakeholder meetings: Informational presentations to stakeholder groups will present the summary matrix and outline the potential impacts of the proposed rules and standards.

**Potential community groups that could be included in the stakeholder workshops include:**

- Clackamas County Soil and Conservation District
- Clackamas River Basin Council
- Clackamas River Water Providers
- North Clackamas Urban Watersheds Council
- Oak Lodge Sanitary District (now OLWSD)
- Rex Putnam High School (working to restore Boardman wetlands)
- RiverHealth (WES/CCSD1)
- SOLVE

This early input will lay the groundwork for widespread acceptance of the new rules and technical standards. One of the focuses in creating a collaborative process will be to make sure that developer issues are well vetted. This focus will result in a clear, well-communicated process to identify issues.



### Deliver clear, concise rules and standards

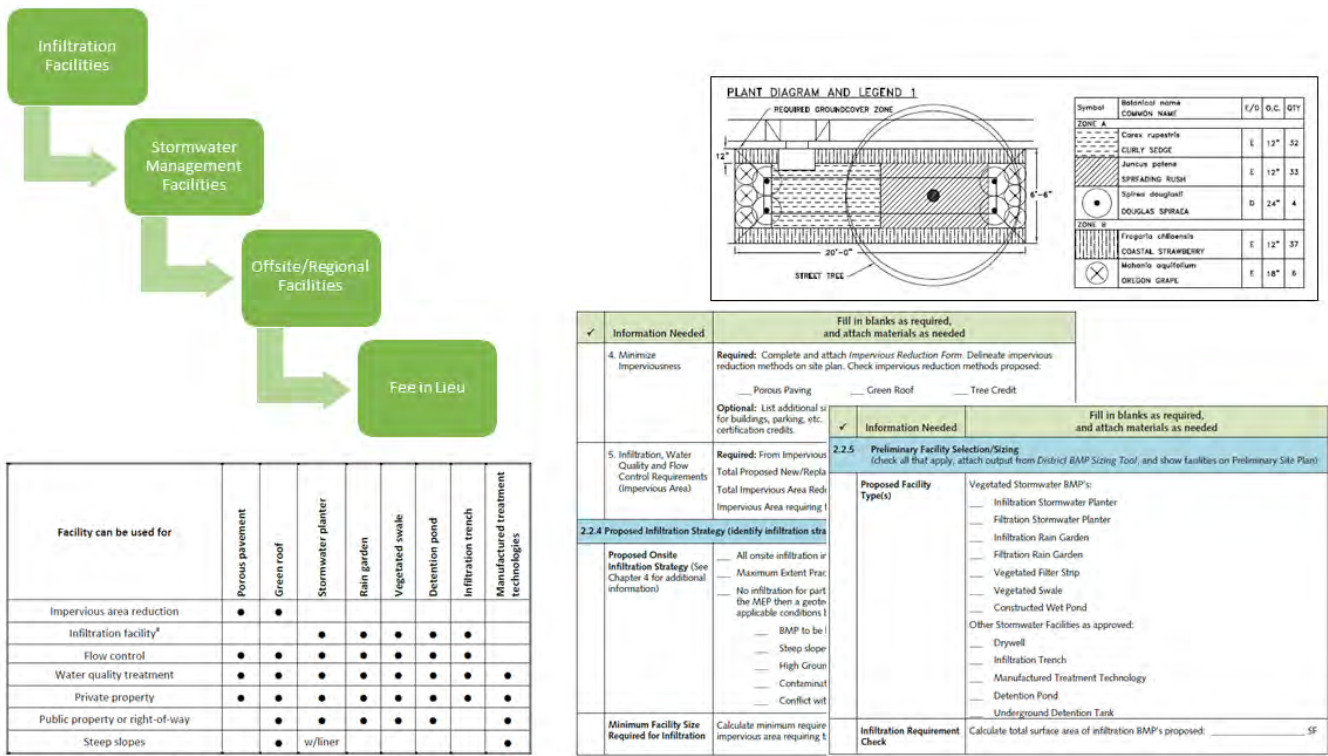
The current and draft stormwater design standards are outdated and may not be consistent with upcoming regulatory requirements or the best science in stormwater management. Additionally, because each district (CCSD1 and SWMACC) had its own set of standards, WES now needs to review and consolidate those into one concise document. A streamlined and updated standards document or manual, developed to address specific local conditions, will improve overall implementation of the stormwater program, improve permit compliance, and increase water quality protections.

BC will leverage our experience developing and refining design standards for other local jurisdictions and our experience having worked on WES’s draft standards to create products that are understandable and easy to use. Our recommended approach includes maintaining the simplified structure of the rules and standards and focusing technical content in the design standards or in a separate manual.

As shown in Figure 5, BC will work with the County to organize content between the rules and regulations, design standards, template forms and agreements, municipal code, and any associated policy documents.



**FIGURE 5**  
The rules and regulations sit at the center and are supported by multiple technical guidance documents to assist in implementation.



**FIGURE 6**  
Easy-to-understand checklists, graphics, and flow charts will result in a clear set of rules and standards for developers to follow and will assist WES in reviewing submittals.

In order for the updated standards to be effective, they must be clear and focused on implementation. Developers and review staff do not need extensive background narrative embedded in the standards. Through our work reviewing development applications, we have seen how excess information leads to confusion when it is not clear whether the narrative is informational or regulatory. When modifying the draft WES Manual for Oregon City, chapters regarding erosion control, O&M, and source controls were reduced by half from their initial drafts, eliminating redundant and conflicting information.

Our team includes an experienced technical editor who will focus on the format and technical consistency of our documents. We will focus on writing documents with the end user in mind. Wherever possible, we will incorporate graphics, checklists, section headings, and tables to replace long narrative. We will work with WES staff to establish preferred implementation tools—calculation templates, sizing tools, and review checklists—and also plan for ways the tools can be modified in the future to incorporate changing technology and new regulatory requirements.

Our approach will help users find what they need, understand what they find, and use the information to meet their needs.

As shown in Figure 6, BC took a site planning checklist originally developed for WES and enhanced the features to reflect the submittal process in Oregon City. By focusing on the content of the checklist, the narrative information in the standards was greatly reduced. Developers and review staff now have a consistent set of criteria to evaluate and adhere to when submitting land use applications.

Clear, easy-to-understand language eases the burden on the developer as well as WES review staff and improves the overall quality of design and submittals.



## Execute a streamlined process

We understand that WES needs an expedited process to meet the Strategic Plan goal to have district rules merged by the end of the 2017/2018 fiscal year. The project schedule will extend to December 2018 to develop the accompanying technical standards and supporting documents.

Our schedule (shown on page 32) uses a streamlined project approach to conduct the financial assessment, stormwater policy workshops, and stakeholder outreach activities concurrently. This approach will allow our team to focus immediately on updating the fiscal rules to create equity among the districts. Deb Galardi is prepared to work immediately with WES staff to review fiscal policies and alternatives, so that new policies are in place before the start of the next fiscal year.

Stormwater policy decisions may take more time and require additional internal discussion. Our collaborative approach, shown in Figure 4, requires background research and a summary of policy options to facilitate decision making. As shown in Table 3, our team has already conducted extensive background research into local and regional design standards. We already know the source documents and understand the strategies that other municipalities use to address topics such as flow control, water quality, LID, volume reduction, landscape integration, and incentives.

Our previous work included an in-depth audit of County standards, as the draft WES manual became the building block for development of updated standards for Oregon City and Wilsonville.

A wide variety of design standards handbooks and manuals with standard details as well as facility-sizing tools have been developed by other jurisdictions. While using standards and tools from another community can simplify the process, relying on outside reference documents can cause challenges during implementation. WES will benefit from developing a set of standards that make best use of available tools and resources, but are tailored for local conditions. Use of existing ideas and approaches from other jurisdictions can help deliver regional consistency while saving the County time in development.

Our team’s in-depth knowledge of available materials throughout Oregon, Washington, and California will streamline the research process and allow us to recommend source documents that are best suited to decisions made on key issues and local needs. We will identify source documents that may serve as the building blocks for each of these elements and discuss them with the County during the key issues workshops. As shown in Table 3, our work comparing regulations across Oregon and Washington will allow us to build on previously completed work to deliver the updated rules and standards within your schedule.

**TABLE 3. Completed Assessments**

Entity	Code Audit	Standards Review and Summary
CCSD1	✓	✓
SWMACC	✓	✓
Portland	✓	✓
CWS	✓	✓
Gresham	✓	✓
Salem	✓	✓
Eugene	✓	✓
Oregon City	✓	✓
Wilsonville	✓	✓
Lake Oswego	✓	✓
Milwaukie	✓	✓
Gladstone	✓	✓
Fairview	✓	
Troutdale	✓	
Corvallis		✓
Western Washington DOE		✓
Newberg		✓

## Schedule

We understand that schedule is a key driver for this project. As shown in Figure 8 on page 32, our schedule includes concurrent work to conduct the financial assessment, stormwater policy workshops, and stakeholder outreach activities. Our team’s unmatched experience in auditing and developing local design standards allows us to dive directly into policy workshops with WES staff, condensing the project timeline to achieve your schedule goal. The project kickoff meeting will also serve as a review of current standards to identify high-priority issues for future policy workshops.

Our approach tackles the fiscal policies in the early stakeholder meetings (both internal and external), so that the updated rules can be in place prior to the start of the next fiscal year. Policy workshops would continue through the spring, with the bulk of the work on the technical standards focused in the second half of 2018. Training for staff and the development community on the new rules and standards would follow adoption of the rules by the BOCC.

## Scope Modifications

No modifications are proposed. See the task list provided on page 33 for details of our proposed work plan.

# Project Examples and References

## RFP Section 5.3.2

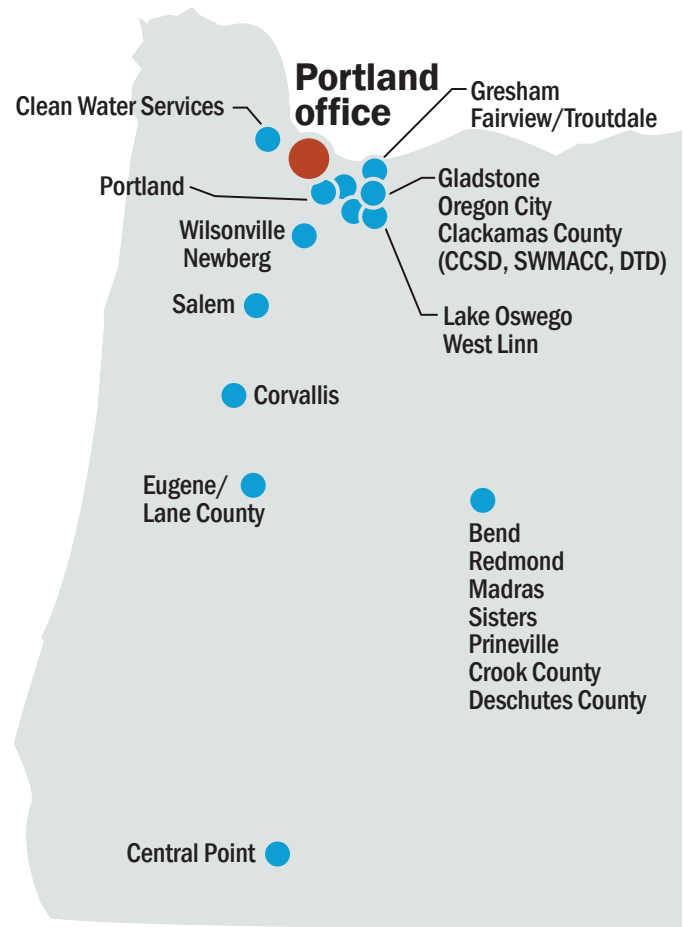


The BC team brings extensive, direct experience in the development of design standards and technical manuals. In conjunction with that experience, the BC team has assisted communities with subsequent efforts to identify and address policy issues through facilitated workshops and stakeholder outreach. BC team members have assisted more than 20 communities throughout Oregon (Figure 7) with updates to stormwater design standards, which have included regulatory compliance, policy and administrative regulations, and technical design standards.

BC's experience specifically with the development of stormwater rules and standards stems from active participation and coordination with Oregon jurisdictions as part of their Phase I NPDES MS4 permit compliance. Since the early 1990s, BC staff aided all Phase I NPDES MS4 jurisdictions including CCSD1 and SWMACC with elements of permit compliance including SWMP development, monitoring, retrofits, TMDL compliance/benchmarks, and code updates/development standards. Most recent efforts have included preparation of Phase I permit renewal applications in 2015 and 2017, monitoring plan updates and water quality data analysis, and TMDL benchmarks. BC facilitated Phase I permit reissuance meetings in conjunction with the ACWA Stormwater Committee to collectively discuss approaches to address permit renewal requirements.

BC is currently facilitating Clackamas County co-permittee coordination meetings to discuss ongoing coordination efforts, permit implementation, and research needs. Krista Reininga is involved in DEQ's Phase II Statewide Advisory Committee for permit development, which will provide insights into the changing MS4 permits landscape and help inform County stormwater standards update needs.

This section provides a summary of BC's direct and indirect design standards and design manual project experience. Projects listed are similar in the scope and deliverables that the WES Rules and Standards Update is expected to include. An overview of technical elements related to each project is indicated in Table 4. Detailed project descriptions are provided for projects in the first half of the table.



**FIGURE 7**  
Team members have assisted communities across Oregon with design standards and policy review.

**TABLE 4. Technical Activities**

Project Name	Direct Technical Activities											Supporting Technical Activities		
	Design manual/technical standards	Code review	Policies and Procedures	Graphics/standard details	Facility sizing guidelines	Maintenance guidelines	Tool development	Stakeholder workshops/interviews	Training	NPDES compliance	TMDL compliance	Hydrologic analysis	Facility design	Public outreach
Design Standards and Hydromodification BMPs Sizing Tools, Clackamas County WES, Oregon	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓		✓
Stormwater Development Review, City of Lake Oswego, Oregon*		✓	✓		✓					✓	✓			✓
Stormwater and Grading Design Standards, City of Oregon City, Oregon*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SWMP Development, OLWSD, Oregon	✓	✓	✓		✓	✓				✓	✓			
Stormwater Public Works Standards and LID Guidebook, City of Wilsonville, Oregon	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Stormwater Design Standards, City of Corvallis, Oregon	✓	✓	✓	✓	✓	✓		✓		✓		✓	✓	
Healthy Watersheds Project (Phase I), City of Gresham, Oregon	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Drainage Master Plan, MCDD, Oregon*				✓			✓					✓	✓	
Central Oregon Stormwater Manual and Update, Central Oregon Intergovernmental Council	✓			✓	✓	✓		✓	✓	✓		✓	✓	✓
Support of Design Standards, City of Portland, Oregon		✓			✓					✓		✓	✓	✓
Review of Design Standards and Rainfall Analysis, CWS, Oregon		✓			✓					✓		✓	✓	✓
Sanitary and Stormwater System Resiliency Master Plan, City of Portland Bureau of Environmental Services, Oregon			✓		✓			✓				✓	✓	
Stormwater Quality Program and Standards, City of Albany, Oregon (GreenWorks)	✓	✓		✓	✓	✓	✓	✓	✓					
Stormwater Management Tool Evaluation, Clackamas County, Oregon (Barney & Worth)								✓						✓
Water, Wastewater, and Stormwater Rate and SDC Studies, City of Salem, Oregon (GRG)		✓	✓	✓			✓	✓	✓					✓
NPDES MS4 Permitting Support and Renewal Applications, Various Clients	✓	✓				✓		✓	✓	✓	✓	✓	✓	✓
Basin-Level Stormwater Master Plans, Development Standards, and Alternatives for Upstream Headwater Areas, City of Eugene, Oregon	✓	✓		✓	✓	✓		✓	✓	✓		✓	✓	✓
Phase I Permit Negotiations, CWS, Oregon		✓								✓	✓			
Coordinated Clackamas County Stormwater Monitoring Plan, Various Clients										✓	✓			✓
Kellogg-Mt. Scott and Rock Creek WAP, Clackamas County WES, Oregon						✓	✓			✓	✓	✓		✓
Rainfall Analysis, City of Salem, Oregon	✓													
West Linn Sanitary and Stormwater Master Plan, City of West Linn, Oregon		✓	✓		✓	✓				✓			✓	
LID and Regional Stormwater Management Evaluation, City of Gresham, Oregon		✓		✓	✓					✓		✓	✓	
Post-construction Development Standards Review, City of Gladstone, Oregon	✓	✓			✓	✓				✓			✓	✓

\* Client reference included



# Design Standards and Ongoing Hydromodification BMP Sizing Tool Development

Clackamas County WES, Oregon

**BC helped the County develop methods for addressing hydromodification through development practices.**

BC, teamed with GreenWorks, completed a preliminary update of the County's stormwater design standards for water quality, hydromodification, and flood control in 2009. The project stemmed from recommendations in the Kellogg-Mt. Scott Creek and Rock Creek Watershed Action Plans (WAPs) as a strategy for reducing impacts from hydromodification. The BC team developed a comprehensive site assessment and planning process to guide developers through an integrated stormwater management approach. In addition, the design standards included sections related to water quality, capacity, O&M, plantings for vegetated facilities, and buffers. These earlier efforts may be reviewed for relevance under this project.

As part of the process, the team facilitated a workshop at the front end of the project to identify and resolve critical policy issues with WES and County staff. This workshop was critical in providing for early agreement on the content and format of the standards by the many internal stakeholders. Public information for the project included online surveys, Web materials development, media releases, and billing inserts.

## Project Dates

2008–present

## Key Personnel

Krista Reininga

Angela Wieland

GreenWorks



As one outcome from the project, BC developed a stormwater facility (BMP) sizing tool, programmed to meet post-construction stormwater design requirements from the County NPDES MS4 permit, and address hydromodification (i.e., flow duration controls). The tool contains a user-friendly graphical interface to support stormwater facility selection, appropriate facility sizing, and report generation to meet the stormwater plan submittal and drainage reporting requirements. Facility sizing to address hydromodification is provided for LID-type facilities as well as detention ponds. An additional element to the project was a rainfall analysis that was conducted for the County and other co-permittees to identify an appropriate water quality design storm for use in developing the BMP sizing tool.

Although not currently adopted, WES currently uses the BMP sizing tool for hydromodification-based stormwater facility sizing in areas where infiltration is not possible. BC aids WES staff with design review activities and tool utilization for these development applications. BC coordinates directly with engineers and developers regarding design applications and documents design review findings for County approval. BC recently completed a BMP sizing tool user guide and works closely with WES staff on tool implementation.

# Stormwater Development Review

City of Lake Oswego, Oregon

**BC's stormwater review support for land use applications has helped City staff meet increasing development interests and pressure.**

BC has an ongoing contract with the City of Lake Oswego to provide stormwater design review services for land use decisions. The project includes reviewing residential and commercial development proposals to evaluate compliance

with the City's 2016 *Stormwater Management Manual*. Consistent with the NPDES MS4 Phase I permit, the standards require site assessments, infiltration testing, onsite stormwater retention, flow control, and water quality



# Stormwater Management Plan Development

Oak Lodge Water Services District, Oregon

**BC's NPDES MS4 support efforts have included code review assistance in support of OLWSD's rules and standards consolidation.**

Following submittal of OLWSD's Phase I NPDES MS4 permit renewal application, BC has been aiding OLWSD with reformat and consolidation of its SWMP for consistency with current implementation efforts and updated policies, procedures, and technical standards.

As part of SWMP development, BC audited existing code for enforcement procedures, illicit discharge provisions, erosion and sediment control activities, and post-construction stormwater design standards. Results of the code audit were

documented in support of code consolidation. Code provisions were incorporated into standard operating procedures and enforcement response planning documentation.

Additionally, for OLWSD, BC has developed code and technical standard language related to flow control exemptions for stormwater management.

#### Project Dates

2016-17

#### Key Personnel

Angela Wieland

Alissa Maxwell

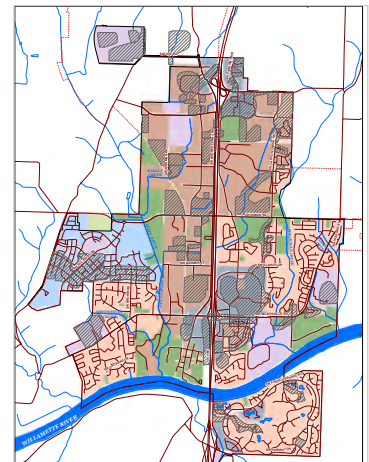
# Stormwater Public Works Standards and Low Impact Development Guidebook

City of Wilsonville, Oregon

**BC prepared code language and a graphical guidance document to facilitate implementation of LID design approaches for NPDES permit compliance.**

BC provided support to the City of Wilsonville to complete updated stormwater and surface water design standards, including adoption of a new sizing tool to assist the development community. This project included collaboration with the City in multiple workshops to resolve major policy issues, explore alternatives, and reach consensus on proposed changes. The new stormwater standards include green infrastructure standards that address hydromodification, adoption of a user-friendly stormwater facility sizing tool, and updated standard details to support development in implementing the new standards. Updated design standards were developed and formatted as part of the Public Works standards portion of the municipal code.

Because the City's updated stormwater standards were not developed as a standalone design manual, BC is currently aiding the City in development of a graphical LID Guidebook to aid developers in siting and design stormwater facilities for residential, commercial, and transportation sites. The LID Guidebook is being developed with site planning instructions, developer checklists, submittal requirements, and facility renderings in support of design applications.



#### Project Dates

2012-present

#### Key Personnel

Alissa Maxwell

Angela Wieland

Krista Reininga

Nate Whirly

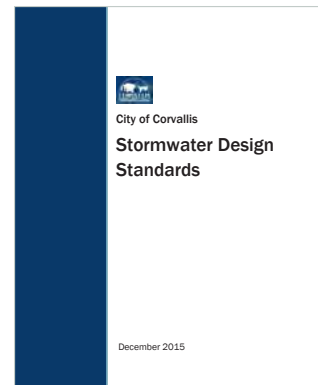
Dan Draheim

# Stormwater Design Standards

City of Corvallis, Oregon

**BC helped to consolidate standards from multiple reference documents into a clear, concise technical manual to guide new development for a Phase II community.**

BC developed a comprehensive stormwater design manual to guide new development and redevelopment projects. The intent was to develop a design manual to require water quality treatment, flow control, and stormwater conveyance for both private and public projects. BC prepared draft manual chapters, using the King County (Washington) *Stormwater Design Manual* as a base and adjusting requirements and design details to meet the specific needs in Corvallis. During the process, BC facilitated workshop meetings with City staff to review current development review processes, location-specific design considerations and constraints, preferred treatment approaches, and maintenance schedules and considerations.



## Project Dates

2014-15

## Key Personnel

Alissa Maxwell  
Krista Reininga  
Angela Wieland  
Nate Whirly  
Dan Draheim

# Healthy Watersheds Project (Phase I)

City of Gresham, Oregon

**As part of the larger-scope Healthy Watersheds project, BC analyzed NPDES permit requirements and potential impacts to the city, providing a strong background for conducting similar technical and policy analyses for WES.**

BC and GreenWorks worked on the Healthy Watersheds project for the City of Gresham to collectively address multiple requirements of the City's reissued Phase I NPDES MS4 permit, specifically: (1) update the City's stormwater design standards, (2) perform a retrofit assessment, and (3) conduct a hydromodification assessment.

BC led efforts under Phase I of the project to update the City's design standards, with the goal of consolidating multiple documents into a single manual, and simplifying compliance for developers and addressing NPDES permit requirements related to flow durations (e.g., hydromodification).

As part of Phase I, BC facilitated four stakeholder workshops to identify key policy and technical issues and present alternatives for addressing the issues. Workshops were attended by City maintenance, engineering, natural resource, and planning staff. Feedback and decision resolution were



documented for future review and manual development.

BC prepared an impacts analysis to summarize technical, programmatic, and application impacts of modifying existing design standards. Impacts were quantified in terms of facility sizing and cost, water quality improvements and TMDL compliance, development review, code modifications, and impacts to the City's retrofit strategy.

## Project Dates

2012-13

## Key Personnel

Krista Reininga  
Angela Wieland  
Nate Whirly  
GreenWorks



# Drainage Master Plans

Multnomah County Drainage District, Oregon

**Alissa has recent project management experience working with local municipalities to develop comprehensive plans and updates.**

BC is managing a dual project for MCDD to develop drainage master plans for both MCDD and Peninsula Drainage District No. 2. The two districts operate in a highly constrained urban environment with limited opportunities for new infrastructure routes. The plans will provide a clear understanding of the existing internal drainage system and an outline of improvements to address both existing and future drainage needs.

The two plans are being developed concurrently and the project involves coordination with multiple partner agencies and subconsultants to conduct field evaluations to support development of the plans. The project requires extensive data collection and processing to establish a baseline GIS database of all district-managed infrastructure. BC is updating and expanding complex hydraulic models to evaluate the flow of water within and between the districts before discharge. The planning process will result in a comprehensive list of capital projects and management actions to address existing deficiencies and prepare for future growth. BC is also developing a risk-based decision-making tool that will help the districts make asset management decisions and prioritize projects for implementation. The resulting plans will address operations and flood management capacity for pump stations and conveyance system infrastructure under district management.



## Project Dates

2017–present

## Key Personnel

Alissa Maxwell

## Reference (newly engaged client)

Bill Owen

Flood Control Director, MCDD

1880 NE Elrod Drive  
Portland OR 97211

bowen@mcdd.org, 503.281.5675

# Central Oregon Stormwater Manual and Update

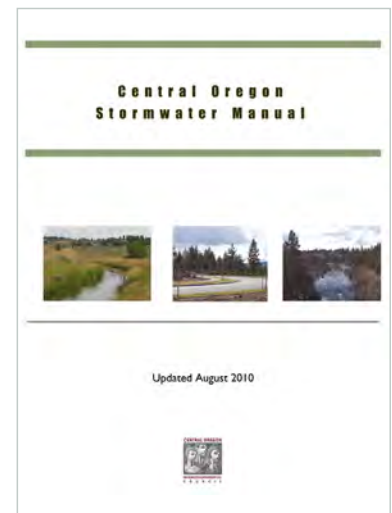
Central Oregon Intergovernmental Council, Oregon

**Alissa's work with stakeholders and local design engineers resulted in a clear and comprehensive guidance manual that addresses a stormwater management under a wide range of conditions.**

While with another firm, Alissa Maxwell served as the lead author in preparation of a comprehensive stormwater design manual (and first update) to guide new development and redevelopment projects throughout central Oregon. The project was sponsored by seven municipalities in a three-county area, where no comprehensive stormwater management guidance was previously in place. The intent was to develop a design manual that met DEQ requirements, while addressing specific needs in central Oregon. The project included an initial assessment of existing stormwater practices and concerns throughout the region and a strategy for revising an existing stormwater manual to meet local needs.

Technical issues included establishing design storms, setting impervious area thresholds, defining submittal requirements, and identifying acceptable BMPs for water quality treatment and flow control. The manual also includes example hydrology and hydraulic calculations, erosion and sediment control standards, source control requirements, LID guidelines, and maintenance requirements.

The project included an ongoing stakeholder process with representatives from seven municipalities. Alissa provided technical guidance during stakeholder workshops and prepared written responses to stakeholder comments during manual development and DEQ negotiations. The project process included two public workshops and two training sessions to educate local engineers about the new stormwater requirements.



## Project Dates

2007–10

## Key Personnel

Alissa Maxwell (while with another firm)



Now complete, the central Oregon manual has been adopted by local agencies to become the design standard throughout the region. This project received an honor award from the American Council of Engineering Companies, and the first manual update (2010) received a concurrence letter from DEQ.

**“We believe that the [Central Oregon Stormwater Manual] is an excellent compendium of practices and approaches for controlling pollutants contained in stormwater and is designed to comply with applicable federal and state regulations, while being tailored to the unique climatic and hydrogeologic conditions of the region.”**

—Eric Nigg, Water Quality Manager (Bend), and Rodney Weick, Water Quality Manager (Portland), Oregon DEQ

## Support of Design Standards

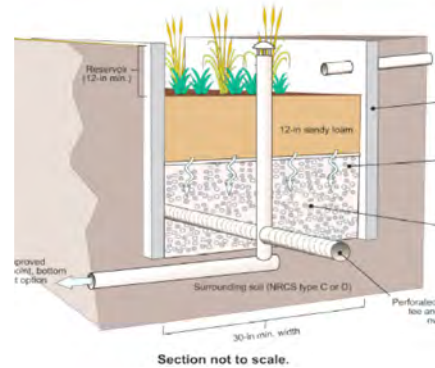
City of Portland, Oregon

**BC's effort to evaluate regional BMP sizing tools can inform evaluations for WES.**

**Project Dates**  
2010

**Key Personnel**  
Krista Reininga  
Angela Wieland

BC reviewed the City of Portland's 2008 *Stormwater Management Manual* with respect to anticipated NPDES MS4 permit requirements. The purpose of the review was to identify potential gaps or areas of the manual in need of updates to meet new requirements. In addition, BC conducted a detailed review of the City's design tool, also known as the Presumptive Approach Calculator (PAC), to evaluate whether the tool could be used or adjusted to design facilities that will address hydromodification issues.



An analysis was also conducted to compare the size of facilities designed using the PAC tool versus those designed using existing regional tools that were developed to address hydromodification/flow duration issues. This included an evaluation of other regional BMP sizing tools and their advantages and disadvantages.

## Review of Design Standards and Rainfall Analysis

Clean Water Services, Oregon

**Understanding the nuances of evaluating rainfall data results in the most appropriate site-specific design standards.**

BC reviewed CWS's *Design and Construction Standards for Surface Water Management* with respect to anticipated NPDES MS4 permit requirements. The purpose of the review was to conduct an audit of the manual to identify potential gaps or areas in need of potential updates to meet new requirements.

This project also included an analysis of data from CWS's rain gauges and two National Weather Service rain gauges to evaluate its existing design storm and how it would meet anticipated NPDES MS4 permit requirements to treat 80 percent of average annual runoff. Volume-based and flow-based design storms were independently evaluated and defined in accordance with the 80 percent standard.

**Project Dates**  
2008-09

**Key Personnel**  
Krista Reininga  
Angela Wieland

# Sanitary and Stormwater System Resiliency Master Plan

City of Portland Bureau of Environmental Services, Oregon

**Our experience with resiliency will inform both sanitary and storm standards updates regarding best practices to apply in new and re-development projects to reduce future vulnerabilities.**

BC is currently managing a project to assist the Bureau of Environmental Services at the City of Portland with development of a Resiliency Master Plan (RMP) for their sanitary and storm system infrastructure to address risks posed by both climate change and seismic hazards. For seismic risks, the goal is to develop a plan towards meeting recovery goals for a Cascadia subduction zone magnitude 9 earthquake as outlined in the Oregon Resilience Plan. For climate change, the goal is to conduct evaluations to understand how to effectively meet levels of service for drainage, water quality, system overflows, basement backups and flood management with an uncertain climate

future. A unique, bottom-up approach is being applied to evaluate sanitary and stormwater assets and prioritize rehabilitation and replacement needs in order to reduce vulnerabilities. The RMP will evaluate specific actions that reduce vulnerabilities such as modifications to sanitary and stormwater design standards. In addition, capital projects and operational practices will be considered. A cost benefit analysis will be conducted to prioritize actions.

#### Project Dates

2017–present

#### Key Personnel

Krista Reininga

## Stormwater Quality Program and Standards

City of Albany, Oregon

**GreenWorks' design standards recommendations focused on easy-to-integrate facilities that offer flexibility to the community.**

GreenWorks assisted the City of Albany in developing stormwater quality development standards. The first phase was a thorough review of the City's municipal and development codes and engineering standards. GreenWorks recommended updates to address water quality and stream protection goals and regulations. Additionally, GreenWorks facilitated workshops and a field facility tour for City staff to determine the types of stormwater quality facilities and related design standards to adopt. GreenWorks developed

#### Project Dates

2010–14

#### Key Personnel

Mike Faha



facility sizing requirements and prepared engineering standards, specifications, and standard drawings. Key goals were to develop stormwater quality standards with a focus on vegetated facilities that can integrate into existing site landscaping and City right-of-way, are straightforward to design and review for compliance, and offer flexibility to the development community. The highly illustrative standards show how various options of vegetated facilities can be sized and located. The resulting program (including codes, standards, specifications, and drawings) was adopted by the Albany City Council in 2014.

GreenWorks continues to provide implementation assistance to City staff. This support is being provided on an on-call basis to review drawings and answer questions, and provide stormwater facility design support as needed.

# Stormwater Management Tool Evaluation

Clackamas County WES, Oregon

**Barney & Worth recently worked with WES to obtain buy-in from multiple stakeholders in the development community.**

Clackamas County’s Watershed Action Plans recommended the use of LID approaches to manage stormwater runoff. WES staff recently developed tools for engineers and developers that incorporate hydromodification and infiltration goals in the sizing of various LIDA stormwater management facilities. Although the new tools were complete, WES staff wanted to ensure that they worked for the end users and were marketed in a way that caught the attention of the

development community. Barney & Worth was hired to provide outreach and engagement to solicit feedback on how to improve the tools’ effectiveness and catalyze developer and contractor interest. Stakeholder interviews were held with more than 30 development community representatives. A summary report provided recommendations on new ways to increase use and engage the development community.

**Project Dates**

2013 - 15

**Key Personnel**

Libby Barg

# Water, Wastewater, and Stormwater Rate and SDC Studies

City of Salem, Oregon

**GRG has a long history of working with municipalities in Oregon to develop and implement rates.**

GRG has served as the Financial Consultant of Record for the City of Salem since 1998. During that time, Deborah has conducted numerous financial and rate analyses for the water, sewer, and stormwater systems, and has participated in a variety of public outreach efforts. For stormwater, she assisted the City with all phases of stormwater rate implementation, including conducting an initial feasibility study (that identified needed data collection and billing

procedures), developing a rate structure (based in part on impervious area), and calculating rates to be phased in over a 4-year period. Deborah also developed the City’s first stormwater SDCs. In early 2016, GRG completed an SDC policy review for the City’s infrastructure systems that developed recommendations related to SDC expenditures, credits, project list updating, administrative cost recovery, and reporting and tracking.

**Project Dates**

1998 - present

**Key Personnel**

Deborah Galardi

References are included for two long-term clients: the City of Lake Oswego (page 23–24) and the City of Oregon City (page 24). We have also included the newly engaged client, Multnomah County Drainage District (page 27) as a reference.

# Workload and Capacity to Meet Schedule

## RFP Section 5.3.3



BC maintains a workload planning tool to track current and anticipated projects and the staff resource commitments required for each project. With several significant projects for key team members nearing completion, the timing of this project coincides with ample workload capacity for our team to execute the work.

Alissa Maxwell is currently managing two planning projects that have significant completion deadlines in December 2017. The projected project schedule and hours estimate shows that the WES Sanitary and Stormwater Standards Update would occupy approximately 25 percent of her time over the next 10 months. We can affirm that the BC team has capacity to execute this high-priority project in a timely manner to meet your expectations. Recent workload, projected workload, and anticipated project effort as a percentage of each key team member’s time is listed in Table 5 below.

**TABLE 5. Key Team Member Workload**

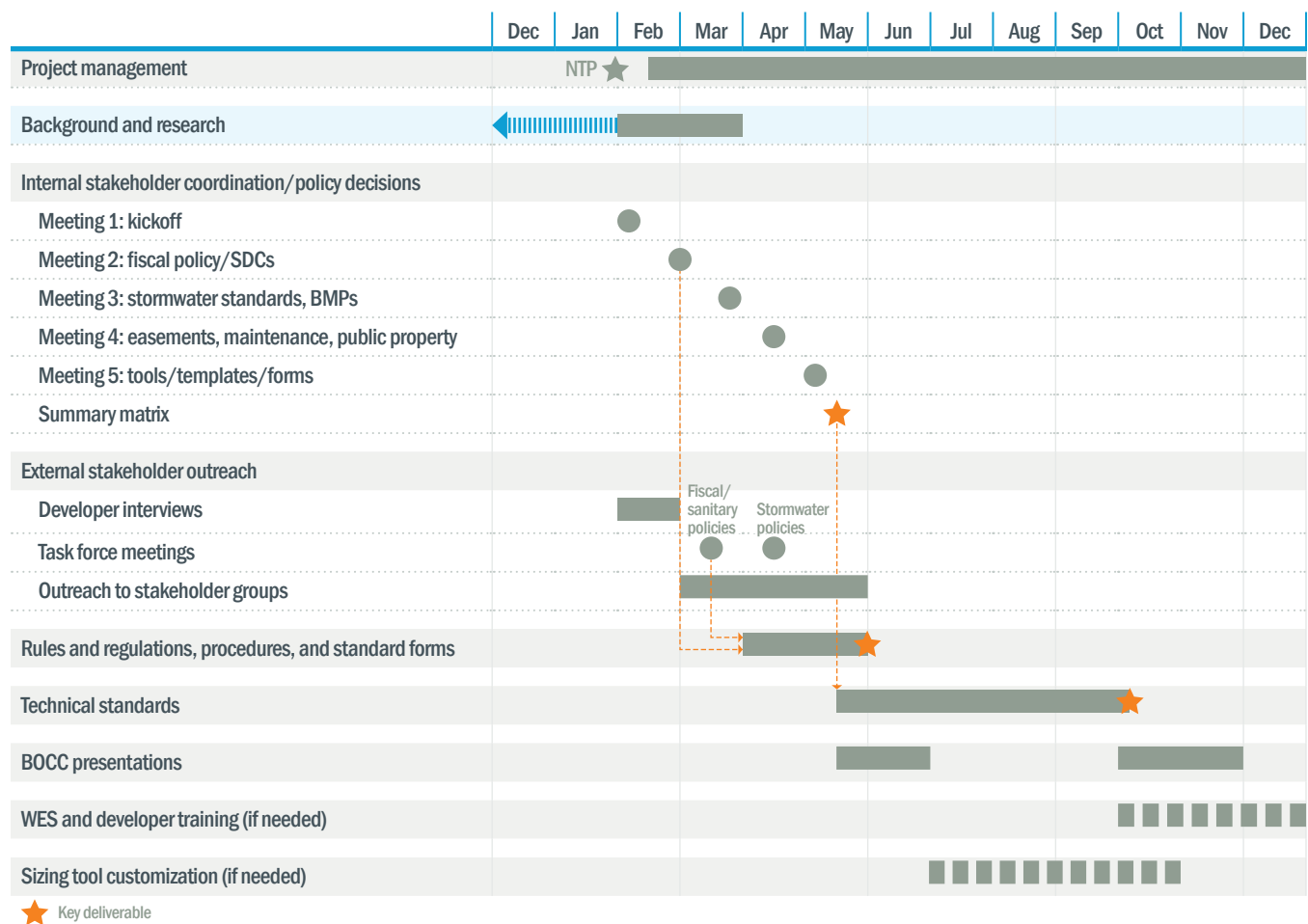
Name/Role	Recent Workload	Projected Workload	Anticipated Project Effort
Alissa Maxwell/Project Manager and Policy Lead	85%	50%	25%
Krista Reininga/Technical Advisor	75%	75%	5%
Nic Oltean/Sanitary Standards	N/A	20%	25%
Angela Wieland/Stormwater Standards	80%	60%	25%
Deborah Galardi/Financial Standards	85%	70%	25%
Libby Barg/External Outreach	80%	65%	20%
Mike Faha/Landscape Standards	75%	75%	5%
Nate Whirty/CAD Standards	75%	75%	5%
Dan Draheim/Technical Editing	75%	50%	5%

# Schedule of Tasks and Staff Hours

## RFP Section 5.3.4



Our project team has thoroughly evaluated the project objectives to develop the outlined project approach, as shown in the schedule below. The following page presents our preliminary detailed task list, hours, and fee schedule for conducting background research; facilitating internal policy workshops; conducting external stakeholder outreach activities; and developing comprehensive rules, technical standards, and supporting documents.



**FIGURE 8**

Our project schedule includes concurrent tracks of work built upon extensive pre-work to allow the team to quickly focus on high priority issues.



Sanitary and Stormwater Rules and Standards Update, Task List, Hours, and Fee Schedule																		
Phase	Phase Description	Task Notes	Maxwell, Alissa M	Dickson, Sandra L	Reininga, Krista	Wieland, Angela M	Oltean, Nicolae	Whirty, Nathan S	Draheim, Daniel P	Vasquez, Jesus E	Total Labor Effort	Mileage	Allowance	Galardi Rothstein Group	Barney and Worth	Greenworks	Total Subconsultant Effort	Total Effort
			Project Manager	Project Assistant	Tech Advisor	PE	PE	CAD	Tech Edit /W/P	Project Acct				Cost	Cost	Cost		
			\$171	\$102	\$231	\$171	\$153	\$134	\$117	\$102								
<b>100</b>	<b>Project Management</b>		64	40	6	0	0	0	0	24	<b>18,858</b>	0	0	1,400	3,432	450	<b>5,546</b>	<b>24,404</b>
101	Coordination and Contracting		40	40	6	0	0	0	0	0	12,306	0	0	<b>1,400</b>	<b>3,432</b>	<b>450</b>	<b>5,546</b>	<b>17,852</b>
102	Invoicing		24	0	0	0	0	0	0	24	6,552	0	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6,552</b>
<b>200</b>	<b>Background and Research</b>		26	0	2	28	44	0	0	0	<b>16,428</b>	0	0	7,000	0	2,660	<b>10,143</b>	<b>26,571</b>
201	Assess Existing Rules-Standards	<i>Largely complete</i>	12	0	0	4	12	0	0	0	4,572	0	0	<b>0</b>	<b>0</b>	<b>830</b>	<b>872</b>	<b>5,444</b>
202	Technical and Policy Research	<i>Largely complete</i>	12	0	2	24	24	0	0	0	10,290	0	0	<b>0</b>	<b>0</b>	<b>1,830</b>	<b>1,922</b>	<b>12,212</b>
203	Fiscal Review and Alternatives		2	0	0	0	8	0	0	0	1,566	0	0	<b>7,000</b>	<b>0</b>	<b>0</b>	<b>7,350</b>	<b>8,916</b>
<b>300</b>	<b>Internal Stakeholder Coordination</b>		140	0	12	4	60	0	0	0	<b>36,576</b>	120	0	8,400	1,600	2,820	<b>13,461</b>	<b>50,157</b>
301	Meeting #1 Prep and Facilitate	<i>Kick-off/existing documents summary</i>	20	0	0	4	8	0	0	0	5,328	20	0	<b>1,400</b>	<b>1,600</b>	<b>830</b>	<b>4,022</b>	<b>9,370</b>
302	Meeting #2 Prep and Facilitate	<i>Fiscal Policy/SDCs</i>	8	0	0	0	12	0	0	0	3,204	20	0	<b>5,600</b>	<b>0</b>	<b>0</b>	<b>5,880</b>	<b>9,104</b>
303	Meeting #3 Prep and Facilitate	<i>Stormwater performance stds (retention, WQ, FC) and BMPS (allowable uses, prioritization)</i>	40	0	4	0	12	0	0	0	9,600	20	0	<b>0</b>	<b>0</b>	<b>830</b>	<b>872</b>	<b>10,492</b>
304	Meeting #4 Prep and Facilitate	<i>Easements, Maintenance, Use of Public Properties</i>	20	0	2	0	8	0	0	0	5,106	20	0	<b>0</b>	<b>0</b>	<b>1,160</b>	<b>1,218</b>	<b>6,344</b>
305	Meeting #5 Prep and Facilitate	<i>Tools, Templates, Forms, and Resources</i>	20	0	2	0	8	0	0	0	5,106	20	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,126</b>
306	Meeting #6 Prep and Facilitate	<i>Allowance for additional Topics</i>	20	0	2	0	8	0	0	0	5,106	20	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,126</b>
307	Policy Matrix	<i>Summarize decisions; used for external outreach</i>	12	0	2	0	4	0	0	0	3,126	0	0	<b>1,400</b>	<b>0</b>	<b>0</b>	<b>1,470</b>	<b>4,596</b>
<b>400</b>	<b>External Stakeholder Outreach</b>		44	0	0	0	22	0	0	0	<b>10,890</b>	100	0	1,400	24,030	1,660	<b>28,445</b>	<b>39,435</b>
401	Developer Interviews	<i>Serves as kick-off meeting with each developer</i>	4	0	0	0	0	0	0	0	684	0	0	<b>0</b>	<b>3,450</b>	<b>0</b>	<b>3,623</b>	<b>4,307</b>
402	Task Force Meetings	<i>Fiscal policy/SDCs, Stormwater Policy Matrix, Review Comments</i>	20	0	0	0	12	0	0	0	5,256	50	0	<b>1,400</b>	<b>10,980</b>	<b>1,660</b>	<b>14,742</b>	<b>20,048</b>
403	Outreach to Stakeholders Grps	<i>Multiple group meetings</i>	20	0	0	0	10	0	0	0	4,950	50	0	<b>0</b>	<b>9,600</b>	<b>0</b>	<b>10,080</b>	<b>15,080</b>
<b>500</b>	<b>Rules and Regulations</b>		36	0	10	0	72	0	16	0	<b>21,354</b>	20	0	3,500	0	0	<b>3,675</b>	<b>25,049</b>
501	Draft Rules and Regs	<i>Includes fiscal policy</i>	12	0	4	0	24	0	8	0	7,584	0	0	<b>3,500</b>	<b>0</b>	<b>0</b>	<b>3,675</b>	<b>11,259</b>
502	Administrative Procedures		8	0	2	0	16	0	2	0	4,512	0	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,512</b>
503	Standard Forms and Agreements		8	0	2	0	16	0	2	0	4,512	0	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,512</b>
504	Final Documents	<i>Includes review meeting with WES</i>	8	0	2	0	16	0	4	0	4,746	20	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,766</b>
<b>600</b>	<b>Technical Standards</b>		46	0	18	180	0	56	48	0	<b>55,924</b>	20	0	0	0	19,840	<b>20,832</b>	<b>76,776</b>
601	Outline Standards, Appendices		2	0	0	24	0	0	0	0	4,446	0	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,446</b>
602	Draft Standards or Manual	<i>Writing text and updating source documents</i>	24	0	12	100	0	0	32	0	27,720	0	0	<b>0</b>	<b>0</b>	<b>6,320</b>	<b>6,636</b>	<b>34,356</b>
603	Typical Drawings-Standard Details		4	0	2	16	0	40	0	0	9,242	0	0	<b>0</b>	<b>0</b>	<b>6,760</b>	<b>7,098</b>	<b>16,340</b>
604	Final Standards	<i>Includes review meeting with WES</i>	16	0	4	40	0	16	16	0	14,516	20	0	<b>0</b>	<b>0</b>	<b>6,760</b>	<b>7,098</b>	<b>21,634</b>
<b>700</b>	<b>Public Outreach</b>		36	0	0	0	16	0	0	0	<b>8,604</b>	100	0	2,800	0	0	<b>2,940</b>	<b>11,644</b>
701	Commission Work Sessions	<i>Assumes 2 meetings</i>	20	0	0	0	8	0	0	0	4,644	50	0	<b>2,800</b>	<b>0</b>	<b>0</b>	<b>2,940</b>	<b>7,634</b>
702	Stakeholder Meetings	<i>Assumes 2 meetings</i>	16	0	0	0	8	0	0	0	3,960	50	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,010</b>
	<b>BASE COST</b>		<b>392</b>	<b>40</b>	<b>48</b>	<b>212</b>	<b>214</b>	<b>56</b>	<b>64</b>	<b>24</b>	<b>168,634</b>	<b>360</b>	<b>0</b>	<b>24,500</b>	<b>29,062</b>	<b>27,430</b>	<b>85,042</b>	<b>254,036</b>
<b>800</b>	<b>Optional Tasks</b>																	
000	Training-WES Staff and Developers		0	0	0	0	0	0	0	0	0	0	10,000	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10,000</b>
000	Sizing Tool Develop or Customize		0	0	0	0	0	0	0	0	0	0	25,000	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>25,000</b>

- Notes: 1. Hours are preliminary, based on an assumed scope of work. Contract budget to be negotiated following selection.  
 2. Subconsultant invoices are subject to a 5% markup.  
 3. Employee travel time will be billed at hourly rates. Mileage charges will be billed at the Internal Revenue Service's standard mileage rates.  
 4. Miscellaneous project expenses (CAD services, software licenses, color graphics, copying, printing, computer, etc.) are included in the BC hourly rates and not billed separately.

Appendix

# Proposal Certification Form

**PROPOSAL CERTIFICATION**  
**RFP #2017-105 Sanitary and Stormwater Rules and Standards Update**

Submitted by: Brown and Caldwell, Inc. // State of California  
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agent or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
  3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer fully understands and submits its Proposal with the specific knowledge that:
1. The selected Proposal must be approved by the Board of Commissioners.
  2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.

(h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

(i) That the Proposer is legally qualified to contract with the County.

(j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

(k) The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

Resident Bidder, as defined in ORS 279A.120

Non-Resident Proposer, Resident State \_\_\_\_\_

Oregon Business Registry Number 015248-26

Contractor's Authorized Representative

Signature:  Date: 12-18-17  
Name: Bryan Paulson Title: Vice President  
Firm: Brown and Caldwell  
Address: 6500 Macadam Avenue, Suite 200  
City/State/Zip: Portland OR 97239 Phone: (503) 977.6618  
e-mail: bpaulson@brwncald.com Fax: 503.244.9095

Contract Manager:

Name Alissa Maxwell Title: Principal Engineer  
Phone number: 503.977.6664  
Email Address: amaxwell@brwncald.com



**Planning process** Development thresholds/exemptions Proprietary treatment devices  
Material specifications **Stormwater management strategy**  
Source control and pretreatment Design tools and facility sizing  
Infiltration feasibility Site planning principles Erosion control Regulatory compliance Credits and incentives  
Maintenance responsibility **Conveyance standards**



**Create.**



**Execute.**



**Deliver.**



Portland Office  
6500 SW Macadam Avenue | Suite 200  
Portland, OR 97239  
503.244.7005



**EXHIBIT C**  
**Mutually Agreed Upon Scope of Work**

## Sanitary and Stormwater Rules and Standards Update

# Mutually Agreed Upon Scope of Work

Clackamas County Water Environment Services (WES) has partnered with Brown and Caldwell (BC) to develop comprehensive sanitary and stormwater rules and standards. The rules and standards should provide consistency across all three service districts: Tri-City Service District (TCSD), Clackamas County Service District No. 1 (CCSD1), and the Surface Water Management Agency of Clackamas County (SWMACC).

Through this work the BC Team will facilitate a collaborative process to engage WES staff and external stakeholders to identify and resolve key policy issues in the early stages of the project. The goal is to develop consensus and understanding among stakeholders, and create a clear road map for development of the rules and standards.

The outcome of this project is expected to be a streamlined rules and regulations document and accompanying sanitary and stormwater design manuals for all WES programs and facilities. Together these documents will cover design standards, typical facility cross sections, administrative procedures, standard forms, agreements and new policies encompassing storm design, fiscal practices and rules for the public's use of WES properties.

BC intends to contract with Barney and Worth, GreenWorks, and the Galardi Rothstein Group to complete this scope of services.

The following assumptions carry across all project tasks:

- The rules and standards documents will rely heavily on source material from WES' current documents and existing policy and standard documents from other local and regional jurisdictions.
- The Clackamas County *Erosion Prevention and Sediment Control, Planning and Design Manual* has previously been adopted. No modifications are planned for the existing document.
- Development policies and restrictions for stream and wetland buffers and sensitive lands are currently included in the rules for CCSD1 and SWMACC. These policies will not be a point of discussion in the strategy meetings and will not be modified with this project. Current policies will either be carried forward as currently written or removed from the WES administrative rules to a stand-alone document.
- Standard specifications and standard details for construction will not be part of this project.

The project duration is expected to be approximately 12 months, with final timeline dependent on the process to present the rules and standards for approval by the Clackamas County Board of Commissioners.

## Task 1. Project Management

**Objective:** Manage and administer project activities to deliver the high quality products on time and on budget.

## Task 1.1 Project Administration

BC will perform project administration activities that include developing and administrating subconsultant contracts, tracking schedule and budget, coordinating project meetings, organizing deliverables and preparing monthly invoices and progress reports.

## Task 1.2 Project Kickoff

An initial kickoff meeting with WES staff will be held to define project goals and objectives, review the project schedule, and outline a plan for conducting internal policy workshops and external stakeholder outreach.

During the kick-off meeting, BC will present a summary of the Districts' existing policies and standards, highlighting key policy and technical issues. This meeting is intended to introduce many of the issues that will be discussed in detail at the policy/technical issues workshops (Task 2.3). The kick-off meeting will also be used to identify WES staff that will participate in each of the proposed policy/technical issues workshops.

### Assumptions:

- The project duration, including delivery of project files and final invoices, is expected to cover 12 months.
- The kick-off meeting will be attended by two BC staff and three subconsultant representatives at the WES office.
- The WES Project Manager will coordinate meeting logistics, including securing a meeting location and identifying appropriate WES staff to attend.
- WES will assemble a team of staff decision makers that will participate in the duration of the rules and standards process. All staff decision makers will participate in the kick-off meeting.

### Deliverables:

- Monthly invoices with project progress reports
- Kickoff meeting materials
- Bulleted summary of kick-off meeting decisions

## Task 2. Policy and Technical Strategy

**Objective:** Engage WES staff stakeholders to identify and discuss policy/technical issues; develop consensus about policy and technical decisions and create a clear road map for development of the rules and standards.

### Task 2.1 Policy Review

BC will review the existing rules and regulations, stormwater standards, and sanitary standards for each of the three districts, as applicable. BC will obtain and review stormwater and sanitary policy and design standards from other local jurisdictions such as the City of Portland, Clark County, Clean Water Services, Oregon City, Lake Oswego, and Wilsonville. BC will also review the 2009 draft WES Stormwater Manual. The purpose of this review is to identify existing policies and technical standards and identify reasonable alternatives for WES's consideration.

Prior to the kickoff meeting, BC will create a spreadsheet to summarize the existing rules and standards and the reasonable alternatives from other local jurisdictions.

## Task 2.2 Policy/Technical Issues Matrix

BC will develop an initial Policy/Technical Issues matrix. The matrix will outline the key topics, policy issues, and technical requirements that form the backbone of the rules and standards. BC will work with WES staff to outline a strategy for both the Task 2.3 and Task 3.2 workshops, identifying the key policy and technical issues to be covered in each workshop.

Following the workshops conducted under Task 2.3, BC will populate the Policy/Technical Issues matrix to document the decisions made during and following the Policy/Technical Issues workshops. This summary matrix will be updated throughout the internal and external processes (Tasks 2 and 3). Once reviewed and approved by WES staff, the summary matrix will guide the development of the updated rules and standards (Tasks 4, 5, and 6).

## Task 2.3 Policy/Technical Issues Workshops

This task includes five workshops with WES staff, facilitated by BC staff. The goal of the workshops is to review and come to consensus regarding policy issues and technical standards that will be addressed in the rules and standards update.

Workshops are expected to include the following topics:

- Stormwater performance standards (retention, water quality, flow control), project thresholds, exemptions, and in-lieu fees
- Stormwater facility selection and design – facility types (including green infrastructure and proprietary systems), allowable uses, prioritization, and minimum design criteria
- Sanitary connections, pretreatment requirements and conveyance design standards
- Sanitary and stormwater fiscal policies
- Easements, maintenance, and use of public properties
- Tools, templates, forms, and resources

BC will develop materials to facilitate discussion and decision making for each workshop. The materials will include PowerPoint presentations and handouts to summarize the content in the current rules and standards and present potential alternatives and implications.

Following completion of all of the workshops, BC will prepare a summary memorandum, documenting the workshop and decision making process. Policy decisions will be documented in the matrix, as described in Task 2.2.

### Assumptions:

- WES will provide a preliminary list of technical and policy issues to discuss.
- Based on the workshop strategy (Task 2.2), the WES project manager/project leader will identify which WES staff will be decision makers for each topic and schedule workshops to ensure key decision makers are present.
- Five policy/technical issues workshops will be attended by two BC engineers and are anticipated to last up to 3 hours each.
- Policy/technical issues workshops are expected to occur approximately once every 3-4 weeks.
- WES will conduct additional internal meetings as necessary to reach decisions and provide direction to BC, regarding the technical issues discussed in each meeting.

**Deliverables:**

- Technical Issues Spreadsheet, documenting current WES policies and standards and reasonable alternatives from other local jurisdictions
- Policy/Technical Issues matrix
- Internal and External Workshop strategy
- Meeting agendas for 5 workshops
- Presentation materials for 5 workshops
- Attendance and facilitation at 5 policy/technical issues workshops
- Updated policy/technical issues matrix, documenting direction and decisions made by WES staff
- Summary memorandum of decision making process

**Task 3. External Outreach**

**Objective:** Solicit feedback from external task force and stakeholder groups regarding initial policy and technical decisions.

**Task 3.1 Stakeholder Interviews**

Barney and Worth (B&W) will work with WES to identify members of the development community to interview about sanitary and stormwater rules and standards.

BC and B&W will develop a list of questions and topics to guide the interviews. B&W will conduct 12-15 phone interviews with development engineers, planners, and others who utilize the rules and standards. Information obtained during the interviews will be compiled into a Stakeholder Interview Summary Memo.

**Task 3.2 Task Force Workshops**

The workshop strategy developed in Task 2.1 will be implemented during the summer of 2018. Four workshops will be conducted with the external task force to introduce and get feedback on the policy and technical decisions reached in the Task 2 policy meetings.

B&W will work with WES to identify and recruit members of the Task Force (including both developers and municipal agency partners), develop task force assignments, identify roles and responsibilities, develop meeting schedules and facilitate the meetings. BC, B&W and WES will work together to develop the workshop materials—PowerPoints, handouts, worksheets, electronic polling, etc.

It is anticipated that Task Force meetings would begin after the major policy/technical issues decisions have been reached. Task Force meetings dates would be set ahead of time, understanding that not every member will be able to attend each meeting.

The following is a preliminary Task Force schedule, to be updated with the kickoff meeting in Task 1.2.

- June: Task Force Kick-off – Task Force assignment; project overview
- July: Meeting 2 – Policy topics
- Early September: Meeting 3 – Technical Topics
- Late September: Meeting 4 – Final recommendations

Recommendations from the Task Force will be discussed with WES and incorporated into the policy issues/decisions tracking matrix developed in Task 2.



### Task 3.3 Stakeholder Group Outreach

Following the final Task Force Workshop, briefings will be held with various interest groups, such as North Clackamas Chamber, North Clackamas Urban Watersheds Council, Clackamas River Basin Council, Clackamas County Community Planning Organizations, Homebuilders Association and other development/business interest groups. The purpose of the briefings will be to update them on the proposed standards and invite them to comment. BC, B&W and WES will identify the relevant stakeholder groups early in the process and B&W will contact the organizations to request time on their meeting agendas. B&W will create a presentation and talking points for the presentations.

#### Assumptions:

- The task force workshops will be attended and facilitated by B&W and attended by 2 B&W staff and the BC project manager.
- Task Force Workshops are anticipated to last 3 hours each.
- WES will provide a venue for task force workshops.
- B&W staff will provide presentations at 5 stakeholder group briefings. Presentations to additional stakeholder groups will be given by WES staff, using the same materials.

#### Deliverables:

- Questionnaire for stakeholder interviews
- Draft and Final Stakeholder Interview Summary Memo
- Task force workshop materials – PowerPoints, handouts, and worksheets
- Meeting notes from task force workshops
- Updated Policy/Technical Issue tracking spreadsheet
- PowerPoint presentation and talking point summary for stakeholder group briefings.

## Task 4. Draft Rules and Regulations

**Objective:** Develop draft Administrative Rules based on the policy and technical guidance established in Tasks 2 and 3.

### Task 4.1 Administrative Rules Outline

Develop an annotated outline of the rules and regulations document, identifying topics and summarizing the content of each section. The outline will indicate the source of proposed content, reflecting how content from the existing rules and regulations will be carried into the new document areas where new content will be developed.

The annotated outline will be submitted to WES for review and comment.

### Task 4.2 Draft Administrative Rules

Following the outline established under Task 4.1 and the policy direction developed through Tasks 2 and 3, BC will prepare a preliminary draft of the new WES Administrative Rules document. The preliminary draft Administrative Rules will cover sanitary and stormwater rules for Rate Zone 1 – Tri-City City, Rate Zone 2 – CCSD#1, and Rate Zone 3 – SWMACC. The focus of the preliminary draft document will be to establish the content of each section of the rules.

The preliminary draft Administrative Rules will be submitted to WES for review and comment.

### Task 4.3 Public Review Draft Administrative Rules

Following receipt of WES comments, one meeting will be held with WES staff to discuss draft language and resolve issues identified during the WES comment period.

The preliminary draft Administrative Rules will be revised to create a public review draft. Development of the public review draft will include detailed review from a technical editor to clarify language and check for consistency between sections.

The public review draft will be issued to the external task force and stakeholder groups, identified in Task 3 for review and comment.

#### Assumptions:

- The Administrative Rules will be a text-only document with simple formatting. No graphics or figures will be developed
- Draft documents will be submitted to WES in electronic format (Word and PDF)
- The WES project manager/project leader will facilitate collection of internal comments on the draft document and provide BC with a single, compiled set of comments with any internal conflicting comments resolved
- WES will post the public review draft online to facilitate review by task force members and stakeholder groups.

#### Deliverables:

- Draft and Final Administrative Rules Annotated Outline
- Preliminary Draft Administrative Rules
- Public Review Draft Administrative Rules

## Task 5. Draft Stormwater Standards

**Objective:** To develop draft stormwater standards based on the policy and technical guidance established in Tasks 2 and 3.

### Task 5.1 Stormwater Standards Outline

Develop an annotated outline of the stormwater standards, identifying topics and summarizing the content of each section. The outline will indicate the source of proposed content, reflecting how content from the existing standards will be carried into the new document areas and where new content will be developed. The annotated outline will include a list of appendices with content sources and potential figures to be sourced or developed.

The draft annotated outline will be submitted to WES for review and comment. A final annotated outline will be prepared to reflect WES comments.

### Task 5.2 Draft Stormwater Standards

Following the outline established under Task 5.1 and the policy direction developed through Tasks 2 and 3, BC will prepare draft content for the stormwater standards. The focus of the draft document is in establishing the content of each chapter and appendix of the stormwater standards. Tables, charts, flow charts, and figures will be developed to aid in interpretation and implementation of the standards. Technical editing and word processing will establish consistent format and technical language.

The stormwater standards will include typical cross sections, preferred plant lists, and sample planting plans for preferred stormwater management facility types.

Draft chapters will be developed in groups, along with associated appendices. The draft chapters will be submitted in groups to WES for review and comment.

### **Task 5.3 Public Review Draft Stormwater Standards**

Following receipt of WES comments on all draft content, one meeting will be held with WES staff to discuss draft language and resolve issues identified during the WES comment period.

The draft stormwater standards will be revised to create a public review draft. Development of the public review draft will include detailed review from a technical editor to clarify language and check for consistency between sections.

The public review draft will be issued to the external task force and stakeholder groups, identified in Task 3 for review and comment.

#### **Assumptions:**

- Draft documents will be submitted to WES in electronic format (Word and PDF)
- WES will identify a lead internal reviewer for each chapter of the stormwater standards. The lead reviewer will have the authority to make decisions and provide content direction during the development of the draft standards.
- The WES project manager/project leader will facilitate collection of internal comments on the draft standards and provide BC with a single, compiled set of comments with any internal conflicting comments resolved.
- WES will post the public review draft online to facilitate review by task force members and stakeholder groups.

#### **Deliverables:**

- Stormwater Standards draft and final annotated outline
- Draft stormwater standards
- Public review draft stormwater standards

## **Task 6. Draft Sanitary Standards**

**Objective:** To develop draft sanitary standards based on the policy and technical guidance established in Task 2.

### **Task 6.1 Sanitary Standards Outline**

Develop a draft annotated outline of the sanitary standards, identifying topics and summarizing the content of each section. The outline will indicate the source of proposed content, reflecting how content from the existing standards will be carried into the new document and areas where new content will be developed. The annotated outline will include a list of appendices with content sources and potential figures to be sourced or developed.

The annotated outline will be submitted to WES for review and comment.

### **Task 6.2 Draft Sanitary Standards**

Following the outline established under Task 6.1 and the policy direction developed through Tasks 2 and 3, BC will prepare draft content for the sanitary standards. The focus of the draft document is in establishing the content of each chapter and appendix of the sanitary standards. Tables, charts, flow charts, and figures will be developed to aid in interpretation and implementation of the standards. Technical editing and word processing will establish consistent format and technical language.



Draft chapters will be developed in groups, along with associated appendices. The draft chapters will be submitted in groups to WES for review and comment.

### **Task 6.3 Public Review Draft Sanitary Standards**

Following receipt of WES comments on all draft content, one meeting will be held with WES staff to discuss draft language and resolve issues identified during the WES comment period.

The draft sanitary standards will be revised to create a public review draft. Development of the public review draft will include detailed review from a technical editor to clarify language and check for consistency between sections.

The public review draft will be issued to the external task force and stakeholder groups, identified in Task 3 for review and comment.

#### **Assumptions:**

- Draft documents will be submitted to WES in electronic format (Word and PDF)
- WES will identify a lead internal reviewer for each chapter of the sanitary standards. The lead reviewer will have the authority to make decisions and provide content direction during the development of the draft standards.
- The WES project manager/project leader will facilitate collection of internal comments on the draft document and provide BC with a single, compiled set of comments with any internal conflicting comments resolved.
- WES will post the public review draft online to facilitate review by task force members and stakeholder groups.

#### **Deliverables:**

- Sanitary Standards draft and final annotated outline
- Draft sanitary standards
- Public review draft sanitary standards

## **Task 7. Final Documents**

**Objective:** To develop final Administrative Rules, stormwater standards, and sanitary standards for WES review and approval..

### **Task 7.1 Review Meeting**

Following collection of comments on the public review drafts, a meeting will be held with the WES staff to discuss comments received from the task force and stakeholder groups to determine direction forward on addressing comments. Some comments might be introduced on the issues tracking spreadsheet to document resolution.

### **Task 7.2 Final Administrative Rules**

The Administrative Rules will be modified to incorporate final comments, discussed in Task 7.1. The final Administrative Rules will be submitted to WES in electronic format – both MS Word and a searchable PDF.

### **Task 7.3 Final Stormwater Standards**

The Stormwater Standards will be modified to incorporate final comments, discussed in Task 7.1. The final Stormwater Standards will be submitted to WES in electronic format. Chapter text will be submitted in both MS Word and searchable PDF. Appendices will be submitted as a searchable PDF.

### **Task 7.4 Final Sanitary Standards**

The Sanitary Standards will be modified to incorporate final comments, discussed in Task 7.1. The final sanitary standards manual will be submitted to WES in electronic format. Chapter text will be submitted in both MS Word and searchable PDF. Appendices will be submitted as a searchable PDF.

#### **Deliverables:**

- Electronic copy of final Administrative Rules (Word and PDF)
- Electronic copy of final Stormwater Standards (Word and PDF)
- Electronic copy of final sanitary Standards (Word and PDF)
- Final spreadsheet documenting issue resolution

## **Task 8. Adoption and Implementation**

**Objective:** Support approval and implementation of the updated Rules and Standards.

### **Task 8.1 Presentations to Commission**

Following development of the public review drafts of the Administrative Rules, Stormwater Standards, and Sanitary Standards, a briefing will be held with the Board of County Commissioners (BOCC) to outline the proposed policies. BC will create a presentation and talking points for the work session. WES staff will give the presentation to the BOCC.

BC will attend the BOCC meeting and be available to answer questions during the first reading of the ordinance to adopt the updated Rules and Standards.

### **Task 8.2 WES Staff Workshop**

Following adoption of the Administrative Rules and updated Stormwater and Sanitary Standards, a 2- to 3-hour training workshop will be held with WES staff to review the updated policies and technical guidelines. The training will focus on the development review process and guide WES staff through review of typical projects designed under the new standards.

### **Task 8.2 Development Engineers Workshop**

Following adoption of the Administrative Rules and updated Stormwater and Sanitary Standards, a 2- to 3-hour training workshop with local developers and engineers will be held to introduce the new policies and standards. This workshop will follow the same format as the workshop in Task 8.2.

#### **Assumptions:**

- WES staff will prepare materials and coordinate with the BOCC to develop the ordinance that will adopt the updated rules and standards.
- BC will create a presentation and talking points for the work session with the BOCC. WES staff will give the presentation to the BOCC.

#### **Deliverables:**

- Presentation materials for one work session with the BOCC



- Training materials for one workshop with WES staff
- Training materials for one workshop with the development community

Clackamas Co Service Dist No 1 - Storm and Sanitary Standards

Phase	Phase Description	Maxwell, Alissa M	Dickston, Sandra L	Reininga, Krista	Christofferson, Jessica L	Oltean, Nicolae	Draheim, Daniel P	Whirty, Nathan S	Pate, Wendy M	Vasquez, Jesus E	Total Labor Hours	Total Labor Effort	Mileage	Total ODCs	Galardi Rothstein Group Cost	Barney and Worth Cost	Green-works Cost	Total Sub Cost	Total Expense Cost	Total Expense Effort	Total Effort
		\$171	\$102	\$231	\$153	\$153	\$117	\$134	\$117	\$102											
<b>100</b>	<b>Project Management</b>	80	40	6	4	8	0	0	0	24	<b>162</b>	<b>23,430</b>	400	<b>400</b>	3,150	8,140	2,880	<b>14,170</b>	<b>14,570</b>	<b>15,279</b>	<b>38,709</b>
101	Project Administration	64	40	6	0	0	0	0	0	24	<b>134</b>	18,858	400	<b>400</b>	<b>1,750</b>	<b>6,540</b>	<b>2,050</b>	<b>10,340</b>	<b>10,740</b>	<b>11,257</b>	<b>30,115</b>
102	Kick-Off Meeting	16	0	0	4	8	0	0	0	0	<b>28</b>	4,572	0	<b>0</b>	<b>1,400</b>	<b>1,600</b>	<b>830</b>	<b>3,830</b>	<b>3,830</b>	<b>4,022</b>	<b>8,594</b>
<b>200</b>	<b>Policy and Technical Strategy</b>	80	0	14	120	76	0	0	8	0	<b>298</b>	<b>47,838</b>	0	<b>0</b>	14,000	0	6,970	<b>20,970</b>	<b>20,970</b>	<b>22,019</b>	<b>69,857</b>
201	Policy Review	16	0	2	40	20	0	0	0	0	<b>78</b>	12,378	0	<b>0</b>	<b>7,000</b>	<b>0</b>	<b>2,660</b>	<b>9,660</b>	<b>9,660</b>	<b>10,143</b>	<b>22,521</b>
202	Policy/Technical Issues Matrix	10	0	2	16	8	0	0	4	0	<b>40</b>	6,312	0	<b>0</b>	<b>1,400</b>	<b>0</b>	<b>3,150</b>	<b>4,550</b>	<b>4,550</b>	<b>4,778</b>	<b>11,090</b>
203	Policy/Technical Issues Workshops	54	0	10	64	48	0	0	4	0	<b>180</b>	29,148	0	<b>0</b>	<b>5,600</b>	<b>0</b>	<b>1,160</b>	<b>6,760</b>	<b>6,760</b>	<b>7,098</b>	<b>36,246</b>
<b>300</b>	<b>External Outreach</b>	44	0	0	20	0	0	0	0	0	<b>64</b>	<b>10,584</b>	0	<b>0</b>	1,400	24,642	0	<b>26,042</b>	<b>26,042</b>	<b>27,344</b>	<b>37,928</b>
301	Stakeholder Interviews	6	0	0	0	0	0	0	0	0	<b>6</b>	1,026	0	<b>0</b>	<b>0</b>	<b>3,590</b>	<b>0</b>	<b>3,590</b>	<b>3,590</b>	<b>3,770</b>	<b>4,796</b>
302	Task Force Workshops	28	0	0	16	0	0	0	0	0	<b>44</b>	7,236	0	<b>0</b>	<b>0</b>	<b>12,412</b>	<b>0</b>	<b>12,412</b>	<b>12,412</b>	<b>13,033</b>	<b>20,269</b>
303	Stakeholder Group Workshops	10	0	0	4	0	0	0	0	0	<b>14</b>	2,322	0	<b>0</b>	<b>1,400</b>	<b>8,640</b>	<b>0</b>	<b>10,040</b>	<b>10,040</b>	<b>10,542</b>	<b>12,864</b>
<b>400</b>	<b>Draft Administrative Rules</b>	26	0	11	52	10	24	0	14	0	<b>137</b>	<b>20,919</b>	0	<b>0</b>	3,500	0	0	<b>3,500</b>	<b>3,500</b>	<b>3,675</b>	<b>24,594</b>
401	Admin Rules Outline	6	0	1	12	2	0	0	4	0	<b>25</b>	3,867	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,867</b>
402	Draft Admin Rules	12	0	8	24	8	16	0	8	0	<b>76</b>	11,604	0	<b>0</b>	<b>3,500</b>	<b>0</b>	<b>0</b>	<b>3,500</b>	<b>3,500</b>	<b>3,675</b>	<b>15,279</b>
403	Public Review Draft Admin Rules	8	0	2	16	0	8	0	2	0	<b>36</b>	5,448	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,448</b>
<b>500</b>	<b>Draft Stormwater Standards</b>	46	0	17	136	0	48	56	28	0	<b>331</b>	<b>48,997</b>	0	<b>0</b>	0	0	20,840	<b>20,840</b>	<b>20,840</b>	<b>21,882</b>	<b>70,879</b>
501	Stormwater Standards Outline	6	0	1	12	0	0	0	4	0	<b>23</b>	3,561	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,000</b>	<b>1,000</b>	<b>1,000</b>	<b>1,050</b>	<b>4,611</b>
502	Draft Stormwater Standards	24	0	12	100	0	32	40	20	0	<b>228</b>	33,620	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>13,080</b>	<b>13,080</b>	<b>13,080</b>	<b>13,734</b>	<b>47,354</b>
503	Public Review Draft	16	0	4	24	0	16	16	4	0	<b>80</b>	11,816	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>6,760</b>	<b>6,760</b>	<b>6,760</b>	<b>7,098</b>	<b>18,914</b>
<b>600</b>	<b>Draft Sanitary Standards</b>	20	0	11	0	60	24	0	12	0	<b>127</b>	<b>19,353</b>	0	<b>0</b>	0	0	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>19,353</b>
601	Sanitary Standards Outline	4	0	1	0	8	0	0	2	0	<b>15</b>	2,373	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,373</b>
602	Draft Sanitary Standards	12	0	8	0	40	16	0	8	0	<b>84</b>	12,828	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12,828</b>
603	Public Review Draft	4	0	2	0	12	8	0	2	0	<b>28</b>	4,152	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,152</b>
<b>700</b>	<b>Final Documents</b>	28	0	8	26	18	16	8	16	0	<b>120</b>	<b>18,184</b>	0	<b>0</b>	0	0	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>18,184</b>
701	Review Meeting	12	0	0	2	2	0	0	0	0	<b>16</b>	2,664	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,664</b>
702	Final Admin Rules	4	0	2	8	8	4	0	4	0	<b>30</b>	4,530	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,530</b>
703	Final Stormwater Standards	8	0	4	16	0	8	8	8	0	<b>52</b>	7,684	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7,684</b>
704	Final Sanitary Standards	4	0	2	0	8	4	0	4	0	<b>22</b>	3,306	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,306</b>
<b>800</b>	<b>Adoption and Implementation</b>	48	0	0	24	0	0	0	0	0	<b>72</b>	<b>11,880</b>	0	<b>0</b>	2,800	0	0	<b>2,800</b>	<b>2,800</b>	<b>2,940</b>	<b>14,820</b>
801	Presentations to Commission	16	0	0	4	0	0	0	0	0	<b>20</b>	3,348	0	<b>0</b>	<b>2,800</b>	<b>0</b>	<b>0</b>	<b>2,800</b>	<b>2,800</b>	<b>2,940</b>	<b>6,288</b>
802	WES Staff Workshop	20	0	0	12	0	0	0	0	0	<b>32</b>	5,256	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,256</b>
803	Development Engineers Workshop	12	0	0	8	0	0	0	0	0	<b>20</b>	3,276	0	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,276</b>
<b>GRAND TOTAL</b>		<b>372</b>	<b>40</b>	<b>67</b>	<b>382</b>	<b>172</b>	<b>112</b>	<b>64</b>	<b>78</b>	<b>24</b>	<b>1,311</b>	<b>201,185</b>	<b>400</b>	<b>400</b>	<b>24,850</b>	<b>32,782</b>	<b>30,690</b>	<b>88,322</b>	<b>88,722</b>	<b>93,138</b>	<b>294,323</b>

Notes:

1. Subconsultant invoices are subject to a 5% markup.
2. Employee travel time will be billed at hourly rates. Mileage charges will be billed at the Internal Revenue Service's standard mileage rates.
3. Miscellaneous project expenses (CAD services, software licenses, color graphics, copying, printing, computer, etc.) are included in the BC hourly rates and not billed separately.