



DAN JOHNSON
DIRECTOR

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

September 16, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of the change in control of solid waste collection franchises (70-3-C, 70-4-C, 70-5-C, 70-19-C) held by Hoodview Disposal and Recycling, Inc., and (70-1-C) held by Canby Disposal Company, Inc.; and (70-15-C) held by West Linn Refuse & Recycling, Inc. to Kahut Companies Holdings, Inc.

Purpose/Outcomes	Approving the change in control of a solid waste collection franchise.
Fiscal Impact	N/A
Funding Source	N/A
Duration	Until terminated by the Board
Previous Action	Solid Waste Commission approval on August 18, 2021
Strategic Plan Alignment	Build public trust through good government and ensure safe, healthy and secure communities
Counsel Review	Reviewed and approved by Counsel 8-30-21 SC
Procurement Review	Was the item processed through Procurement? NO If no, provide brief explanation: Not required.
Contact Person	Rick Winterhalter, Sr. Sustainability Analyst DTD Sustainability & Solid Waste 503-742-4466

The Clackamas County Solid Waste and Waste Management Code (10.03.250) allows the holder of a solid waste or wastes Collection Service Franchise to change control of the franchise to other persons by providing written notification to the County of the proposed change and with approval from the Board. The Board may approve the transaction with a recommendation from the Solid Waste Commission.

The Kahut family owns and manages Hoodview Disposal and Recycling, Inc., Canby Disposal Company and West Linn Refuse & Recycling, Inc. These companies hold solid waste collection franchises in the County and in the cities of Canby, Milwaukie, Sandy, and West Linn.

The Kahut's relationship with the County began 47 years ago when brothers Fred and Jerald Kahut and a partner, George Findling, purchased Canby Disposal Service, incorporated as Canby Disposal Company and received approval from the Board to provide services in franchise 70-1-C.

Since that time, the Kahut family has purchased other companies and the Board has approved the associated franchise transfers, through sales and change in control. Hoodview Disposal and Recycling, Inc. (Hoodview) holds several franchises. The largest area is the B&J Garbage franchise 70-19-C. This transfer was approved by the Board in 2002. The other three franchises held by Hoodview were originally held by members of the Deines family (70-3, 4, & 5 –C). These franchises border the cities of Milwaukie and Portland. Annexations by the City of Milwaukie are eroding the already small number of customers in these franchises. The Board approved the franchise transfers in 2011 and 2017. For future disposition of these franchised areas they will be combined as the Hoodview franchised area and numbered (70-19,3,4,5-C).

West Linn Refuse & Recycling, Inc. (WLR&R) has a franchise to serve the City of West Linn granted by the City. The majority of the twenty-two (22) County customers served by this company, through the County's franchise, are all within the urban growth boundary of the City. There are seven tax lots in the County franchise outside the city boundary. The Board approved the transfer of all of the customers, from the previous franchisee, to WLR&R in 2002.

In mid-July staff was verbally notified that the three companies were seeking a change in control of the solid waste collection franchises held by Canby Disposal Company, Inc., Hoodview Disposal & Recycling, Inc.; and West Linn Refuse & Recycling, Inc. to another County franchisee. A letter was received on August 3, 2021 from the attorney representing the three (3) companies that the stock in the companies was to be sold to Kahut Companies Holdings, Inc., a wholly owned subsidiary of Waste Connections US, Inc. and further requested the County's approval of the franchise change in control. On the same day, the County received the application for the change in control. Staff reviewed and accepted the application as complete.

Waste Connections of Oregon, Inc., a wholly owned subsidiary of Waste Connections US, Inc. (WCI), currently holds two county solid waste collection franchises, the American and Mt. View franchises. These franchises serve approximately 2,500 customers in the rural area outside Estacada. The Board approved the transfer of the American franchise (70-25-C) in 2002 when WCI purchased American Sanitary Service, Inc. The Board approved the Mt. View (70-17-C) franchise transfer in 2003 when WCI dba Arrow Sanitary Service, Inc. purchased Mt. View Sanitary Service, Inc. Waste Connections of Oregon, Inc. is a County solid waste collection franchisee in good standing.

Waste Connections of Oregon, Inc. has proven they have the available land, equipment and personnel to carry out the requirements of a franchise holder in Clackamas County.

This change in control means all the equipment, land and personnel currently owned or managed by the current County franchisees will be available to WCI. The company intends to continue serving these franchises from the current locations.

WCI will also be acquiring KB Recycling, a processing facility for dry waste and curbside recyclables in Clackamas and the Canby Transfer Station in Canby. The County does not franchise, license or permit these facilities; therefore they are not subject to the recommended action.

The Solid Waste Commission discussed this issue and recommended approval on August 18, 2021. The report has been reviewed and approved by County Counsel.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners approve the change in control of the following franchises: 70-1-C from Canby Disposal Company; 70-19,3,4,5-C from Hoodview Disposal and Recycling, Inc., and 70-15-C from West Linn Refuse & Recycling, Inc. to Kahut Companies Holdings, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Winterhalter". The signature is fluid and cursive, with a large initial "R" and "W".

Rick Winterhalter, Sustainability Analyst, Sr.

Attachments

1. Letter Requesting Change in Control
2. Application Change in Control/Board Signature Page
3. Franchise Map: Canby
4. Franchise Map: Hoodview
5. Franchise Map: West Linn



August 3, 2021

VIA E-MAIL: rickw@clackamas.us

Rick Winterhalter
Sustainability & Solid Waste Program
Clackamas County
150 Beaver Creek Rd
Oregon City, OR 997045

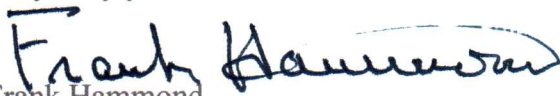
RE: Franchise Transfer

Dear Mr. Winterhalter:

I represent Canby Disposal Company, Hoodview Disposal & Recycling, Inc., and West Linn Refuse & Recycling, Inc (collectively, the "Companies"). This is to notify you that the Companies are being purchased by Kahut Companies Holdings, Inc., a wholly owned subsidiary of Waste Connections US, Inc. The Companies request that the County consent to this change in control of the Companies.

Thank you for your consideration. Please contact me if you have any questions concerning this request.

Very truly yours,


Frank Hammond

FH/jh

cc: Raymond Kahut
Michael Dell


503-837-3471

1050 SW 6th Ave., Suite 1100, Portland, OR 97204
frank@frankhammondllaw.com
frankhammondllaw.com



DAN JOHNSON
DIRECTOR

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

**APPLICATION FOR CLACKAMAS COUNTY'S CONSENT TO A
CHANGE IN CONTROL OF
SOLID WASTE COLLECTION FRANCHISES**

Any change in control of a solid waste franchise in Clackamas County requires completion of this application. All requested information must be provided and application must be signed by all parties in order for change in control to be considered by County

Date of Application July 30, 2021

1. INFORMATION ON DISTRICTS/ROUTES TO BE TRANSFERED

Provide the number of customers serviced by the current franchisees (Transferor) that will be served by the applicant (Transferee) if this change in control is approved by the County. For multifamily and commercial, use the number of service addresses where service is provided, not the number of paid accounts.

	Canby (70-1-C)	West Linn (70-15-C)	Hoodview (70-19,3,4,5-C)
Residential	1,281	22	4,879
Multifamily (5 units or more)	3	0	5
Commercial	119	0	277

2. INFORMATION ON TRANSFEREE

Business Legal Name **Kahut Companies Holdings, Inc.**

Business DBA Name _____

Mailing Address **c/o Waste Connections**

12115 NE 99th Street Suite 1830

Vancouver, Washington 98682

Attention: Division Vice President

Location of Office (if different) _____

Website Address http://kahutwasteservices.com/

Contact Person

Name & Title Jason Hudson, Division Vice President

Mailing Address (if different) _____

Office Phone 503-318-1572

Office e-mail Jasonh@wcnx.org

Person Responsible for Management _____

Of this Franchise (if different) _____

Type of Organization: Delaware corporation qualified to conduct business in the State of Oregon

Other Companies Controlled by Transferee (list for each):

Names of Company	<u>Canby Disposal Company</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Refuse & Recycling Collection</u>
Name of Company	<u>Canby Transfer & Recycling, Inc.</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Refuse & Recycling Transfer</u>
Name of Company	<u>Hoodview Disposal & Recycling, Inc.</u>
Location	<u>Clackamas, OR</u>
Business Activity	<u>Refuse & Recycling Collection</u>
Name of Company	<u>K.B. Recycling, Inc.</u>
Location	<u>Clackamas, OR</u>
Business Activity	<u>Recycling Processing</u>
Name of Company	<u>West Linn Refuse & Recycling, Inc.</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Refuse & Recycling Collection</u>
Name of Company	<u>Kahut Investment Holdings, LLC</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Real Estate</u>

If Transferee is a Subsidiary of Another Corporation:

Name of Parent Company Waste Connections US, Inc.

If Transferee is a Partnership:

Names of partners and percentage of partnership interest held by each

_____	_____
_____	_____
_____	_____
_____	_____

Continue on separate sheet of paper, if necessary.

3. AREAS CURRENTLY SERVED BY APPLICANT

List the jurisdictions in the Portland Metro Region and Clark County, Washington in which the Transferee or its principal officer(s) has provided solid waste, recycling and or composting service to customers during the past five years. Include length of time, in years, that service was provided and whether service was conducted under a franchise, permit, contract, or open market conditions. Note other business names used, if applicable.

Affiliates of the Transferee, Waste Connections of Washington, Inc. and Waste Connections of Oregon, Inc., dba Arrow Sanitary Service, dba American Sanitary Service, currently have franchise agreements with the City of Portland, City of Gresham, City of Estacada, Clackamas County, OR, and the City of Vancouver, City of Washougal, City of Camas and Clark County, Washington.

CONTRACTS LIST--Waste Connections Companies in Clark County Washington and Portland Metro Area

Dist Name	Customer Name	Serviced By	Start Date*	Related Customer Counts		
				Resi Counts	MF Counts	Comm Counts
Waste Connections of Washington	City of Washougal	Contract	03/23/09	5,276	19	208
Waste Connections of Washington	City of Camas - Recycling and Yard Debris	Contract	08/01/09	7,600	28	-
Waste Connections of Washington	Clark County G - Certificate 253	Certificate WUTC	10/26/97	74,034	NA*	4,352
Arrow Sanitary Service	Clackamas County	Franchise	01/01/02	2,352	159	167
Arrow Sanitary Service	City of Estacada	Franchise	01/01/02	455	-	26
Arrow Sanitary Service	City of Gresham	Franchise	7/1/98*	5,175	139	132
Arrow Sanitary Service	City of Portland	Franchise	7/1/98*	20,877	-	-
Arrow Sanitary Service	City of Portland - Commercial	Open Market	7/1/98*	85	624	1,957

*MF in Clark County are included in Commercial Count.

List the number of customers currently being serviced by the Transferee in each jurisdiction. For multifamily and commercial, use the number of service addresses where service is provided, not the number of paid accounts.

Jurisdiction See above Table

Date Transferee Began Operations See above Table

Residential See above Table

Multifamily (5 units or more) See above Table

Commercial See above Table

Continue on separate sheet of paper, if necessary.

4. DESCRIPTION OF SERVICES PROVIDED

Provide the number of customers currently served by the Transferee in the County. For multifamily and commercial, use the number of service addresses where service is provided, not the number of paid accounts.

	American (70-25-C)	Mt. View (70-17-C)
Residential	1,509	843
Multifamily (5 units or more)	159	0
Commercial	87	80

Are any of these customers served by a subcontractor? **No** If yes, list name(s) of subcontractor(s) and type(s) of service provided and number of customers served.

If the request for a franchise change in control is approved by the County and the Transferee intends to use a subcontractor to provide services within the County, they will be required to submit a separate application requesting approval from the Manager for each subcontractor.

5. VEHICLES

Complete the attached Fleet Sheet listing all vehicles that will be used for residential, multifamily or commercial collection within the County. Indicate which are currently owned, which would be acquired with the change in control, and which would be purchased new.

See attached Fleet Sheet for Kahut Companies Holdings, Inc.

6. EMPLOYEES & SERVICE

How many employees, calculated as full-time equivalents, will the Transferee have for each of the following functions? Indicate those that are currently employees of the Transferee, which would be acquired as part of the transfer and which would be hired new.

		<u>Overall operations</u>		<u>County only operations</u>	
Management:	Current	<u>6</u>	FTE	<u>1</u>	FTE
	Acquire	<u>4</u>	FTE	<u>.7</u>	FTE
	New	<u>2</u>	FTE	<u>.35</u>	FTE
Administrative	Current	<u>5</u>	FTE	<u>.9</u>	FTE
	Acquire	<u>3</u>	FTE	<u>.5</u>	FTE
	New	<u>2</u>	FTE	<u>.35</u>	FTE
Collection	Current	<u>46</u>	FTE	<u>8</u>	FTE
	Acquire	<u>46</u>	FTE	<u>8</u>	FTE
	New	<u>0</u>	FTE	<u>0</u>	FTE
Customer Service	Current	<u>10</u>	FTE	<u>1.7</u>	FTE
	Acquire	<u>10</u>	FTE	<u>1.7</u>	FTE
	NEW	<u>0</u>	FTE	<u>0</u>	FTE
Maintenance	Current	<u>10</u>	FTE	<u>1.7</u>	FTE
	Acquired	<u>10</u>	FTE	<u>1.7</u>	FTE
	NEW	<u>0</u>	FTE	<u>0</u>	FTE

Headcount for County operations is based on a customer county allocation.

Please list times and days of week your office will be open and conducting administrative business such as customer service, payment acceptance, and billing. Monday – Friday, 8:00 a.m. to 5:00 p.m.

7. DETAIL COST REPORT

If the transferee is not currently a franchisee in the County, but is a permitted or licensed hauler elsewhere in the Metro Region, attach the most recent Detail Cost Report submitted in the jurisdiction in which you serve the most customers.

See most recent Detail Cost Report submitted by Arrow Sanitary Service.

8. INSURANCE

List the carrier names, carrier phone numbers and account numbers for the insurance coverage that the transferee will use to provide coverage for its County operations.

Coverage Type	Carrier Name	Local Agent	Name/Phone #	Policy #
General Liability	ACE American Insurance Company	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	HDOG72492547
Auto Liability	ACE American Insurance Company	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	ISA H25544717
Workers Compensation	Indemnity Insurance Company of N A	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	WLR C67816389 (AOS) WLR C67816420 (CA, MA)
Umbrella	ACE Property & Casualty Insurance Company	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	XEUG27614620 007

9. ADDITIONAL INFORMATION FOR NON-FRANCHISEES / PERMITTEES

If the transferee is not currently a franchisee in the County, attach the following documents:

- U.S. Department of Transportation verification of compliance
- Certificate of Insurance indicating public liability and property damage coverage with a combined single limit of not less than \$1,000,000 per occurrence
- Certificate (form CG-20-12) naming the County, their officers and employees as additional insured

NOTICE: THE ABOVE INFORMATION IS NOT EXEMPT FROM DISCLOSURE UNDER STATE PUBLIC RECORDS LAW.

10. ATTEST TO COMPLY AND VERIFY ACCURACY OF APPLICATION

I, the Transferee, certify that I have read, understand and shall abide by the following regulatory requirements:

- Clackamas County Code Chapter 10.03.
- Clackamas County Solid Waste and Recycling Collection Services Administrative Regulations for Franchisee & Customer

I certify that all employees have access to, are familiar with and shall abide by these regulations.

I, the undersigned, verify that all information submitted on this form is truthful and accurate, and that I am authorized to complete and submit this application.

Signed:  Date: 8/3/2021

Print name: Jason W. Hudson Title: Division Vice President

Address: 12115 NE 99th Street, Suite 1830 Phone: 503-318-1572

Vancouver, WA 98682

RELEASE OF ADDITIONAL INFORMATION

I authorize the County and/or its representatives to request any information they find necessary to verify the transferee's technical, financial and legal qualifications to operate this franchise. Those who are asked for information related to this inquiry may accept a copy of this document as their authorization to release such information.

Kahut Companies Holdings, Inc.

Company Name


Signature

Division Vice President
Title

8/3/2021
Date

Jason W. Hudson

Name (please print)

TRANSFeree

1. I SHALL notify the County of any intent to change principal ownership or name of the business entity holding the franchise(s).
 YES NO
2. I SHALL submit a written request to receive the forms for Change in Control, Name Change, or Transfer of the Franchise Holder prior to either action occurring.
 YES NO
3. I SHALL notify the County of any intent to transfer the franchise(s) to another person or entity.
 YES NO
4. I SHALL be bound by the County's decision to accept or deny a Change in Control, Name Change, or Transfer of the franchise(s).
 YES NO
5. I recognize the County's authority to revoke the privileges of holding the franchise(s) associated with this Change in Control, Name Change, or Transfer without compensation.
 YES NO
6. I recognize the County's authority to realign the borders of the area served by this franchise.
 YES NO
7. I HAVE not willfully misrepresented the material facts or information given in this application for a franchise.
 YES NO
8. I SHALL not willfully misrepresent material facts or information given in a future application for a franchise.
 YES NO
9. I SHALL comply with all policies established by the County during the Franchise period.
 YES NO
10. I SHALL use only authorized disposal sites.
 YES NO
11. I SHALL notify the County of all disposal sites used at the time of this application and when those sites change.
 YES NO
12. I SHALL furnish the County with a Certificate of Insurance and comply with Section 10.03.160 B 4, 5 and 6 of the Clackamas County Solid Waste and Waste Management Code and any subsequent amendments of regulations adopted thereto.
 YES NO
13. I SHALL make accurate and timely franchise fee payments due the County under the Clackamas County Code and any subsequent amendments of regulations adopted thereto.
 YES NO

14. I SHALL submit, on forms provided by the County, the production records of the transferor beginning January 1 of the year of the transfer to the closest month end prior to the submittal of the request for transfer.
 YES NO
15. I SHALL separately submit, on forms provided by the County, the financial and production records of the transferor beginning January 1 of the year of the transfer to the date of the transfer as determined by the Board of County Commissioners. If the transfer takes place in the first quarter the submittal date shall be June 10; if in the second quarter the submittal date shall be September 10, if in the third quarter the , submittal date shall be September 10; in in the fourth quarter the submittal shall be the same as required for the annual financial review.
 YES NO
16. I SHALL separately submit, on forms provided by the County, the financial and production records produced by me after assuming operational responsibility of the franchise at the time of required submittal for the annual financial review.
 YES NO
17. I SHALL combine, on forms provided by the County, the financial and production records produced by the transferor prior to my assuming operational responsibility of this franchise, with the production records produced by me after assuming operational responsibility, in order to meet the County's requirement for generation of the annual financial review report.
 YES NO
18. I SHALL maintain collection vehicles, equipment, facilities and personnel commensurate with existing service.
 YES NO
19. I SHALL continue to serve customers at the level of service they are accustomed to at the time of the transfer.
 YES NO
20. I SHALL notify the County of any intention to change the level of service provided to customers at the time of the transfer.
 YES NO
21. I SHALL notify the County of any impending changes to collection vehicles, equipment, facilities and personnel (management and other County contacts) during the franchise period.
 YES NO
22. I SHALL secure written approval of the County prior to making changes to collection vehicles, and equipment affecting a change in service delivery from that of the transferor.
 YES NO
23. I SHALL not willfully refuse to provide adequate service in a defined service area.
 YES NO

24. I SHALL not willfully misrepresent the total number of customers or any other information relating to performing the operations necessary to comply with the Clackamas County Code and any subsequent amendments of regulations adopted thereto.
 YES NO

25. I SHALL not willfully violate the Clackamas County Code, Administrative Rules, ORS Chapter 459 and 459A, or the rules or regulations promulgated there under and any subsequent amendments of regulations adopted thereto.
 YES NO

26. I SHALL provide the best possible integrated solid waste collection service in the area served by my Clackamas County Franchise.
 YES NO

TRANSFeree (BUYER)

I/we agree to the above commitments and will attend any Board of County Commission or Solid Waste Commission meeting on this matter to answer any questions regarding the change in control of the franchise by any Board, Commission or staff member.

(signature) 

(signature)

Jason W. Hudson

(print name)

(print name)

Division Vice President

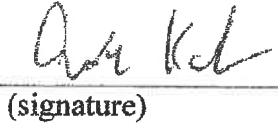
Title

Title

DATE: 8/3/21

TRANSFEROR (SELLER)

I/we agree to the change in control of the franchise to Transferee :

(signature) 

(signature)

Andrew Kahit

(print name)

(print name)

President

Title

Title

DATE: 8-3-21

Clackamas County Board of Commissioners
Approval of Change in Control of Solid Waste Collection
Franchises

This application comes before the Board on _____.
After having reviewed all materials and considering the
recommendations of staff, the Solid Waste Commission, and
anyone else submitting comments or information, the Board
hereby approves the application for change in control of these
franchises.”

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

Attachment 3

OREGON CITY
GARBAGE CO.

REPUBLIC
SERVICES

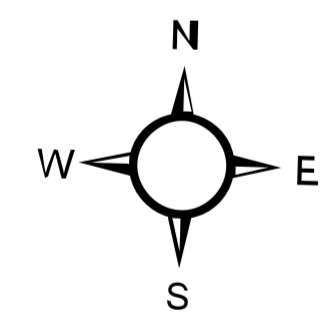
CANBY
DISPOSAL

MOLALLA
SANITARY

Canby-(70-1-C)

Hauler Boundaries

- Canby Disposal
- Molalla Sanitary
- Oregon City Garbage Co.
- Republic Services



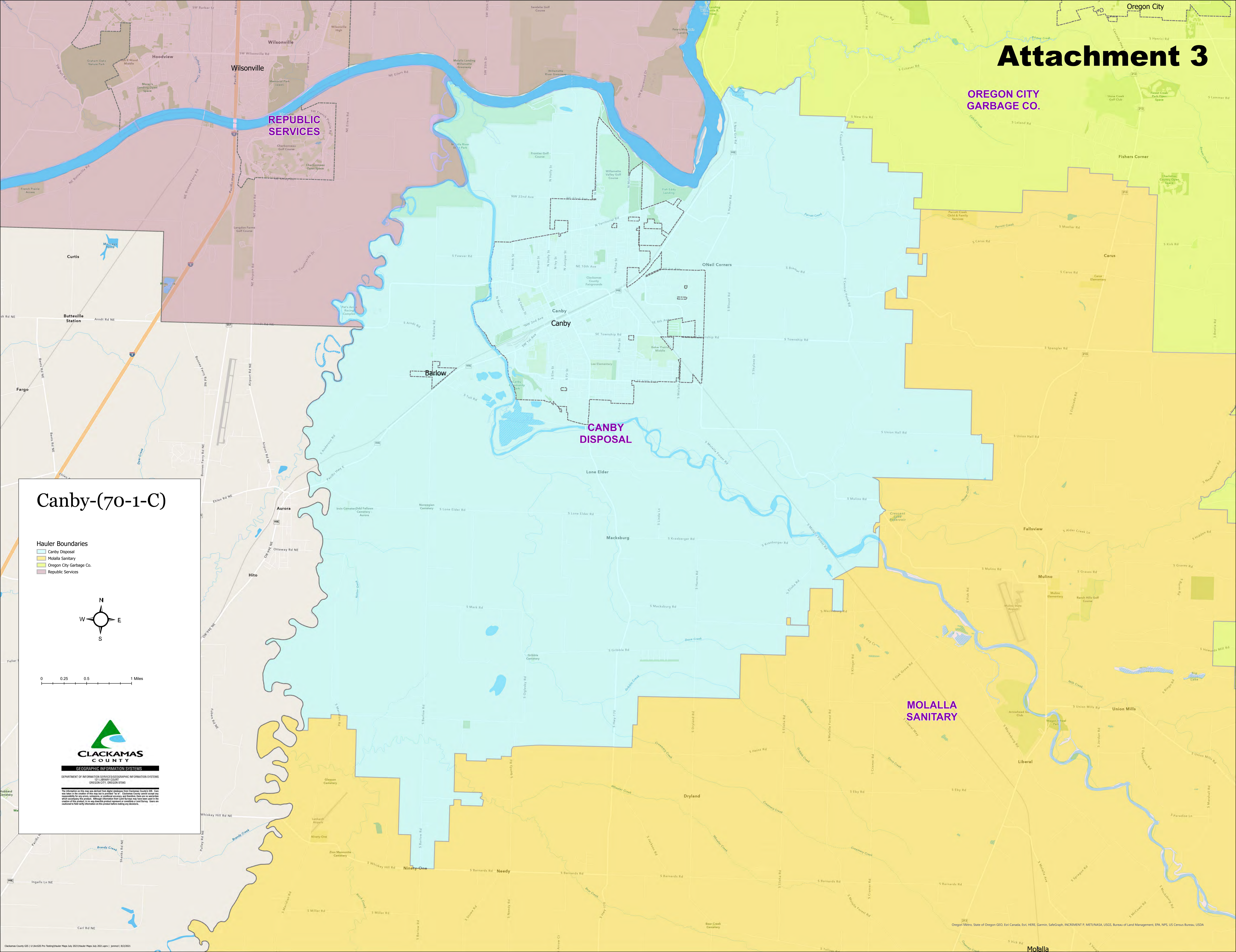
0 0.25 0.5 1 Miles



CLACKAMAS COUNTY
GEOGRAPHIC INFORMATION SYSTEMS

DEPARTMENT OF INFORMATION SERVICES/GEOGRAPHIC INFORMATION SYSTEMS
1211 LIBRARY COURT
OREGON CITY, OREGON 97143

The information on this map was derived from digital datasets from Clackamas County GIS. Data was taken in the creation of this map but is provided "as is". Clackamas County cannot accept any responsibility for any errors, omissions, or outdated accuracy of the information. There are no warranties made concerning the product. Although information that Clackamas County does not own is included in the creation of this product, it is only Clackamas County's responsibility to ensure that the information is accurate to the best of its knowledge at the time of publication. Clackamas County is not responsible for any errors or omissions that may appear in this product.



Waste Management of Oregon

Arrow Sanitary

Hoodview Disposal & Recycling, Inc.

Waste Management of Oregon

Hoodview-(70-19,3,4,5-C) Map 2

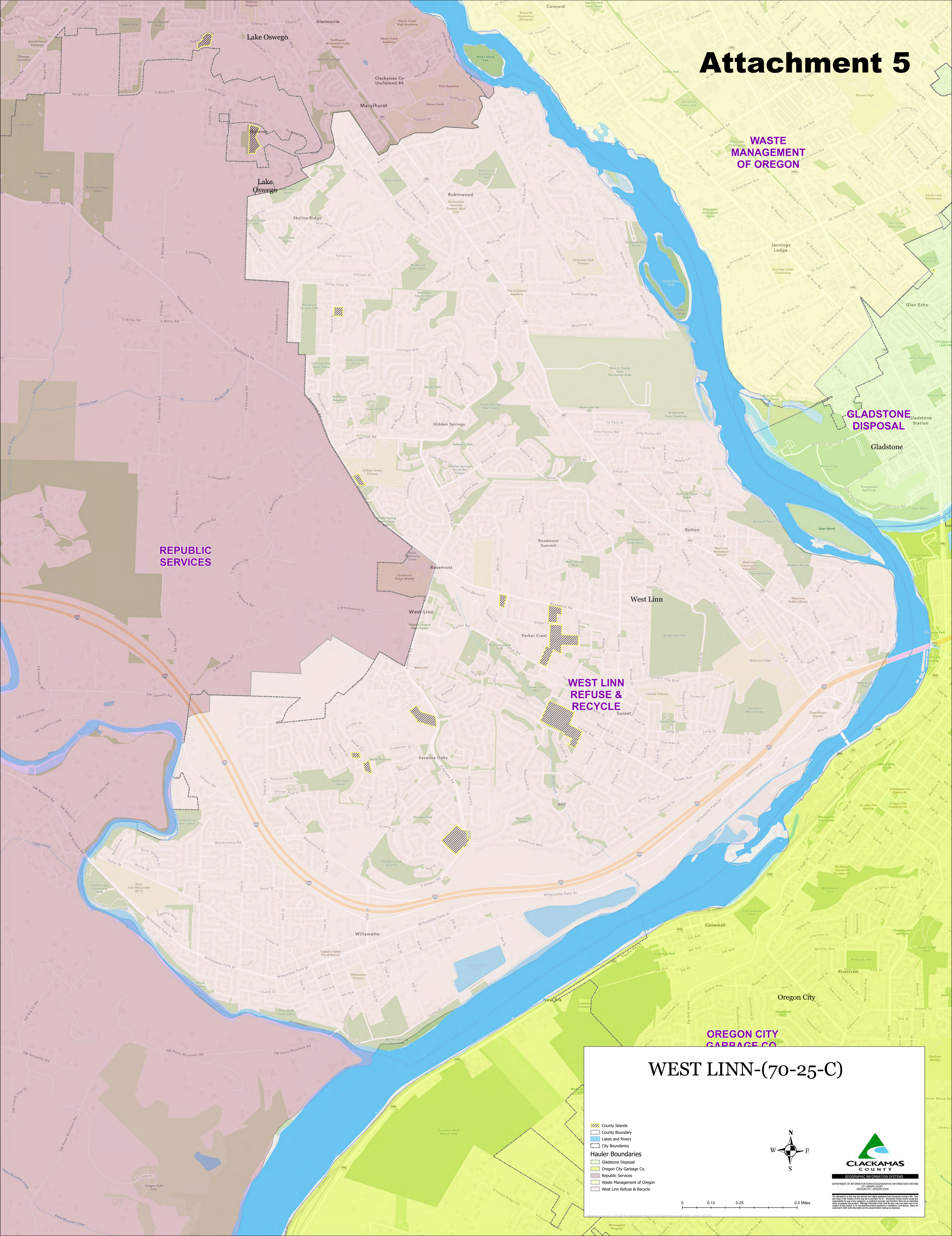
- County Boundary
- Hood View Disposal
- City of Milwaukie and Hoodview Disposal Intersect
- Lakes and Rivers
- City Boundaries
- Hauler Boundaries



0 1,000 2,000 4,000 6,000 Feet

Department of Information Services/Geographic Information Systems
101 10000 0000
OREGON CITY, OREGON 97143

Attachment 5



REPUBLIC SERVICES

WEST LINN REFUSE & RECYCLE

WASTE MANAGEMENT OF OREGON

GLADSTONE DISPOSAL

OREGON CITY GARBAGE CO.

WEST LINN-(70-25-C)

Legend

- County Islands
- County Boundary
- Lakes and Rivers
- City Boundaries
- Hauler Boundaries
- Gladstone Disposal
- Oregon City Garbage Co.
- Republic Services
- Waste Management of Oregon
- West Linn Refuse & Recycle

Scale: 0 0.13 0.25 0.5 Miles

North Arrow

CLACKAMAS COUNTY
GEOGRAPHIC INFORMATION SYSTEMS
DEPARTMENT OF INFORMATION SERVICES/GEOGRAPHIC INFORMATION SYSTEMS
OREGON CITY, OREGON 97143



DAN JOHNSON
DIRECTOR

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

September 16, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement with
Confluence Environment Center for an AmeriCorps Member

Purpose/Outcome	Embedding an AmeriCorps member from the Confluence Environment Center's AmeriCorps program with Clackamas County.
Dollar Amount and Fiscal Impact	\$14,000
Funding Source	DTD solid waste franchise fees (restricted funds only). No General Funds
Duration	10 months, ending July 29, 2022
Previous Board Action / Review	Board approved an Agreement with Confluence Environmental Center for an AmeriCorps Member in FY 20-21 and in prior years.
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> Our program provides a lead role in meeting the County's obligations to support waste reduction and recycling throughout the county through technical assistance, outreach and education.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> In addition to fulfilling state and regional requirements, waste reduction and recycling outreach and technical assistance align with the Performance Clackamas goal to Honor, Utilize, Promote and Invest in our Natural Resources. These activities also support the policy perspective of carbon neutrality.</p>
Counsel Review	This agreement was reviewed by County Counsel (AN) and approved on 08/17/2021.
Procurement Review	<p>1. <i>Was the item processed through Procurement?</i> No</p> <p>2. <i>If no, provide brief explanation:</i> Item is effectively an internship placed through a non-profit AmeriCorps partner; subject to Board approval but not procurement process.</p>
Contact Person	Eben Polk, Supervisor, DTD-Sustainability & Solid Waste – 503-742-4470
Contract No.	Confluence AmeriCorps Service Agreement No CEC-AC-2022-02

BACKGROUND:

This agreement with the Confluence Environment Center, a 501(c)3 non-profit sponsor of AmeriCorps members, confirms the County as host of an AmeriCorps member during Fiscal Year 21-22, to work with the Sustainability & Solid Waste program on waste reduction and recycling education and outreach initiatives focused on Clackamas County multifamily communities and wasted food reduction.

Hosting an AmeriCorps member is included in the approved Sustainability and Solid Waste FY 21-22 budget. The agreement is effective September 8, 2021, through July 29, 2022.

RECOMMENDATION:

Staff respectfully recommends the Board approve this Agreement with Confluence Environment Center for an AmeriCorps Member and authorize Dan Johnson, DTD Director, to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eben Polk". The signature is fluid and cursive, with a large initial "E" and "P".

Eben Polk, Supervisor

Department of Transportation & Development – Sustainability & Solid Waste Program



CONFLUENCE AMERICORPS PROGRAM SERVICE AGREEMENT
Between
Confluence Environmental Center and Clackamas County
#CEC-AC-2022-02

RECITALS

- A.** Confluence Environmental Center (CEC) is a non-profit organization located in Portland, Oregon. CEC oversees a program named the Confluence AmeriCorps Program, (“the AmeriCorps Program”) in technical partnership with Palouse-Clearwater Environmental Institute (PCEI) in Moscow, ID. The AmeriCorps Program engages volunteers to serve on community-based projects to preserve and restore the natural environment in racially, ethnically and socioeconomically diverse communities in the Portland region.
- B.** CEC was awarded formula funding, via Oregon Volunteers, from the Corporation for National and Community Service to implement the AmeriCorps Program. Confluence operates the AmeriCorps Program by enrolling AmeriCorps Members (“Members”), and placing the Members with community organizations, government agencies or school/educational districts.
- C.** The Project Partner (“Partner”) is a community organization, government agency or school/educational district that has a significant unmet community need. CEC will address the community need by placing Members to serve on a service project proposed by the Partner and described in Exhibit C.
- D.** The “Supervisor” is a designated employee or representative of the Project Partner who provides day-to-day supervision in the execution of the service project.
- E.** This AmeriCorps Service Agreement (“Agreement”) addresses the obligations owed by CEC and the Supervisor regarding Members that CEC places with the Partner.

AGREEMENT

1.0. PURPOSE: CEC and the Partner are entering this Agreement to provide Confluence AmeriCorps Members to the Partner. The Partner’s project shall be implemented in accordance with and subject to the terms and conditions in this Agreement.

2.0. TERM: The term of this Agreement is from **September 8, 2021 to July 29, 2022** unless the Agreement is terminated in accordance with Section 6.

3.0. RESPONSIBILITIES OF CEC: CEC shall, through its own activities and/or through its technical partnership with PCEI:

- 3.1.** Perform all duties set forth in Exhibit C.
- 3.2.** Provide Members with AmeriCorps Pre-Service Orientation.
- 3.3.** Provide a contact person, specified in Exhibit C, to facilitate and support the Partner in matters relating to the service project, including but not limited to overseeing the completion of Confluence duties, general supervision, recognition, discipline of Members that are placed with the Partner, coordination of invoices, and monthly communications.
- 3.4.** Provide Members a living allowance and health insurance if the Member is eligible for health benefits.
- 3.5.** Provide workers’ compensation coverage for Members while the Member conducts approved service

activities.

3.6. Provide Members with appropriate AmeriCorps identifiers, uniforms and necessary protective equipment to wear during service hours.

3.7. Provide all forms the Partner is required to complete, including but not limited to in-kind donation forms and Member evaluation forms.

3.8. Provide a directive to Members requiring them to: review job hazard analysis, observe any required dress codes, use necessary safety equipment, follow all CEC safety procedures and comply with all Partner's administrative procedures, policies, rules and regulations.

3.9. Invoice the Partner for its financial obligations in accordance with Exhibit C.

3.10. Conduct criminal history background checks on all Members. Until final results of the fingerprint background check are confirmed, Members must be accompanied by an authorized supervisor when in contact with vulnerable populations (children, persons age 60 and older, and people with disabilities). CEC shall refuse to engage with such Members if the Member has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or sexual abuse.

3.11. Provide supervision and direction to Members in those situations that pertain to Confluence duties in Exhibit C.

3.12. Ensure that Member payroll taxes are paid to the extent required under the law.

4.0. RESPONSIBILITIES OF THE PARTNER: The Partner shall:

4.1. Perform all Partner duties set forth in Exhibit C.

4.2. Work with Members to complete the service project described in Exhibit C in accordance with and subject to the terms and conditions in this Agreement.

4.3. Provide a Partner representative as specified in Exhibit C to facilitate communications and provide technical assistance and support to the extent it is necessary to ensure successful completion of the project.

4.4. Ensure that permits are obtained and regulatory requirements for project-related work are met.

4.5. Verify Member driving eligibility prior to the start of the service. Confluence does not request driving abstracts or otherwise screen for safe driving.

4.6. Provide reasonable accommodation for Members who disclose a disability.

4.7. Publicize to the media and to the community, to the greatest extent practical, CEC's partnership with the Partner's organization.

4.8. Submit documentation detailing the value of noncash (in-kind) contributions the Partner provided in support of the project.

4.9. Provide adequate training, office space and the necessary equipment for Members to successfully provide project services set forth in Exhibit C.

4.10. Provide tools that are necessary for the project and not already available through CEC.

4.11. Recognize that whenever Members serve with students of local schools and/or with volunteers (youth or adult) on projects outlined in this Agreement, it is in a technical assistance/mentoring capacity. CEC is not responsible for the supervision, discipline, safety or transportation of students or adult volunteers.

4.12. Support CEC policy that requires Members to wear AmeriCorps uniforms or identifiers.

4.13. Comply with the AmeriCorps' Prohibited Activities policy set forth in Exhibit A.

4.14. Pay CEC invoices within 30 days of the invoice date.

4.15. Support the Member in recruiting and tracking volunteers to support the project.

4.16. Refuse to allow any employee under this Agreement who may have recurring access to vulnerable populations (children, persons age 60 and older and individuals with disabilities) to work on the project described in Exhibit C if, to the Partner's actual knowledge, the person has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or a sexual offense.

4.17. Provide supervision and direction to Members while Members are working on the Partner's projects or the Partner's property or service site.

4.18. Ensure the Member is aware of her/his performance throughout the term of service.

4.19. Ensure the Member activities do not generate operating revenue for the organization.

4.20. Ensure the Member does not perform services, duties or other activities that were assigned to an

employee.

4.21. Establish measurable and achievable goals for the project and support the Member in accurately reporting the extent to which these goals were met.

4.22. Evaluate CEC at the conclusion of the project using online Partner surveys and forms provided by CEC.

5.0. PARTNER HANDBOOK: All parties agree to comply with the terms set forth in the enclosed Partner Handbook.

6.0. TERMINATION:

6.1. Mutual Agreement. This Agreement may be terminated by CEC and the Partner's mutual written agreement. This Agreement may be terminated by Partner for convenience upon providing CEC sixty (60) day's written notice. Upon termination pursuant to this Section 6.1, CEC shall be entitled to receive prorated payment for services rendered through the termination date. If CEC has received full payment for the agreement term prior to the termination date, CEC shall retain an amount equal to its prorated share through the termination date and CEC shall reimburse the Partner the balance of the payment for the agreement term within thirty (30) days of the termination date. Prorations shall be based on the full agreement term defined in Section 2 of this Agreement.

6.2. Breach. This Agreement may be terminated by either CEC or the Partner if the other party violates a provision of this Agreement and the violation is not adequately addressed within fifteen (15) days after the violating party receives notice of the violation. If CEC terminates this Agreement pursuant to this Section 6.2, the Partner shall pay CEC the entire balance of any outstanding fees that are owed pursuant to Exhibit C. The outstanding balance shall be paid within thirty (30) days of the date CEC notifies the Partner that the Agreement has been terminated. If Partner terminates this Agreement pursuant to Section 6.2, CEC will only be entitled to receive a prorated payment for services rendered through the termination date. If CEC has received full payment for the agreement term prior to the termination date, CEC shall retain an amount equal to its prorated share through the termination date and CEC shall reimburse the Partner the balance of the payment for the agreement term within thirty (30) days of the termination date. Prorations shall be based on the full agreement term defined in Section 2 of this Agreement.

6.3. Immediate Termination. CEC or the Partner may immediately terminate this Agreement if the other party knowingly allows any person who will be working on the project as described in Exhibit C and who may have recurring access to vulnerable populations (children, persons age 60 and older and individuals with disabilities) if any such person has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or sexual abuse.

7.0. ASSIGNMENT: Neither CEC nor the Partner may assign this Agreement, or any interest herein, without the prior written consent of the other party.

8.0. EMPLOYMENT RELATIONSHIP: All Parties understand and agree that this Agreement is not intended and shall not be construed as creating an employment relationship between CEC and the Partner or between Members and the Partner, their respective officers, employees and agents. All parties agree that Members are solely the employee of CEC, shall not be considered or treated as employees of the Partner.

9.0. INDEMNIFICATION:

9.1. CEC. To the extent authorized by Oregon law, CEC agrees to defend, indemnify and hold harmless the Partner and its officers, employees and agents from and against claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including attorney's fees, that may arise as a result of CEC's performance under this Agreement.

9.2. Partner. Subject to the conditions and limitations of Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution Article XI, Section 10, Partner agrees to defend, indemnify and hold harmless CEC and their officers, employees and agents from and against claims, actions, proceedings, liabilities, losses,

damages, costs and expenses, including attorney's fees, that may arise as a result of the Partner's performance under this Agreement.

10.0. INSURANCE:

10.1. CEC. Through its technical partnership with PCEI, CEC will carry Workers' Compensation insurance for Members to cover claims or compensation that is owed for injuries that Members may incur while Members are providing the services described in Exhibit C. Partner will not direct Member to provide services beyond those identified in Exhibit C or to provide services in a manner that violates the law or conflicts with any requirements of this Agreement.

10.2. Partner. Unless waived in writing by an authorized CEC representative, the Partner shall be self-insured or carry general liability insurance and automobile insurance if Members are using Partner vehicles that cover the Members while Members are providing project services that are identified in Exhibit C. The Partner shall provide evidence in a form that is approved by CEC that the Partner has the insurance required under this Section 10.2.

11.0. WAIVER: Absent a written Agreement signed by both CEC and the Partner acknowledging a waiver of any provision in this Agreement, failure by either party at any time to require performance of any provision in this Agreement by the other party shall in no way affect the parties' rights to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of this Agreement be held to be a waiver of any succeeding breach or a waiver of this clause.

12.0. SEVERABILITY: If any terms in this Agreement or application thereof to any person or circumstance are held invalid, then such invalidity shall not affect other terms or applications of the Agreement which can be given effect without the invalid term or application, and to this end, the terms of this Agreement are declared severable.

13.0. MEDIATION: If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, CEC and the Partner agree first to try in good faith to settle the dispute by mediation.

14.0. COMPLIANCE WITH APPLICABLE LAW: The Parties agree to comply with all federal, state and local laws, including but not limited to statutes, rules and regulations which prohibit discrimination on the basis of race, color, creed, religion, national origin, age, gender, sexual orientation, marital status or the presence of any sensory, mental or physical disability, or which prohibit the release of confidential student information (the Family Educational Rights and Privacy Act) or which require child abuse reporting.

15.0. NOTICE: All notices required under this Agreement shall be deemed to have been properly provided upon deposit of the notice in the United States mail, postage prepaid, addressed to the parties as follows:

AmeriCorps Program:

Confluence Environmental Center
5441 SE Belmont Street, Suite 25
Portland, OR 97215

Project Partner:

Clackamas County, Sustainability & Solid Waste
150 Beaver Creek Road
Oregon City, OR 97045

16.0. WHOLE AGREEMENT: The Parties agree that this Agreement constitutes the entire agreement between the parties and supersedes all prior or existing written or oral agreements between the parties and may not be amended other than in writing signed by the parties.

17.0. AUTHORITY: The individuals executing this Agreement represent that they have the legal authority under applicable laws or actions by their respective Boards of Directors to execute this Agreement and bind their

respective organization.


18.0 Required Terms: The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

19.0. DEBT LIMITATION. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year indicated below. By signing, the Partner certifies that the project described in Exhibit C is unfunded or underfunded to the extent that the Partner requires assistance from Members to complete the project and that Members are not displacing existing or potential workers to complete the project.

Confluence Environmental Center (CEC)

Adriana Escobedo-Land
CEC Board President **Name**


CEC Board President **Signature**

7/21/2021
Date

Partner Organization

Agreement Signee **Name**

Agreement Signee **Signature**

Date

Confluence AmeriCorps Program

Elizabeth Cabral
Program Director **Name**


Program Director **Signature**

7/15/2021
Date

Approved as to Form (if applicable)

Andrew Naylor
County Attorney/Designee **Name**


County Attorney/Designee **Signature**

08/17/2021
Date

Please review, sign/date and **email** your Partner Agreement to Elizabeth Cabral at ecabral@confluencecenter.org within 30 days of receipt.

An executed copy will be emailed to you.

AMERICORPS SERVICE AGREEMENT
Exhibit A - Prohibited Activities and Ineligible Organizations

Federal law and the Corporation for National and Community Service (“Corporation”) policy prohibit AmeriCorps Programs and Members from engaging in certain activities while using Corporation funds or on Corporation time. Members are not prohibited from engaging in any of these activities in their personal capacities and on their own time. If there is any question about whether a certain activity is permissible, please contact Confluence. Examples of prohibited activities include, but are not limited to:

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts or strikes;
- c. Assisting, promoting or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining Contracts;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to--
 - i. a business organized for profit,;
 - ii. a labor union;
 - iii. a partisan political organization;
 - iv. a non-profit organization that fails to comply with the restrictions contained in Section 501c(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent Members from engaging in advocacy activities undertaken on their own initiative; and
 - v. an organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support the religious activities;
- i. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Election and Polling Activities. AmeriCorps member may not provide services for election or polling locations or in support of such activities.
- l. Census Activities. AmeriCorps members and volunteers associated with AmeriCorps grants may not engage in census activities during service hours. Being a census taker during service hours is categorically prohibited. Census-related activities (e.g., promotion of the Census, education about the importance of the Census) do not align with AmeriCorps State and National objectives. What members and volunteers do on their own time is up to them, consistent with program policies about outside employment and activities.
- m. Such activities as the Corporation may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

Non-Displacement

Programs may not permit a Member to fill in for an absent employee. By law, Members may not under any circumstances perform services, duties, or activities that had been assigned to an employee or to an employee who has recently resigned or has been discharged. Programs may not use a Member in a way that will displace an employee or position or infringe on an employee's promotional opportunities. Provisions include:

- a. An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance;
- b. An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance;
- c. A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual;
- d. A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee;
- e. A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that –
 - i. Will supplant the hiring of employed workers; or
 - ii. Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures
- f. A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any -
 - i. Presently employed worker;
 - ii. Employee who recently resigned or was discharged;
 - iii. Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
 - iv. Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
 - v. Employee who is on strike or who is being locked out.

AMERICORPS SERVICE AGREEMENT
Exhibit B – Funding Source Certification
(To be completed and signed by the Supervisor)

1. Are the matching cash funds for this project coming from a federal source?

____ (Yes, go to 2) (No)


2. If yes, can you certify that the federal funds may be used to match funds for other federal grants*?

____ (Yes) ____ (No)

*To make this determination, check with your federal funder or refer to the federal guidance for your federal funding source. If you can use funds, please provide a letter from the authorized federal agent certifying that funds can be used to match other federal grants, in this case, with **Corporation for National and Community Service**. Please print your certification on letterhead, sign/date and submit to Confluence Environmental Center with your signed agreement.

Eben Polk _____

Supervisor **Name**

 _____

Supervisor **Signature**

08/17/21 _____

Date

AMERICORPS SERVICE AGREEMENT
Exhibit C – Scope of Service

1. **Position Title:** Waste Reduction Specialist
2. **Partner Name:** Clackamas County
3. **Service Site Location(s):** 150 Beaver Creek Road, Oregon City, OR 97045

4. **Contact Names:**

Confluence AmeriCorps Representative

Name: Elizabeth Cabral
Title: Program Director
Phone: 503-719-6779
Email: ecabral@confluencecenter.org

Partner Representative

Name: Eben Polk
Title: Program Supervisor
Phone: 503-742-4470
Email: epolk@clackamas.us

Project Supervisor

Name: Eben Polk
Title: Program Supervisor
Phone: 503-742-4470
Email: epolk@clackamas.us

5. **Service Activity Schedule:**

All Supervisors are required to attend *Supervisor Orientation* on August 19, 2021. The Member will begin their term of service with a CEC Member orientation beginning on September 8, 2021. The Supervisor will attend the final day of *Member Orientation* on September 14, 2021. The Supervisor will begin Site and Project Onboarding for the Member beginning September 15, 2021. The Member will serve 32-40 hours per week through July 29, 2022. The Supervisor will receive a Confluence AmeriCorps Program Calendar at Supervisor Orientation which will include dates the Member will not be available at the service site.

6. **Project Summary:**

In Partnership with the Confluence Environmental Center, the Member will help to identify, coordinate, and increase food donation opportunities to local food pantries to increase food donation and access to food, reduce wasted food, and reduce the environmental impacts of that wasted food (50%).

The Member will also help us bring greater consistency and value to recycling and waste reduction in apartment and condo communities, targeting low-income, racially diverse, and underserved residents (per Oregon's Affordable Housing Inventory). This position will build on the success of previous AmeriCorps members and pilot new programming to pair service-level and infrastructure analyses with outreach and education for a more holistic, effective, and inclusive approach to community assistance (30%).

The Member will participate in Confluence led professional development activities: Professional Development Series, completing a Change Agent Project, team meetings, National Service events and other self-directed development opportunities (20%).

7. **Project Resources and Training Provided by Partner:**

The Partner will provide all training and equipment necessary to successfully complete the project. The Partner will serve as the direct supervisor for the Member and will meet with the Member regularly to review and set project goals.

8. **Project Resources and Training Provided by CEC:**

CEC, through its technical partnership with PCEI, will provide the Member living allowance and health insurance, if eligible. CEC will provide a Pre-Service orientation for the Member that will include an overview of AmeriCorps, Confluence rules and regulations, AmeriCorps Prohibited Activities, as well as other training that will prepare the Member for their term of service. CEC will require Members to attend

Leadership Development trainings, monthly Team Meetings and two National Days of Service.

9. Evaluation method:

The Partner will develop tracking and reporting systems to measure outcomes of the project in accordance with the AmeriCorps Performance Measures. CEC will provide forms and technical assistance.

10. Project Costs:

Project costs, which include all AmeriCorps Program costs, are paid with AmeriCorps funds and funds provided by the Partner.

- a. Partner Cash Match Amount: **\$14,000**

11. Schedule of Payment:

Confluence will invoice the Partner as indicated below. Partner will pay invoice within 30 days of the invoice date. Partner will make checks payable to **Confluence Environmental Center**.

- a. Total Amount of compensation under this agreement shall not exceed: **\$14,000**
- b. Invoice Schedule: **August 2, 2021 (net 30)**

12. Project In Kind:

In-kind donations are an integral part of the Confluence AmeriCorps Program. All in-kind donations must be accurately verified and submitted on the in kind reporting form provided by Confluence.

- a. Partner In Kind Amount: **\$200**
- b. In Kind Report Due **February 15, 2022**

13. Authorizing Signatures:

Confluence AmeriCorps Program

Elizabeth Cabral
Program Director **Name**

Elizabeth Cabral
Program Director **Signature**

7/15/2021
Date

Partner Organization

Eben Polk
Supervisor **Name**

Eben Polk
Supervisor **Signature**

8/17/21
Date



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Emery & Sons Construction Group, LLC. for the
Sunnyside Road ADA Improvements: 122nd -132nd

Purpose/Outcome	This contract will retrofit 1 signalized intersection corner and 5 non-signalized intersection corners for ADA compliance along Sunnyside Road.
Dollar Amount and Fiscal Impact	Contract Value \$744,914.50, budgeted in DTD CIP Project #22292.
Funding Source	County Road Funds.
Duration	Contract Execution through June 30, 2022.
Previous Board Action/Review	09/07/21: Discussion item at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on "The public's increasing expectation that the transportation system will be safer and support a healthier community." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a strong infrastructure" and "Ensure safe, healthy and secure communities" by providing ADA compliant curb ramps and traffic signals ensuring safer pedestrian travel.
Counsel Review	Counsel Date: August 23, 2021 Counsel Initials: AN
Procurement Review	Was this project processed through Procurement? Yes.
Contact Person	Bob Knorr, Project Manager, Transportation and Development 503-742-4680
Contract No.	4331

Background:

This contract will retrofit 1 signalized intersection with 6 total corners and 5 non-signalized intersections with 18 total corners for ADA compliance. This work is in advance of an asphalt concrete overlay scheduled for the summer of 2022. Work consists of furnishing, installing and removing temporary traffic control devices and temporary erosion control measures, constructing concrete curb ramp retrofits, constructing pedestrian push button retrofits, installing or reinstalling new permanent signing and pavement markings, and other incidental work as called by the special provisions and plans.

Substantial completion of construction is expected by April 30, 2022. Final completion of construction is required by June 30, 2022.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 22, 2021. Bids were publicly opened on August 3, 2021. The County received four (4) bids: MEI Group, \$927,419.00; Emery & Sons Construction Group, LLC. \$744,914.50; Brown Contracting, \$792,323.00; and Carter & Company, \$816,524.77. Engineers estimate was \$877,000.00. After review of the bids, Emery & Sons Construction Group, LLC. was determined to be the lowest responsive bidder.

Recommendation:

Staff respectfully recommends that the Board approve and sign this public improvements contract with Emery & Son Construction Group, LLC for the Sunnyside Road ADA 122nd -132nd Project.

Sincerely,

Bob Knorr

Bob Knorr,
Project Manager

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT
Contract #4331

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Emery & Sons Construction Group, LLC**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: # 2021-61 Sunnyside Road ADA 122nd-132nd

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **seven hundred forty-four thousand nine hundred fourteen dollars and fifty cents (\$744,914.50)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid as indicated in the accepted Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2018) referenced therein.

The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default

2. Representatives.

Contractor has named Vince Makinson as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Joel Howie as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Dan Johnston shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Aaron Slowik shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Christian Spier shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Brandon Zaikoski shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: April 30, 2022

FINAL COMPLETION DATE: June 30, 2022

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract 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. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

6.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7. Tax Compliance.

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, 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.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("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 purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include,

but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

11.1.1. \$ 700 per Calendar day past the Substantial Completion date as identified in section 00180.85 (b) and 00180.85 (c).

12. 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 including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

13. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

14. Escrow and Retainage. If retainage is withheld, unless the Contractor requests and the Owner accepts a form of retainage permitted under ORS 279C.560, the Owner will deposit the retainage in an interest-bearing escrow account as required by ORS 279C.570(2). The Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.

15. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

Signature page to follow.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:

Emery & Sons Construction Group, LLC
P.O. Box 13069
Salem, Oregon 97309

Contractor CCB # 221536 Expiration Date: 6/26/2022
Oregon Business Registry # 1447785-94 Entity Type: DLLC State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Emery & Sons Construction Group, LLC

Clackamas County Board of County Commissioners

 August 20, 2021

Authorized Signature Date

Chair Date

Vince Makinson, Principal

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

 08/23/2021

County Counsel Date