



AGENDA

Thursday, August 23, 2012 - 10:00 AM

Board of County Commissioners Business Meeting

Beginning Board Order No. 2012-80

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance
- Approval of Order of Agenda

Place Holder – if needed

II. DISCUSSION ITEM *(The following item will occur only if it is not completed at the August 22, 2012 evening meeting.)*

1. **Continued if needed** - Special Meeting to Discuss Portland to Milwaukie Light Rail - Consideration of Settlement Terms with TriMet - Resolution No. ____ Authorizing the Potential Issuance of Bonds to Meet the County's Obligation to Fund Portland to Milwaukie Light Rail (Dan Chandler, County Administration, and Scot Sideras, County Counsel)

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

1. Presentation of "This is Clackamas County" – Clackamas County Accomplishments (Gary Schmidt, Public and Government Affairs)

IV. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. This portion of Citizen Communication will proceed for ½ hour. If we are unable to hear everyone who has signed up to speak during this time, we will continue Citizen Communication when our business items conclude after the Consent agenda. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

V. PREVIOUSLY APPROVED LAND USE ISSUE *(No public testimony on this item)*

1. Board Order No. ____ Approval of a Comprehensive Plan Amendment and Zone Change for Shawn and Tamra Wilks (Rhett Tatum, County Counsel) *Previously approved at the July 25, 2012 Land Use Hearing.*

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

1. Second Reading of Ordinance No. 09-2012 Amending the Ordinance Adopted on May 10, 2012 (No. 04-2012) Establishing and Adjusting Fees for the North Clackamas Parks and Recreation District (Dave Miletich, NCPRD, Chris Storey, County Counsel)

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

WATER ENVIRONMENT SERVICES

- 5 1. Approval of an Emergency Construction Contract for Kellogg Creek Pollution Control Plants Digester Mix and Heating Systems Replacement (Mike Kuenzi)

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

A. Health, Housing & Human Services

- 6 1. Board Order No. _____ Approval of the Mental Health Director's Designees to Authorize a Custody Hold Under ORS 426.233 - BH
- 7 2. Approval of Two Agreements between Clackamas County and Clackamas Community Land Trust to use Neighborhood Stabilization Program Funds and HOME Program Funds to Purchase and Rehabilitate a Foreclosed Home - CD
- 8 3. Approval of an Interagency Agreement between Clackamas County Community Development Division and Social Services Division for a Housing Rights and Resources Program in Clackamas County – CD
- 9 4. Approval of a Participation Agreement with Tri-County Medicaid Collaborative - BH

B. Elected Officials

- 10 1. Approval of Previous Business Meeting Minutes – BCC

C. Juvenile Department

- 11 1. Approval of Amendment No. 8 to the Contract with Parrot Creek Child and Family Services to Provide Shelter Services to Children Residing in Clackamas County Under the Jurisdiction of Clackamas Juvenile Court

D. Public and Government Affairs

- 12 1. Board Order No. _____ Approving the Application by Wavedivision Holdings, LLC for Consent to a Change of Control of its Parent, Wavedivision Holding, LLC - CABLE

IX. WATER ENVIRONMENT SERVICES

- 13 1. Approval of an Agreement to Furnish Consultant Services to Clackamas County Service District No. 1 and Tri-City Service District for the Blue Heron Remedial Investigation/Feasibility Study

- 14
2. Approval of a Partnership Agreement between Clackamas County Service District No. 1 and Johnson Creek Watershed Council for Buffer Enhancement and Restoration Activities
- 15
3. Approval of a Partnership Agreement between Clackamas County Service District No.1 and North Clackamas Urban Watersheds Council for Buffer Enhancement and Restoration Activities

CITIZEN COMMUNICATION – Continued if needed

X. COUNTY ADMINISTRATOR UPDATE

XI. COMMISSIONERS COMMUNICATION

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



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GARY SCHMIDT
DIRECTOR

PUBLIC AND GOVERNMENT AFFAIRS

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

Presentation of "This is Clackamas County" – Clackamas County Accomplishments

This year, Public and Government Affairs launched a monthly compilation of milestone accomplishments within Clackamas County. The online feature is entitled "This is Clackamas County."

The purpose is to inform the public about the many ongoing services, initiatives and programs that benefit our citizens, stakeholders and the public. To date through July, 52 milestone accomplishments have been compiled representing a wide range of County departments, agencies and key initiatives.

Today, Public and Government Affairs will provide a brief presentation highlighting these many County accomplishments.

Sincerely,

Gary Schmidt
Director, Public and Government Affairs

For information on this issue please contact Gary Schmidt at (503) 742-5908

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

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In the Matter of a Comprehensive
Plan Amendment and Zone Change
For Shawn & Tamra Wilks, on property
Described as T2S, R3E, Section 35,
Tax Lot 1701



ORDER NO. _____

File No.: Z0190-12-CP / Z0191-12-Z

This matter coming regularly before the Board of County Commissioners, and it appearing that Shawn and Tamra Wilks made application for a Comprehensive Plan amendment and zone change on property described as T2S, R3E, Section 35, Tax Lot 1701, located directly south and across the road from S. Rory Court which fronts S. Eaden Road which fronts the subject property to the north, and depicted in Exhibit A.

If further appearing that planning staff, by its report dated June 18, 2012, recommended approval of the application; and

It further appearing that the Planning Commission, at its June 25, 2012 meeting, recommended approval of the application; and

It further appearing that after appropriate notice, a public hearing was held before the Board of County Commissioners on July 25, 2012, at which testimony and evidence were presented, and that the Board made a preliminary decision to approve the application;

Based upon evidence and testimony presented, this Board makes the following findings and conclusions:

1. The applicant requests approval of a Comprehensive Plan map amendment from Agriculture to Forest with a corresponding zone change from EFU to TBR.
2. The Board finds that the application meets the requirements of the Statewide Planning Goals, the Clackamas County Comprehensive Plan Policies, the applicable state laws and regulations, and the Clackamas County Zoning and Development Ordinance, and adopts as its findings the Staff Report dated June 18, 2012, included as Exhibit B.

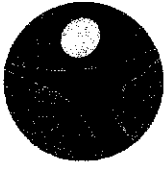
NOW, THEREFORE, IT IS HEREBY ORDERED that the requested Comprehensive Plan Amendment and Zone Change are granted.

DATED this 23rd day of August, 2012


BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



NORTH CLACKAMAS
PARKS & RECREATION DISTRICT

 **COPY**
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August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

A Second Reading of an Ordinance Amending the Ordinance adopted on May 10, 2012
(No. 04-2012) Establishing and
Adjusting Fees for the North Clackamas Parks and Recreation District

The Board of County Commissioners, acting as the governing body of North Clackamas Parks and Recreation District (NCPRD), adopted an ordinance on May 10, 2012 that delegated authority to the District Administrator or District Director to establish and adjust fees to more efficiently and effectively align revenues with cost recovery guidelines established in operating policy and to respond to market conditions.

During adoption, the Board expressed a desire for regular citizen oversight of such delegated authority and directed staff to consult with the District Advisory Board (DAB) on the best way to accomplish this. The DAB discussed the options for more oversight of the ordinance and unanimously approved a motion to have planned or recently-implemented fee changes reported to them with the quarterly financial reports.

The proposed ordinance sets forth a revision describing the reporting requirements but otherwise leaves the adopted ordinance in place. This ordinance has been reviewed and approved by County Counsel. On August 9, 2012 the Board of County Commissioners acting as the governing body of North Clackamas Parks and Recreation District, held the first reading of the amended ordinance.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioner sitting as the North Clackamas Parks and Recreation District Board read the proposed Ordinance by title only.

Sincerely,

Laura Zentner, Deputy Director
Business and Community Services

For information on this issue or copies of attachments, please contact Dave Miletich 503-742-4361



ORDINANCE No. 09-2012

An Ordinance Amending the Ordinance adopted on May 10, 2012
(No. 04-2012) Establishing and
Adjusting Fees for the North Clackamas Parks and Recreation District

WHEREAS, the North Clackamas Parks and Recreation District ("District") provides recreational opportunities for its residents supported by property taxes and usage fees; and

WHEREAS, the Board of County Commissioners ("Board"), acting as the governing body of the District, believes that recreational fees are unique in that they are voluntary, unlike a utility rate or permit fee, and desires to allow flexibility to determine those fees in accordance with seasonal program offerings; and

WHEREAS, each year, the District may establish a dozen or more new programs, in addition to the hundreds of existing programs, which begin at different times throughout the year and each need their own fee established; and

WHEREAS, regular fee reviews and adjustments will allow the District to align with cost recovery guidelines as established in operating policy and respond to market conditions;

NOW, THEREFORE, the Board hereby adopts this ordinance of the District:

Section . Fees for athletic and recreational facilities and activities.

- a) The District Administrator, District Director or their written delegates shall have authority to establish fees for the use of District athletic and recreational facilities and for participation in District parks and recreational activities and programs, provided that such fees shall be based on the policies set forth below. It is the intention of the Board to allow the delegates to have maximum flexibility in interpreting and applying these policies to reach, in their reasoned judgment, the appropriate mix and level of fees and user charges in the provision of recreational services and the accomplishment of the District's mission.

The District Advisory Board (DAB) will review proposed or recently implemented fee changes four times per year at their regularly scheduled meetings, in conjunction with quarterly financial reports.

- b) The policies for setting fees authorized by this ordinance are as follows:
 - i. Customer Service. Fees and charges shall assist and support the overall administration and coordination of recreational services and for the provision of parks, open space, landscapes, park improvements, recreation facilities, and their adequate maintenance.
 - ii. Cost Recovery. The District may set user fees and charges at an amount designed to recover a full range of costs, depending on the type of program being offered. Some

programs serving district residents will be free, such as the RecMobile, which provides services at parks throughout the District in the summer months. Most programs will recover direct costs, including, but not limited to, program labor, supplies, and materials. The next level of cost recovery is designed to recover direct costs, and all, or a portion of indirect costs, including, but not limited to, management staff, facility expenses and utilities. Youth programs and programs for older adults will generally have a lower cost recovery expectation than adult programs. Residents of the District may receive a discounted rate on fees for all programs.

- iii. Hardship Factor. The District may make compensatory efforts to support patrons challenged by unusual or hardship circumstances including special service needs, disabilities, or financial hardship.
- iv. Market Responsiveness. The District fees for voluntary activities are part of a larger regional offering for recreational activities, and market demand and supply for services, programs or facilities may be included in the setting of fees.

DATED this _____ day of _____ 2012

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



August 23, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF AN EMERGENCY CONSTRUCTION CONTRACT FOR
KELLOGG CREEK POLLUTION CONTROL PLANTS (WPCP)
DIGESTER MIX AND HEATING SYSTEMS REPLACEMENT**

Operating staff had identified periodic problems with the Kellogg Creek's digesters system as far back as early 1990's. The problems appeared to stem from poor functioning of the mixing and heat transfer system that was originally constructed more than 40 years ago. These challenges, while inconvenient, were deemed manageable until funds could be set aside for rebuilding the solids handling system. Reinvestment was further delayed until the District made a decision regarding the ultimate disposition of the Kellogg plant. After FY 2008, funds for the replacement of the equipment, instrumentation and system controls were earmarked and scheduled for 2012-13 replacement under the Asset Management Program. In November 2011 however, staff lost control of their digesters and had to pursue emergency hauling and disposal to handle three months of biosolids production that did not meet the criteria for land application under CCSD#1 permit. The unanticipated cost of dealing with this problem was more than \$350,000 and, was ultimately funded through a budget transfer from contingency in May 2012. The digester systems have been stabilized for the time being but the District faces significant financial and environmental risk until these systems can be rebuilt.

The failure prompted the WES Director to proceed in the most expedient manner possible to complete the rebuild prior to the 2012-13 winter season, when heat transfer and mixing are critical to our operations. Without adequate mixing the District is at risk of not meeting its volatile solids reduction, limiting its ability to utilize the solids through the land application process.

Our normal project delivery process is completed through the design/bid/build process that could take up to a year to two years to complete. The critical nature of the program and the potential fiscal impact of another wintertime digester problem prompted the Director of WES to seek alternative delivery for completing the work prior to November 2012. A consultant team was selected through our normal RFP process and began process work in March 2012 to determine what needed to be replaced and consider any proposed process modifications. Discussion between staff and the engineers determined that under our normal design/bid process we could anticipate an additional \$250,000 to prepare design and bid documents and expect the construction timeline to slip by one year to late summer 2013.

For these reasons the District requests authorization to enter into an emergency construction services agreement with Slayden Construction in accordance with Division C-047-0280 (Emergency Procurement) of the Contract Review Board Rules. In 2004 Slayden Construction

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successfully replaced the mix system at the Tri-City WPCP without incident and has the most recent experience with the District working within our digesters. The digesters at the Kellogg Plant are exact replicas of the Tri-City's original system.

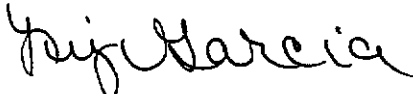
The District proposes a two phase approach to the agreement. The first phase is for an amount not to exceed \$25,000 for pre-construction coordination services with the design engineers to better understand the scope of work for the Kellogg WPCP work and be able to give the District an accurate "not to exceed price" for doing the work. Once we have the actual bid amount the District requests the Board authorize the Director of Water Environment Services the authority to negotiate and enter into phase two of the agreement with Slayden Construction to perform the work at the Kellogg WPCP without further Board action. The anticipated construction cost is \$960,000.

RECOMMENDATION:

Staff respectfully recommends that:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District No.1, a county service district's("District"), and as the Local Contract Review Board, make a finding that the digester mix system failure at the Kellogg WPCP qualifies as an emergency in accordance with C-047-0280 of the Contract Review Board Rules and competitive procurement is not practical under the circumstances; and
2. The Board approve phase 1 of the agreement between Slayden Construction and Clackamas County Service District No.1 for construction of the Digester Mix System; and
3. Authorize the Director of Water Environment Services the authority to negotiate and enter into phase two of the agreement with Slayden Construction for the Kellogg WPCP in a not-to-exceed the approved budget amount of \$1,000,000.

Sincerely,



Michael S. Kuenzi, P.E.
Director

For Information on this issue or copies of attachments please contact Trista Crase at (503) 742-4566

SECTION 00500

AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2012 by and between Clackamas County Service District No. 1 (hereinafter called OWNER) and SLAYDEN CONSTRUCTION GROUP, INC. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

- 1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Kellogg Creek Water Pollution Control Plant – Digester Heat Mix/Maintenance Project

Article 2. THE PROJECT

The Project for which the Work is described in the Contract Documents.

Article 3. ENGINEER

- 3.1 The term ENGINEER is defined in the Supplementary Conditions.
- 3.2 ENGINEER is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 4. CONTRACT TIMES

- 4.1 All time limits for milestones, if any, substantial completion, and completion and readiness for final payment are stated in the Contract Documents and are of the essence of the Contract.
- 4.2 For the Work at the Kellogg Creek Water Pollution Control Plant, the CONTRACTOR shall commence work within 10 calendar days after receipt of written Notice-to-Proceed. CONTRACTOR shall substantially complete the Work within 150 calendar days of Notice-to-Proceed, and the Work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 180 calendar days after Notice-to-Proceed. Interim Milestones (if any) are identified in Section 01313. The written notice to proceed will be forwarded to the CONTRACTOR after the CONTRACTOR submits the signed Agreement, Performance Bond and Payment Bond, and Certificate of Insurance to the OWNER and these documents have been approved as to form by the OWNER's attorney, signed by the OWNER.

4.3 For Work at the Kellogg Creek Water Pollution Control Plant, CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER five hundred dollars (\$500) for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the days specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER one hundred dollars (\$100) for each calendar day that expires after the time specified in Paragraph 4.2 above for completion and readiness for final payment, plus any fees or penalties imposed by regulators for other violations.

Article 5. CONTRACT PRICE

5.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to Article 5.2 below.

5.2 For all Work, as broken down into the following:

A. Lump Sum Amount "A" for Work at the Kellogg Creek Water Pollution Control Plant as identified in the Proposal Form.

Lump Sum Price: \$ _____
(in figures)

B. Owner Contingency Allowance (OCA): An allowance designated by the Owner in the amount identified below is to be included in Contract Price. The OCA may only be used if and when authorized by the Owner. The OCA may be used in part, in full or not at all. Use of the OCA shall only be only through the Change Order process if and when authorized by the Owner. Any or all of the OCA that remains unused shall be deducted from the Contract Amount at the time of final Payment.

Owner Contingency Allowance: \$25,000.00

C. The Total Contract Price is the sum of Lump Sum Amount "A", and the Owner Contingency Allowance identified in Articles 5.2.A, B, C as totaled below:

Total Contract Price: \$ _____
(in figures)

Article 6. PREVAILING WAGE RATES

- 6.1 CONTRACTOR agrees that the provisions required by ORS 279C.830 pertaining to CONTRACTOR'S payment of prevailing wage rates shall be included as part of this Agreement. Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor or other person doing or contracting for whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage in effect for this contract.

Article 7. PAYMENT PROCEDURES

7.1 Progress Payments and Retainage

- A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.
- B. If the Contract is for a public work and the Contract price is \$10,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the OWNER and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, Oregon 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.
- C. Make progress estimate of work performed in any calendar month and submit to the ENGINEER for approval by the 5th day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.
- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the ENGINEER approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the ENGINEER provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- E. If the Contract price is determined wholly on a unit basis, ENGINEER may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the ENGINEER, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.

- F. If the OWNER receives written notice of any unsettled claims for damages or other costs due to CONTRACTOR'S operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of ENGINEER.
- G. Progress payments will be made by OWNER on a monthly basis within thirty (30) days after receipt of the CONTRACTOR'S estimate of work performed, or 15 days after the payment is approved by the ENGINEER, whichever is the earlier date. Negotiable warrants will be issued by OWNER for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by OWNER until it is included in and paid to CONTRACTOR as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if CONTRACTOR elects, retainage as accumulated will be deposited by OWNER in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the OWNER may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the CONTRACTOR, which application shall include written approval of the CONTRACTOR'S Surety.
- H. The ENGINEER may decline to approve an application for payment and may withhold such approval if, in the ENGINEER'S opinion, the work has not progressed to the point indicated by the CONTRACTOR'S submittal in paragraph C above. The ENGINEER may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the OWNER from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the CONTRACTOR to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the CONTRACTOR, (7) claims against the CONTRACTOR by the OWNER, (8) failure of CONTRACTOR to submit updated project schedules as specified.

When the above grounds are removed, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the CONTRACTOR to interest on such withheld payments or partial payments.

- I. If CONTRACTOR fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by OWNER.

- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the ENGINEER.
- L. CONTRACTORS are required to provide the OWNER with a list of CONTRACTOR'S personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the OWNER's office. No payment will be released to an unauthorized person.

7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the ENGINEER in writing when work is considered complete and ENGINEER shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify CONTRACTOR of work yet to be performed on the Contract. If accepted, ENGINEER shall so notify CONTRACTOR, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.
- B. If the CONTRACTOR believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the ENGINEER to be incorrect, CONTRACTOR shall submit to the ENGINEER within fifteen (15) days of mailing of the ENGINEER'S final estimate and Certificate of Completion to the CONTRACTOR'S last known address as shown in the records of the OWNER, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the OWNER shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Section 00700, Subsection 10.05, Claims and Disputes.
- C. Upon receipt of the executed Certificate of Completion from the CONTRACTOR, and approval by the ENGINEER, the ENGINEER will process the final payment.
- D. Provided CONTRACTOR submits a claim in the manner and time as required in B. above, the ENGINEER, as soon as practicable, will consider and investigate the claim or claims of the CONTRACTOR for compensation earned under the Contract and not included in the ENGINEER'S final estimate and Certificate of Completion. The ENGINEER will then promptly advise the CONTRACTOR of acceptance or rejection of the claim in full or part. If the ENGINEER allows the CONTRACTOR'S claims in full or in part, ENGINEER will prepare a revised final estimate and Certificate of Comple-

tion, including all such items allowed and will submit the same to the CONTRACTOR.

- E. The CONTRACTOR shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the ENGINEER rejects the claim or claims, he will issue written notice of rejection mailed to the CONTRACTOR'S last known address as shown in the records of the OWNER.
- G. The CONTRACTOR shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the ENGINEER'S final estimate and Certificate of Completion to the CONTRACTOR'S last known address as shown in the records of the OWNER. The ENGINEER'S issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the CONTRACTOR, and the CONTRACTOR expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.
- H. Upon return of the fully executed Certificate of Completion from the CONTRACTOR, the ENGINEER will submit the Certificate of Completion and final estimate to the OWNER for approval. Upon approval and acceptance by the OWNER, CONTRACTOR will be paid a total payment equal to the amount due under the Contract including retainage.
- I. Monies earned by the CONTRACTOR are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefore, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the CONTRACTOR'S claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident CONTRACTOR will provide OWNER with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to OWNER, in form approved by the Attorney, a receipt for all amounts paid or payable to CONTRACTOR under the Contract, and a release and waiver of all claims against OWNER arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully

and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting OWNER, its officers, agents and employees as well as CONTRACTOR. This is a condition of final payment and CONTRACTOR will not be entitled to final payment on release of retainage nor interest thereon until execution and delivery of said Receipt, Release & Waiver.

- L. If OWNER declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainages held by OWNER shall be paid to Surety and not to CONTRACTOR in accordance with terms of the Contract.
- M. Acceptance by CONTRACTOR of final payment shall release OWNER and ENGINEER from any and all claims by CONTRACTOR whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release CONTRACTOR or his Sureties from warranties or other obligations required in the performance of the Contract.

Article 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:
 - 1. This Agreement
 - 2. Performance Bond
 - 3. Payment Bond
 - 4. General Conditions
 - 5. Supplementary Conditions
 - 6. Specifications as included in the Proposal Documents and/or referenced therein.
 - 7. Drawings as included in the Proposal Documents and/or as referenced therein.
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Addenda number(s) ___ to ___ included as Exhibit 1.
 - b. Proposal Form
 - c. Noncollusion Affidavit
 - d. First-tier Subcontractor Disclosure Form
 - 9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed.
- b. Written Amendments.
- c. Work Change Directives.
- d. Change Order(s).

B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.5 One Year Maintenance and Warranty
- A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the OWNER and at no cost to OWNER, any and all defects, breaks, or failures of the Work occurring within one (1) year following the date of Acceptance of the Work due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the CONTRACTOR in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The one-year maintenance period required shall, with relation to such required repair, be extended one (1) year from the date of completion of such repair. Where equipment and/or systems are specified to have a longer warranty period, CONTRACTOR shall be bound to the longer warranty period for the specific equipment and/or system.

- B. If CONTRACTOR, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, OWNER may have the defects corrected, and CONTRACTOR and CONTRACTOR'S Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the OWNER, delay would cause serious loss or damage, repairs may be made without notice being given to CONTRACTOR and CONTRACTOR or Surety shall pay the cost of repairs. Failure of the OWNER to act in case of an emergency shall not relieve CONTRACTOR or Surety from liability and payment of all such costs.
- C. As a means of providing surety during the maintenance period, the CONTRACTOR shall provide to the OWNER written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:
1. Continuance of the contract performance bond at the original or a reduced amount.
 2. Maintenance bond in a format and with the conditions acceptable to the OWNER.
 3. Cash deposit to the OWNER's Treasury, with a treasurer's receipt acting as proof of surety.
 4. Other arrangements, as may be proposed by the contractor and accepted by the OWNER.

Article 10. GOVERNING LAW

- 10.1 It is expressly understood that this Agreement in all respects shall be governed by the laws of the State of Oregon and the ordinances of the Clackamas County Service District No.1.

Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

- 11.1 By entering into this Agreement, the CONTRACTOR irrevocably assigns to OWNER any claim or cause of action which the CONTRACTOR now has or which may accrue in the future, including at OWNER's option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the CONTRACTOR by any person which are used, in whole or in part, for the purpose of carrying out the CONTRACTOR'S obligations under this Agreement.
- 11.2 CONTRACTOR shall require any subcontractor to irrevocably assign to the OWNER, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the OWNER's option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the

purpose of carrying out the subcontractor's obligations as agreed to by the CONTRACTOR in pursuance of the completion of this Agreement.

11.3 In connection with this assignment, it is an express obligation of the CONTRACTOR that it shall take no action which any way diminishes the value of the rights conveyed or assigned hereunder to the OWNER. It is an express obligation of the CONTRACTOR to advise the OWNER's legal counsel:

- A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the OWNER.

11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the CONTRACTOR, it shall promptly pay over to the OWNER its proportionate share thereof, if any, assigned to the OWNER hereunder.

Article 12. RECORDS RETENTION

12.1 CONTRACTOR shall maintain all standard records and accounts as required by the Contract Documents throughout the life of the Agreement and for a period of three years after the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives as of the day and year first above written.

WATER ENVIRONMENT SERVICES
for
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

CONTRACTOR:

SLAYDEN CONST. GROUP, INC.
Company

PO BOX 247
Address

STAYTON, OR 97383
City, State, Zip

Authorized Signature

OWNER:

Director: Michael S. Kuenzi, PE

Date

August 23, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

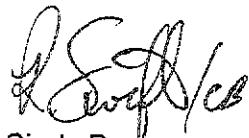
**Board Order # _____ Approval of Mental Health Director's
Designees to Authorize a Custody Hold Under ORS 426.233**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of the Designation of Kelly Fisher, MSW, Ryan Harris, MA, SooHyun Lee, M.Ed, with Cascadia, and Mike Doogan, MA, by the Clackamas County Behavioral Health Director as additional designees authorized under ORS 426.233 (copy attached) to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division.

Recommendation

Staff recommends the Board approve the attached Board Order of Kelly Fisher, MSW, Ryan Harris, MA, SooHyun Lee, M.Ed, with Cascadia, and Mike Doogan, MA, as additional qualified mental health professionals authorized to direct a peace officer to take a person into custody under ORS 426.233.

Respectfully submitted,



Cindy Becker
Director

For more information on this issue or copies of attachments,
please contact Teri Beemer at 503 655-8356

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

In the Matter of the Designation of Kelly Fisher, MSW, Ryan Harris, MA, SooHyun Lee, M.Ed, with Cascadia, and Mike Doogan, MA, as Mental Health Director Designees to Direct Peace Officer Custody Holds



ORDER NO.

This matter coming on at this time to be heard, and it appearing to this Board that Cindy Becker, Director of Health, Housing & Human Services Department, has recommended to this Board the approval of Kelly Fisher, MSW, Ryan Harris, MA, SooHyun Lee, M.Ed, with Cascadia, and Mike Doogan, MA, as additional designees of the Behavioral Health Division Director, authorized under ORS 426.233 to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division, and

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

IT IS THEREFORE HEREBY ORDERED that Clackamas County approve the designation of Kelly Fisher, MSW, Ryan Harris, MA, SooHyun Lee, M.Ed, with Cascadia, and Mike Doogan, MA, as qualified mental health professionals authorized to direct a peace officer to take a person into custody under ORS 426.233.

ADOPTED this 23rd day of August, 2012.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Two Agreements between Clackamas County and
Clackamas Community Land Trust to use Neighborhood Stabilization Program Funds
and HOME Program Funds to Purchase and Rehabilitate a Foreclosed Home**

The Community Development Division of the Health, Housing and Human Services Department requests approval of two agreements with Clackamas Community Land Trust (CCLT) to fund the purchase and rehabilitation of a single family foreclosed home located at 1056 Mt. View Lane in Molalla. The first agreement is a loan of federal Neighborhood Stabilization Program 2 (NSP2) funds. The second agreement is a loan of federal HOME Program funds. Because there are distinct differences in the requirements of the NSP2 and HOME programs and in the loan terms, it is in the best interest of the County to have separate loan documents.

The total amount of the purchase and rehabilitation project is \$203,500. The NSP2 funds being used for this project are the sale proceeds from another home that CCLT acquired and rehabilitated with NSP2 funds. The HOME funds are being used to complete the budget.

The NSP2 funds will be in the form of a no-interest deferred-payment loan in the amount of \$83,500. The HOME funds will be in the form of a no-interest loan in the amount of \$120,000. CCLT will use proceeds from the initial sale of the home to repay the HOME funds. The NSP2 funds will remain in the home as a permanent subsidy. Under the terms of the loans, CCLT must meet the affordability requirements of both programs for at least 15 years.

The NSP2 is authorized under the American Recovery and Reinvestment Act of 2009. Its purpose is to stabilize neighborhoods by redeveloping foreclosed properties that might otherwise become blighted. Clackamas County is a member of a consortium of Oregon counties that received NSP2 funding. The HOME Program is authorized under Title II of the National Affordable Housing Act of 1990. One of its main purposes is to strengthen partnerships with nonprofit organizations to expand the supply of decent and affordable housing for very low-income Americans. Clackamas County is a Participating Jurisdiction under the HOME Program. CCLT is certified as a Community Housing Development Organization (CHDO) under the County's HOME Program.

The rehabilitation work will bring the home up to the County's rehabilitation standards and improve the energy efficiency of the home.

Under the community land trust model of homeownership, CCLT will retain ownership of the land and sell the rehabilitated home at a reduced price to an eligible low-income household. The homeowner and CCLT will enter into a 99-year land lease which will be recorded in the records of Clackamas County.

No general fund dollars are involved in this project. County Counsel approved this agreement on July 19, 2012.

Recommendation

We recommend approval of both agreements and that Cindy Becker be authorized to sign all related documents on behalf of the Board of County Commissioners.

Respectfully submitted,



Cindy Becker
Director

For more information on this issue or copies of attachments
please contact Gloria Lewton at 503-655-8591.

CLACKAMAS COUNTY HOME PROGRAM

LOAN AGREEMENT

Project: Community Stabilization Project
Homeownership Acquisition with Rehabilitation

Activity: 1056 Mt. View Lane, Molalla

This Loan Agreement ("**Agreement**") is entered into between **Clackamas Community Land Trust**, an Oregon non-profit organization ("**CCLT**" or "**Owner**") and Clackamas County ("**County**"), a Participating Jurisdiction under the HOME Program.

This Agreement includes the following attachments:

- | | |
|------------------------------------|--|
| A. Legal Description | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| B. Sources and Uses | G. Project Completion documentation |
| C. Schedule of Tasks | H. HOME Agreement between County and Homebuyer |
| D. HOME Match Contributions | I. Land Lease Between CCLT and Homebuyer |
| E. HOME Affordability Requirements | |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
 1. **Annual Income.** For the purposes of this Agreement CCLT will use the Census long-form definition of "Annual Income" found at 24 CFR 92.203(b)(2) when determining whether a Household is an Eligible Low-Income Household.
 2. **Affordability Requirements.** The Affordability Requirements are the restrictions on purchase/sale price and Homebuyer incomes set forth in this Agreement.
 3. **CHDO.** A Community Housing Development Organization ("CHDO") is a non-profit organization that has been certified by the County as meeting the requirements of 24 CFR 92.2. Clackamas Community Land Trust has been certified as a CHDO by Clackamas County for the current program year.
 4. **Community Land Trust Model of Homeownership.** The Community Land Trust ("CLT") Model of Homeownership means that the CLT owns the Land and the Homebuyer owns the HOME Unit on the Land. The CLT retains ownership of the Land in perpetuity. The Homebuyer leases the Land from the CLT under a 99-year Land Lease to assure future affordability of the HOME Unit. The CLT records the Land Lease or Memorandum of Lease in the records of Clackamas County.
 5. **Eligible Low-Income Household.** A Low-Income Household is a Household whose Annual Income does not exceed 80% of the County's Median Income. To be an Eligible Low-Income Household, the members of the Low-Income Household must be US Citizens, Non-Citizen Nationals, or Qualified Aliens.
 6. **HOME-Assisted Unit or HOME Unit.** HOME-Assisted Unit ("HOME Unit") is any unit in the Project which is partially or totally acquired, rehabilitated, constructed, or otherwise assisted with the use of HOME Funds.
 7. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 3.
 8. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program ("HOME Program") is authorized under Title II of the National Affordable Housing Act of 1990. The regulations and requirements for the HOME Program are located in 24 CFR Part 92 ("HOME Regulations"). Should anything in this Agreement or the other Loan Documents conflict with the HOME Regulations, the HOME Regulations shall supersede.

9. **Homebuyer.** The Homebuyer is an Eligible Low-Income Household at the time it purchases the HOME Unit. The Homebuyer includes both the initial and any subsequent purchaser of the HOME Unit. CCLT must determine that the Homebuyer is an Eligible Low-Income Household prior to it purchasing the HOME Unit.
10. **Homeownership.** Homeownership is defined at 24 CFR 92.2 to include ownership in fee simple of a 1-unit dwelling.
11. **Household.** Household is defined at 24 CFR 92.2 to mean one or more persons occupying a housing unit.
12. **HUD.** The federal Department of Housing and Urban Development.
13. **Initial Sale.** CCLT's first sale of the Unit to a Homebuyer is the Initial Sale.
14. **Loan Documents.** The Loan Documents for the Project are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
15. **Median Income.** Median Income refers to the median income for Clackamas County, adjusted for family size, as published periodically by HUD.
16. **Owner.** Owner includes the current Owner of the Land which is CCLT as well as any subsequent Project Owner, subject to the County consenting to any transfer under Section 28. CCLT is considered the Project Owner for the purposes of Section 0.
17. **Period of Affordability.** The Period of Affordability shall begin on the Project Completion Date. The Period of Affordability is comprised of two separate periods: the Initial Period of Affordability and the Extended Period of Affordability. In accordance with 24 CFR 92.254(a)(4), the Initial HUD-required Period of Affordability shall be 15 years. The Extended Period of Affordability shall begin at the end of the Initial Period of Affordability and continue until the HOME Funds are repaid.
18. **Project.** The Project is CCLT's purchase of the "Land" and the "Improvement" (a single-family dwelling unit on the Land), rehabilitation and renting or selling the dwelling unit on the Land to and for the benefit of an Eligible Low-Income Household while retaining ownership of the Land, and the subsequent monitoring of the HOME-Assisted Unit to ensure use and transfers are consistent with the Land Lease, CCLT's community land trust model of Homeownership, and the requirements of this Agreement. The Project is located at:

1056 Mt. View Lane, Molalla, OR 97038

The legal description for the Project is set forth in **Attachment A**.

19. **Project Completion Date.** The Project Completion Date is the date when:
 - i. CCLT has completed all rehabilitation work.
 - ii. CCLT has sold the Unit to an Eligible Homebuyer and recorded the Land Lease or Memorandum of Land Lease;
 - iii. The final HOME drawdown has been disbursed to CCLT;
 - iv. Homebuyers have moved into the home; and
 - v. The County has entered the Project completion information, including the Homebuyer's information into HUD's integrated disbursement and information system.

2. HOME REGULATIONS

CCLT agrees to comply with the applicable HOME Regulations and with the other requirements of the Loan Documents.

3. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

1. **Attachment B** identifies all sources and uses of funds for the Project. CCLT certifies that it has firm commitments of the funds from each of the sources identified, the sources of funds are sufficient to fund the Project in full and the HOME Funds shall only be used for HOME-eligible costs defined at 24 CFR 92.206 and 92.214.

2. **Attachment C** identifies the Schedule of Tasks to be undertaken in order to complete the Project

4. **HOME FUNDS; LOAN TERMS**

1. **Amount and Purpose.** County shall loan HOME Funds up to a total of ONE HUNDRED TWENTY THOUSAND dollars (\$120,000.00) to CCLT for the Project.

2. **Interest.** The loan is a zero percent interest loan. CCLT is not required to pay interest on the principal.

3. **Maturity Date.** CCLT shall pay all principal remaining on the loan by December 31, 2062.

4. **Repayment.**

i. CCLT will utilize the proceeds from the Initial Sale of the Unit as follows:

1. CCLT will pay all Project costs (including the Developer Fee) as identified in Attachment B; then,

2. CCLT will remit to Clackamas County all remaining sale proceeds.

ii. Clackamas County will apply all such funds received first to repay the entire amount of HOME Program Funds borrowed from Clackamas County pursuant to these Loan Documents. The County then will apply any remaining funds to repay a portion of the NSP2 Funds owed to the County.

iii. If the proceeds of the Initial Sale of the dwelling unit are not sufficient to repay the entire HOME funds, CCLT is not required to pay any remaining principal until the Maturity Date or one of the following occurs:

1. CCLT sells the Land.

2. CCLT transfers title to the Land. (The sale of the HOME Unit to a Homebuyer does not constitute a transfer of title to the Land.)

3. The HOME Unit is sold to a buyer who is not an Eligible Low-Income Household or for a price which does not meet the Affordability Restrictions outlined in Section 6.

4. A Homebuyer does not occupy the HOME Unit as its primary residence.

5. Upon any other change in use of the Land or HOME Units.

6. CCLT defaults on its obligations under any of the Loan Documents, provided that County shall give CCLT notice of the default and a thirty (30) day opportunity to cure the default before declaring the loan due and payable.

iv. If the Unit becomes a lease-purchase or a rental Unit, CCLT may delay repayment of the Loan until the 60th day after it sells the Unit.

5. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, a Trust Deed, and a Declaration of Land Use Restrictive Covenants, all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."

6. **Recording Requirement:** CCLT agrees to record the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing the Promissory Note.

5. **EVENTS OF DEFAULT**

1. An event of default under the Loan Documents includes, but is not limited to, the following; provided that the party declaring a default has first provided to the other party 30 days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to by the non-defaulting party in writing.

i. CCLT or Owner fails to secure all fund sources identified in **Attachment B** within 12 months from the Effective Date of this Agreement.

ii. CCLT or Owner fails to make the HOME-Assisted Units available for occupancy within 24 months from the Effective Date of this Agreement.

iii. Any other event of default identified in Section 4.01 of the Trust Deed.

2. Remedies for Default. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, if CCLT does not comply with the Affordability Requirements at any time during the term of this Loan, County may declare the entire amount of the Loan due and payable at once.

6. CCLT RESPONSIBILITIES, INCLUDING AFFORDABILITY REQUIREMENTS

During each phase of the project and throughout the Initial Period of Affordability, CCLT will ensure that the Project meets the applicable requirements of affordable Homeownership housing at 24 CFR 92.254.

1. Property Acquisition: CCLT will acquire the Project. The Purchase Agreement must make the sale contingent upon:
 - i. Compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (URA).
 - ii. Completion of an Environmental Review under 24 CFR Part 58.
 - iii. Access to property for inspections and bidding.
 - iv. A determination by the County's Rehab Advisor that the rehabilitation of the property is economically feasible.
 - v. Compliance with Lead Hazard rules if the home was built prior to 1978.
2. Property Rehabilitation: CCLT will rehabilitate the Project to bring it into compliance with the Property Standards outlined in Section 8.
 - i. Bidding and Contracting:
 1. CCLT will use the Worklist Specifications prepared by the Rehab Advisor to solicit bids from at least three licensed Oregon General Contractors for the rehabilitation portion of the Project.
 2. CCLT will use the Owner-Contractor Contract provided by the County to enter into a construction contract with a General Contractor for the rehabilitation portion of the Project.
 3. The bid of the contractor selected must be within 10% of the Rehab Advisor's cost estimate.
 4. The General Contractor hired by CCLT shall be licensed, bonded and registered with the State of Oregon under a valid Construction Contractors Board (CCB) number.
 5. If the home was constructed prior to 1978, the General Contractor hired by CCLT must be trained and certified as required by HUD, EPA and Oregon in Lead Safe Work Practices or be a licensed Lead Abatement Contractor if the property has lead-based paint or lead-based paint hazards.
 - ii. Construction Reports & Recommendations:

CCLT will submit all reports and recommendations concerning construction to the County for its approval.
 - iii. Modifications to the Construction Contract:

All modifications to the construction contract shall be in writing using a change order approved by CCLT, the County and the Contractor.
3. Sale of HOME Unit to Homebuyer. CCLT will:
 - i. Market the HOME Units to Low-Income Households in Clackamas County through a variety of media with the goal of reaching not only the greatest number of Eligible Low-Income Households but also the most diverse collection of Eligible Low-Income Households in the County.
 - i. Provide homebuyer education to prospective buyers that meet the curriculum approved by the County.
 - ii. Assist prospective buyers in locating sources of leasehold mortgage financing.
 - iii. Determine and document the Annual Income, as defined in Section 1(a), of the initial Homebuyer and any subsequent Homebuyers at the time of purchase for the purpose of determining whether or not the Homebuyers are an Eligible Low-Income Household.

- iv. Sell the HOME Unit to an Eligible Low-Income Household as defined in Section 1(e) under the Community Land Trust Model of Homeownership for a price:
 1. Not more than the current HOME affordable homeownership limits provided by HUD; and
 2. Not more than what a family of four at 60 percent of area median income would pay if paying no more than 30 percent of income for principal, interest, taxes and insurance. (The Community Development's Loan Review Committee reserves the right to grant exemptions on this criterion on a case by case basis.)
- v. Require that each buyer of a HOME-assisted unit sign the "Agreement between Homebuyer(s) and Clackamas County". **See Attachment "H"**.
- vi. Enter into a 99-year Land Lease agreement with the Homebuyers and have the Land Lease or Memorandum of Lease recorded in the records of Clackamas County.
- vii. Monitor and enforce the Land Lease. At least annually, CCLT will verify that:
 1. The Homebuyer(s) continue to occupy the property as their principal residence;
 2. The Homebuyers maintain the required insurance; and
 3. The HOME Unit is properly maintained.
- viii. Manage subsequent sales of the HOME Units to Eligible Low-Income Households including:
 1. Performing all responsibilities regarding sale of the HOME Unit;
 2. Providing notice to the County of a Homebuyer's intent to sell;
 3. Certify to County prior to any Homebuyer selling or voluntarily transferring the HOME Unit that the purchaser or transferee is an Eligible Low-Income Household.
 4. Ensure that any subsequent purchase/sale price for the HOME Unit is not more than:
 - a. The resale formula in the Land Lease;
 - b. The current HOME affordable homeownership limits provided by HUD; and
 - c. The amount that a family of four at 60 percent of area median income would pay if paying no more than 30 percent of income for principal, interest, taxes and insurance. (The Community Development's Loan Review Committee reserves the right to grant exemptions to this criterion on a case by case basis.)

4. Extended Period of Affordability

During the Extended Period of Affordability, CCLT will comply with all of the Affordability Requirements listed above except that the County will not require CCLT to certify to County prior to any Homebuyer selling or voluntarily transferring a HOME Unit that the purchaser or transferee is an Eligible Low-Income Household.

7. COUNTY RESPONSIBILITIES

1. Initial Property Inspection. A Rehabilitation Advisor with the Clackamas County Housing Rehabilitation Program will conduct an initial inspection of the Project to determine whether it is economically feasible. That determination will take into account the extent of work needed and the presence of environmental hazards including those related to lead-based paint (if the dwelling unit was constructed prior to 1978), septic systems, heating oil tanks and mold.
2. Environmental Review: The County will conduct an Environmental Review of the Property as described in Section 15.
3. Required Inspections:
 - i. LBP Evaluation: Rehab Advisor will order the appropriate lead evaluation if the dwelling unit was constructed prior to 1978.
 - ii. Energy Audit: Rehab Advisor will order an Energy Audit by Clackamas County Weatherization.
 - iii. Full Home and Pest & Dry Rot Inspection: Rehab Advisor will order a Full Home inspection as directed by CCLT.
 - iv. Property Standards Inspection: Rehab Advisor will conduct a Property Standards inspection

4. Additional / Possible Inspections:

- i. Oil tank locate & inspect
- ii. Sewer line scope
- iii. Septic tank & lines inspect
- iv. Radon short test
- v. Asbestos testing
- vi. Well water testing

5. Bid Packet / Worklist Specifications: Rehab Advisor will prepare a Bid Packet that includes worklist specifications for the rehabilitation work on the Project. The worklist specifications will be written to ensure that, upon completion of the rehabilitation work, the Project will:

- i. Meet requirements outlined in Section 8; and
- ii. Be reasonably maintainable by future owners.

6. Cost Estimate: Rehab Advisor will prepare a cost estimate for the rehabilitation portion of the Project.

7. Conduct a Bid Conference: Rehab Advisor will contact the contractor(s) selected to bid by CCLT and conduct a Bid Conference using the Bid Packet for the rehabilitation portion of the Project.

8. Bid Review: Rehab Advisor will review bids with CCLT.

9. Contract with Contractor: Rehab Advisor will prepare an Owner-Contractor Contract for use by CCLT. The contract between CCLT and the Contractor will provide protections for the County against apparent defects and deficiencies in the permanent work constructed by the Contractor.

10. Pre-construction Conference: Rehab Advisor will conduct a Pre-construction Conference with the General Contractor and CCLT.

11. Progress Inspections: Rehab Advisor will conduct progress inspections of the rehabilitation portion of the project.

12. Progress Payments: Rehab Advisor will review and approve progress payment requests from the General Contractor.

13. Final Inspection: Rehab Advisor with CCLT will conduct a final inspection after the rehabilitation work is completed to verify that:

- i. All of the work is completed;
- ii. All final inspection certificates and lien waivers have been submitted, and
- iii. All units meet the property standards outlined in Section 8.

8. PROPERTY STANDARDS AND WORK PRIORITIES

1. The order of priority for residential rehabilitation work is:

1. Health, Safety and Code Violations -Required
2. Incipient Code Violations -Required
3. Property Standards - Required
4. Energy Efficiency Criteria - Required
5. Green building Practices - Recommended
6. General Property Improvements

2. Upon completion of the rehabilitation, the Project must meet all of the applicable:

- Property Standards in 24 CFR 92.251
- Lead Based Paint requirements at 24 CFR 92.355 if constructed prior to 1978.
- Clackamas County Community Development Housing Rehabilitation Program Rehabilitation Standards for the current program year.

9. LAND LEASE REQUIREMENTS

1. The initial Land Lease between CCLT and the Homebuyer is part of this Agreement. See **Attachment I**.
2. The Land Lease or Memorandum of Land Lease shall be duly executed and recorded in the land records of Clackamas County.
3. The Resale Formula is defined in Section 10 of the Land Lease and complies with the following requirements of 92.254(a)(5):
 - iv. If the original Homebuyer no longer uses the dwelling unit as a principal residence or is unable to continue ownership, then the Homebuyer must sell, transfer, or otherwise dispose of their interest in the HOME Unit only to another Eligible Low-Income Household to use as its principal residence or to CCLT for resale to another Eligible Low-Income Household to use as its principal residence.
 - v. The original Homebuyer shall receive a fair return on investment, market conditions permitting, in that the Homeowner shall receive on resale, its original purchase price plus a portion of any increase in the market appreciation, if any, in the value of the HOME Unit according to the Resale Formula in the Land Lease.
4. The Land Lease Fee is defined in Section 5 of the Land Lease, any increase to the fee must be affordable to the Homebuyers, and CCLT may not increase the fee without the County's approval in advance of the increase.
5. The County must approve any revision to the Land Lease prior to the revision taking effect. Any changes to the Land Lease must comply with 92.254.

10. TERMINATION OF THIS AGREEMENT.

1. In the event of termination of this Agreement prior to the completion of the Project, where no benefit results to Eligible Low-Income Households, CCLT shall return to the County, upon demand, all HOME Funds paid to the CCLT for the Project.
2. In the event of termination of this Agreement for gross negligence, fraud or other serious breach of this Agreement or the Regulations, CCLT shall pay to the County, upon demand, all HOME Funds paid to CCLT for the Project.

11. DISBURSEMENT OF FUNDS, REPORTING AND INSPECTIONS

1. CCLT agrees to request funds under this Agreement only when they are needed for payment of specific allowable costs and only in amounts needed to pay such costs.
2. Payment requests shall be accompanied by:
 - vi. Copies of documentation for actual expenses; and
 - vii. A monthly progress report that describes the activities completed during the reporting period and those anticipated to be completed in the next period.
3. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
4. The County has the authority to inspect and, if necessary, stop the work if, in the County's sole judgment, performance of the work is not in conformance with the specifications, the terms of this Agreement or the Regulations. CCLT shall provide the County such information as the County may require regarding costs incurred, percentage completion, and work process and status.
5. Five percent (5%) of HOME Funds will be withheld until the Owner provides the County with the documentation outlined in Attachment G.
6. The County will not disburse any HOME Funds until all the Loan Documents are signed and the Trust Deed and Declaration of Land Use Restrictive Covenants are recorded.

12. INDEMNIFICATION AND INSURANCE

1. CCLT agrees to indemnify, defend and hold harmless the County and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the County's sole negligence, arising from performance of this agreement.
2. CCLT shall maintain insurance coverage on the Project as follows:

- i. During the construction phase of the Project, CCLT shall maintain all-risk property insurance in the amount of the full replacement value of the property and commercial general liability insurance in the minimum amount of \$1,000,000. CCLT shall provide County proof of insurance in the required amounts upon request by the County. CCLT shall give County no less than 30 days notice of cancellation, nonrenewal or material change of Owner's insurance.
 - ii. The General Contractor hired by CCLT shall obtain at Contractor's expense, and keep in effect during the term of the contract, at least the minimum insurance and bond required by Oregon Law and the Oregon Construction Contractors Board.
 - iii. The insurance coverage outlined above shall include the County as an additional insured. Such insurance shall provide 30 days' written notice to the County in the event of cancellation, nonrenewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the County within thirty (30) days after any reduction on the general annual aggregate limit.
 - iv. Upon request by the County, CCLT will require the Contractor to furnish the County evidence of the insurance required above.
3. After the sale of the Home Unit to the Homebuyer CCLT shall ensure that Homebuyers maintain the insurance coverage as required in Section 9 of the Land Lease and Paragraph 1.12 of the Trust Deed.

13. ENVIRONMENTAL REVIEW

1. The effects of each activity related to the Project must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Parts 50 and 58.
2. Prior to undertaking any activity with respect to the Project which will directly or indirectly cause any change to the natural or man-made environment, regardless of whether such activity is to be funded by the HOME Funds, the Owner must comply to the extent applicable with the regulations found at 24 CFR Part 58, and complete all applicable environmental review and clearance requirements as provided in 24 CFR 58.5.
3. CCLT must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, to the extent applicable by submitting to the County, Form ERR - Historic Compliance Request and the form titled "Determination of Eligibility" prior to initiating any proposed activity. CCLT must also provide all other necessary information and data upon reasonable request of the County in order that the County may maintain the required environmental review records.
4. CCLT may not use any of the HOME Funds for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973.
5. CCLT must not proceed with or commit any funds toward construction of the Project until it receives approval from the County acknowledging that all environmental review and clearance requirements have been met.
6. In the event that changes or modifications to the approved HOME activities are necessary, CCLT must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

14. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 24 CFR Part 24, CCLT must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal Projects.

15. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work

in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

16. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

CCLT must comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601-4655).

17. CONFLICT OF INTEREST

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no Developer, Owner or sponsor of the Project, or officer, employee, agent or consultant of the Owner, Developer or sponsor, may occupy a HOME-Assisted Unit in the Project.

18. MATCH REQUIREMENT

Attachment D identifies any match sources eligible in accordance with 24 CFR 92.218 through 92.222.

19. AFFIRMATIVE MARKETING

If the Project contains five or more HOME-Assisted Units, the Owner must implement and follow the adopted Affirmative Marketing Plan of the County ("Plan"), **Attachment F**. The Owner must maintain records evidencing compliance with the Plan.

20. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME Projects for the purpose of encouraging the use of minority-owned and women-owned business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment F**.

21. NON-DISCRIMINATION

1. CCLT must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in:

- i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
- ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
- iii. Equal Employment Opportunity, Executive Order 11246, as amended;
- iv. Section 3 of the Housing and Urban Development Act of 1968;
- v. Section 504 of the Rehabilitation Act of 1973;
- vi. The Fair Housing Act of 1988 (42 U.S.C. 3601-3620);
- vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
- viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
- ix. Americans with Disabilities Act of 1990 (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).

2. CCLT must maintain data on the extent to which each racial and ethnic group and single-headed Household (by gender of head of Household) have applied for Homeownership of the Project units.

22. FAITH BASED ACTIVITIES

1. Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this Agreement. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

2. An organization that participates in the HOME Program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
3. HOME Funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME Funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the HOME Regulations.

23. RECORDS

1. CCLT must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the Affordability Requirements, Land Lease provisions, property standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review.
2. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - ii. Written agreements must be retained for five years after the particular written agreement terminates.
 - iii. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - iv. Records that are the subject of audit findings must be retained for three years after such findings have been resolved.
 - v. Records for non expendable property shall be retained for three years after its final disposition. Non expendable property is defined in 24 CFR Part 84.
 - vi. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
3. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with HOME Regulations.

24. MONITORING

Any duly authorized representative of the Secretary of HUD or the Comptroller General of the United States or the County shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to CCLT's receipt and disbursement of the HOME Funds.

25. ATTORNEY FEES

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the Bankruptcy laws of the United States) is instituted in connection with any controversy arising out of this Agreement or any of the other Loan Documents, or to interpret or enforce the terms and provisions of this Agreement or any of the other Loan Documents, the prevailing party shall be entitled to recover its attorneys' fees and all other costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

26. WAIVER

Failure by either party to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

27. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party.

28. AUTHORITY TO SIGN

Each party signing this Agreement, and the other Loan Documents, represents that it has full power and authority to enter into this Agreement, and the persons signing this Agreement for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this Agreement, and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with the Loan Documents. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

29. LIAISON RESPONSIBILITY.

Steve McDowell will act as liaison from CCLT and Gloria Lewton will act as liaison from the County.

30. EFFECTIVE DATE

The Effective Date of this Agreement is the date it is signed by all parties.

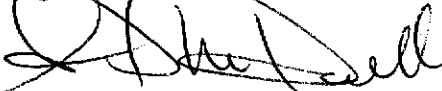
PROJECT OWNER:

Name: Clackamas Community Land Trust
Address: 5427 Glen Echo Avenue
Gladstone, OR 97027

CLACKAMAS COUNTY:

Commissioner
Commissioner Charlotte Lehan, Chair
Commissioner Jim Bernard
Commissioner Jamie Damon
Commissioner Ann Lininger
Commissioner Paul Savas

Signing on Behalf of Owner:



(signature)

Printed Name: Steve McDowell
Title: Executive Director
Federal Tax ID: 93-1262940
Phone: 503-659-1618

8/13/2012

Date

Signing on Behalf of the Board

(signature)

Cindy Becker
Director, Health, Housing and Human Services

Date

Attachment A. Legal Description

Lot 317, BIG MEADOW PHASE 8, in the City of Molalla, County of Clackamas and State of Oregon

August 23, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Interagency Agreement between Clackamas County
Community Development Division and Social Services Division
for a Housing Rights and Resources Program in Clackamas County**

The Community Development Division of the Department of Health, Housing and Human Services requests approval of an Interagency Agreement with the Social Services Division to fund the RentWell Permanent Housing Solutions Program for 3 years. The program is summarized as follows:

- Conducting a series of classes to help low-income participants overcome individual barriers to permanent housing;
- Maintaining a Rental Assistance Fund to assist program participants with expenses associated with establishing permanent housing; and
- Conducting outreach to potential landlords to educate and encourage their participation as landlords in the RentWell Permanent Housing Solutions program.

The RentWell Program provides homeless and low-moderate income citizens the benefit of the classes designed to help clients accept responsibility for rental histories, build skills needed to become good renters, and build skills to help overcome individual barriers to permanent housing.

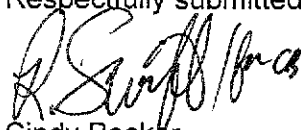
Financial Impact: CDBG Funds (grant).....	\$ 225,000
Total Project Budget:	\$ 225,000

No County General Fund dollars are involved. Community Development Block Grant funds will pay \$85,000 dollars per year adding up to \$255,000 for the three year period. County counsel reviewed and approved this agreement on July 12, 2012. The agreement begins when signed and ends on June 30, 2015.

Recommendation

We recommend approval of this Agreement and that Cindy Becker be authorized to sign all related documents on behalf of the Board of County Commissioners.

Respectfully submitted,



Cindy Becker
Director

For more information on this issue or copies of attachments
please contact Mark Sirois at 503-650-5664.

**INTERAGENCY AGREEMENT
BETWEEN**

**CLACKAMAS COUNTY DEPARTMENT OF HUMAN SERVICES
COMMUNITY DEVELOPMENT DIVISION**

AND

**CLACKAMAS COUNTY DEPARTMENT OF HUMAN SERVICES
SOCIAL SERVICES DIVISION**

I. Purpose

- A. This Agreement provides the basis for a cooperative working relationship between Clackamas County Community Development Division, herein referred to as CDD, and Clackamas County Social Services Division, herein referred to as SSD, with the common goal of operating a **RentWell program** to provide homeless and low-income persons with access to and retention of permanent affordable housing in Clackamas County.

II. Scope of Cooperation

- A. Under this agreement, the responsibilities of SSD shall be as follows:
1. SSD agrees to provide staff and materials necessary for the operation of a Rent Well Permanent Housing Solutions program (PROJECT), which is described in detail in Attachment A of this Agreement and is summarized as follows:
 - a. Conduct a series of classes to help low-income participants overcome individual barriers to permanent housing;
 - b. Maintain a Rental Assistance Fund to assist program participants with expenses associated with establishing permanent housing; and
 - c. Conduct outreach to potential landlords to educate and encourage their participation as landlords in the Ready to Rent Permanent Housing Solutions program.
 2. Prepare and submit to CD, an annual summary report and quarterly progress reports that detail the activities of the program including: number of persons assisted with program services, number of persons with access to permanent housing and ethnicity of persons served. Reports will be a combination of HMIS data and project narratives. See Attachment C.
 3. SSD agrees to provide all requested program information and participate in program monitoring during the term of the Agreement.

B. Under this agreement, the responsibilities of CDD will be as follows:

1. CDD agrees to provide and administer available FY 2012, FY2013 and FY 2014 Community Development Block Grant (CDBG) funds granted by the U.S. Department of Housing and Urban Development (HUD) to finance the Ready to Rent Permanent Housing Solutions Program.
2. CDD will monitor the performance of the SSD against goals and performance standards required herein. Substandard performance as determined by the CDD will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the SSD within ten (10) days after being notified by the CDD, Agreement termination and all funding will end. SSD must return any unused funds promptly.
3. CDD agrees to conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.

III. Compensation

- A. CDD agrees to pay SSD an amount not to exceed \$85,000 annually for each of the three (3) years of FY 2012, FY 2013 and FY 2014 Community Development Block Grant (CDBG) funds for the services outlined in Section II A of this agreement. The obligations of CDD are expressly subject to CDD receiving funds from HUD, and in no event shall CDD's financial contribution exceed the amount finally granted, released and approved by HUD.
- B. SSD agrees to match the CDBG funding with at least 20% of the program budget and report those matching funds annually in the attached report (See Attachment D).
- C. In the event the amount of CDBG funds granted by HUD in the subsequent fiscal years is less than the amount budgeted in the Community Development 3-Year Funding Recommendations, CDD and SSD shall jointly determine the effectiveness of the PROJECT in meeting its program objectives within the reduced funding limits, and will make the necessary operational adjustments.
- D. Interim payments shall be made on requests for payment submitted to CCD on a quarterly basis. Payment requests must detail the PROJECT expenditures of allowable costs incurred during that quarter, pursuant to 24 CFR 85 and OMB Circular A-87 (effective 6/9/2004). All requests for payment are subject to the approval of CDD and shall be submitted to:

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

IV. **Liaison Responsibility**

A. Liz Bartell will act as liaison from SSD. Mark Sirois will act as liaison from CDD.

V. **Special Requirements**

A. **Assignment and Subcontracting.** SSD shall undertake the work outlined in Attachment A and shall not assign any portion of such work outside of SSD without written approval from CDD.

B. **Conflict of Interest.**

1. **Interest of Officers, Employees, or Agents.** No officer, employee, or agent of CDD or SSD who exercises any functions or responsibilities in connection with the planning and execution of activities under the CDBG Program, or any other person who exercises any functions or responsibilities in connection with the Program during their tenure or for one year thereafter, shall obtain a personal or financial interest in or benefit from this Agreement, or any contract, subcontract or agreement arising therefrom, either for themselves or for persons with whom they have family or business ties without appropriate prior HUD waiver; and SSD shall take appropriate steps to assure compliance.
2. **Interest of Certain Federal Officials.** No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.

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

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

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

- F. **Public Information.** CDD and SSD shall cooperate in public information efforts, such as contracts with neighborhood or consumer advocacy organizations, press releases, etc. In all news releases and other public notices relating to activities under this Agreement SSD shall include information identifying the source of funds as the Clackamas County CDBG program.
- G. **Evaluation.** SSD agrees to participate with CDD in any evaluation project or performance report, as designed by the CDD or the appropriate Federal department, and to make available all information required by any such evaluations process.
- H. **Audits and Inspections.** SSD will insure that CDD, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this Agreement for the purpose of making surveys, audits, examinations, excerpts and transcripts. SSD shall not be required to provide any information which in any way would deny the rights of confidentiality to any low or moderate income family or individual seeking or receiving assistance from the program.
- I. **Record and Fiscal Control System.** SSD agrees to comply with the policies, guidelines and requirements of 24 CFR Part 85 with respect to funds pursuant to this Agreement. All financial and programmatic records, supporting documents, statistical records, and other records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- J. **Citizen Participation.** SSD shall compile and maintain records including narratives or other documentation describing the process used to inform citizens concerning the program.
- K. **Equal Opportunity.** SSD shall maintain and provide to CDD racial, ethnic, gender, age, head of household, and income data showing the extent to which these categories of persons have participated in, or benefited from, the activities carried out under this Agreement.

VI. Amendment

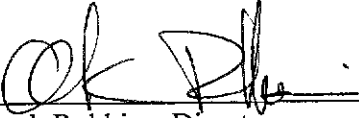
- A. This Agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement


- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning July 1, 2012 and ending June 30, 2015.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 - 1. Written notice provided to CDD from SSD before any materials or services for improvements are procured, or;
 - 2. Written notice provided by CDD in accordance with 24 CFR 85.43, included as Attachment B, resulting from material failure by SSD to comply with any term of this Agreement, or;
 - 3. Mutual agreement by CDD and SSD in accordance with 24 CFR 85.44.
- E. Upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with CDD.

**CLACKAMAS COUNTY
COMMUNITY DEVELOPMENT DIVISION**

**CLACKAMAS COUNTY
SOCIAL SERVICES DIVISION**



Chuck Robbins, Director



Brenda Durbin, Director

8/14/12

Date

7-31-12

Date

-
- CLACKAMAS COUNTY**
Chair: Charlotte Lehan
Commissioner: Paul Savas
Commissioner: Jim Bernard
Commissioner: Jamie Damon
Commissioner: Ann Lininger

Signing on Behalf of the Board.

Cindy Becker, Director
Department of Health, Housing and Human Services

Date

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of a Participation Agreement with
Tri-County Medicaid Collaborative**

The Clackamas County Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of the Participation Agreement with the Tri-County Medicaid Collaborative now known as Health Share of Oregon.

Health Share has been certified by the State of Oregon, Oregon Health Authority as a Coordinated Care Organization serving Oregon Health Plan (OHP) Medicaid members in Clackamas, Multnomah and Washington Counties effective September 1, 2012. Coordinated Care Organizations are replacing the Fully Capitated Health Plans, Mental Health Organizations and Dental Care Organizations that currently manage services for OHP members. CCOs will be responsible for the integration and coordination of physical and mental health services, and, beginning in 2014, dental health services, for its enrolled members.

As a CCO, Health Share will have a global budget that grows at a fixed rate; be accountable for the health outcomes of the population it will serve; and will be governed by a partnership among health care providers, community members and stakeholders in the health systems that have financial responsibility and risk.

Clackamas County has contracted with the State of Oregon as a Mental Health Organization to administer the mental health benefits of the Oregon Health Plan in the county since 1996. The County is now a partner in Health Share and our enrolled Medicaid members will become members of Health Share on September 1, 2012. As such, our contract with the State ends August 31, 2012.

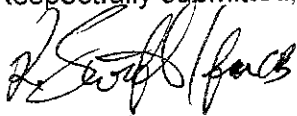
This Agreement establishes the terms and conditions under which the Division will participate in Health Share to continue to manage and coordinate mental health services for Medicaid members who are residents of Clackamas County.

This is a no maximum agreement. It is funded through a per member, per month capitation arrangement. No County General Funds are involved. It was reviewed and approved by County Counsel on August 13, 2012. This agreement is effective September 1, 2012 and terminates on December 31, 2013.

Recommendation

We recommend the approval of this Agreement and further recommend that Cindy Becker be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Cindy Becker
Director

TRI-COUNTY MEDICAID COLLABORATIVE

RISK ACCEPTING ENTITY PARTICIPATION AGREEMENT

THIS RISK ACCEPTING ENTITY PARTICIPATION AGREEMENT ("Agreement") is effective as of the date set forth below ("Effective Date") by and between Tri-County Medicaid Collaborative, an Oregon nonprofit corporation ("TCMC"), and Clackamas County, a , referred to herein as a Risk-Accepting Entity ("RAE").

A. TCMC was created as a Coordinated Care Organization ("CCO"), to enter into a risk contract that covers coordinated care services with the Oregon Health Plan ("OHP"), and facilitate the management and coordination of patient care for OHP members ("Members") and individuals who are dually eligible for coverage under OHP and the Medicare program ("Dual Eligibles").

B. TCMC has entered into a contract with the Oregon Health Authority ("OHA") to become a CCO, effective September 1, 2012.

C. RAE and its participating healthcare facilities, practitioners and other providers desire to participate in TCMC's CCO by providing or arranging for services to Members on a fully-capitated basis in coordination with TCMC under the terms and conditions specified in this Agreement.

D. NOW THEREFORE, this Agreement states the terms and conditions upon which RAE will participate in the CCO of TCMC.

AGREEMENT

I. Effective Date and Duration

A. **Term.** The term of this Agreement shall commence on the first of the month after last to occur of:

1. September 1, 2012; or
2. Approval by the Department Justice and by CMS (the "Effective Date").

B. **Termination.** Unless extended or terminated earlier in accordance with Exhibit D, Section 10 herein, this Agreement shall expire on December 31, 2013 ("Termination Date").

C. **Renewal.** After the Termination Date, this Agreement shall be automatically renewed for successive one year terms (the "Renewal Terms") until the Agreement is terminated in accordance with Exhibit D, Section 10 of this Agreement. All references in this Agreement to the term of this Agreement shall include the initial term and any Renewal Terms that occur.

II. Contract in its Entirety. This Agreement consists of this document together with the following exhibits and schedules (some of which in turn have attachments), which are attached hereto and incorporated into this Agreement by reference:

- Exhibit A:** Definitions
- Exhibit B:** Statement of Work
- Exhibit C:** Consideration
- Exhibit D:** Standard Terms and Conditions
- Exhibit E:** Required Federal Terms and Conditions
- Exhibit F:** Insurance Requirements
- Exhibit G:** DSN Provider and Hospital Adequacy Report Reporting Requirements
- Exhibit H:** Practitioner Incentive Plan Regulation Guidance
- Exhibit I:** Grievance System
- Exhibit J:** Readiness Review
- Exhibit K:** Transformation Plan
- Exhibit L:** Solvency Plan and Financial Reporting

There are no other Agreement documents unless specifically referenced and incorporated in this Agreement.

III. Intentionally omitted.

IV. Intentionally omitted.

V. Enrollment Limits and Service Area

- A. Service Area.** RAE's Service Area by zip code is: All zip codes in Clackamas County.
- B. Enrollment Limit.** RAE's initial Enrollment Limit shall be: No limit. RAE's Enrollment Limit is expressly subject to change as may be authorized in Exhibit B, Part 4 Section 6 of this Agreement.

VI. Interpretation and Administration of Agreement. The parties acknowledge and agree that this Agreement is subject to the terms and conditions of the Health Plan Services Contract ("Core Contract") between TCMC and the Oregon Health Authority (OHA). The parties shall interpret and administer this Agreement in accordance with the Core Contract, Section VI titled "Interpretation and Administration of Agreement" which shall be incorporated herein by reference.

VII. Intentionally omitted.

VIII. Signatures

[Signatures contained on the following page]



ELLEN CRAWFORD
DIRECTOR

JUVENILE DEPARTMENT

JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #8 to the contract with Parrott Creek Child and Family Services to Provide Shelter Services to Children Residing in Clackamas County Under the Jurisdiction of Clackamas Juvenile Court

In August of 2009 the County issued a Request for Proposals for shelter services. Three qualified providers responded at the time of closing on August 20, 2009: Parrott Creek Child and Family Services Christian Community Placement Center and Boys and Girls Aid. Contracts were entered into with each provider, with each provider supplying beds on an as-needed basis to house juveniles needing shelter services.

This amendment adds one additional year to the contract; this will allow the County to complete a Request for Proposals process to select qualified providers to supply Shelter Services. The existing provider is the sole source provider for shelter care in Clackamas County which provides accessibility and improved transitions for youth and families living within the County.

The renewed value of this contract is \$284,440. This will provide access to 6 beds.

County Counsel has reviewed this amendment.

RECOMMENDATION:

Staff respectfully recommends approval of amendment #8 to the contract with Parrott Creek Child and Family Services to provide Shelter Services to Children Residing in Clackamas County under the Jurisdiction of Clackamas Juvenile Court, adding one additional term to the contract.

Sincerely


Ellen Crawford, Director
Juvenile Department

For information on this issue or copies of attachments contact Ellen Crawford Juvenile Department at 503.655.8342

Placed on the Board Agenda of August 23, 2012 by the Purchasing Division

Amendment #8 to the Contract with Parrott Creek Child and Family Services to Provide Shelter Services to Children Residing in Clackamas County Under the Jurisdiction of Clackamas Juvenile Court

This Amendment #8, when signed by the Contractor and the Board of County Commissioners, will become part of the contract documents, superseding the original to the applicable extent indicated.

ADD THE FOLLOWING LANGUAGE: The CONTRACTOR will collect random urinalysis testing on all youth at the shelter. CONTRACTOR staff will attend COUNTY department trainings related to the contract as requested by CCJD.

ADD REVISED SCOPE OF WORK DATED JUNE 21, 2012

ADD 2012/2013 SHELTER QUARTERLY WORK PLAN TEMPLATE

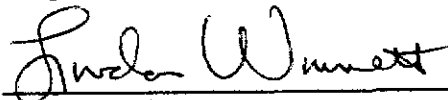
AGREEMENT FORM, COMPENSATION, A:

A. Add one additional one year term to the contract.

Renew the contract through June 30, 2013. This is the third of three renewals available for use under the terms of the contract. The maximum value of the contract renewal is \$284,440 (for 365 days).

Original contract	\$127,871 (4 beds for the period 10/16 2010 through 6/ 30/2010)
Amendment #1	2009/2010 work plan
Amendment #2	Language change
Amendment #3	Language change
Amendment #4	31,681 (addition of 2 beds for the period 3/1/2010 through 6/30/2010)
Amendment #5	Contract renewal (\$189,566 4 beds for the period 7/1/2010 through 6/30/ 2011)
Amendment #6	62,843
Amendment #7	Contract Renewal through 6/30/2012
	\$285,129 for a total of 6 beds (for 366 days)
<u>Amendment #8</u>	<u>Contract amendment & renewal</u>
Total contract value	\$284,440 (for 365 days)

Parrott Creek Child and Family Services
1001 Molalla Avenue, Suite 209
Oregon City, OR 97045



Authorized Signature

Linda Winnett, Executive Director
Name, Title

7-18-12
Date

503-722-4110 / 503-655-8908
Telephone / Fax Number

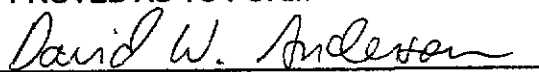
Clackamas County
Board of Commissioners by

Charlotte Lehan, Chair

Recording Secretary

Date

APPROVED AS TO FORM



County Counsel

12



Debbie McCoy
Manager

CABLE COMMUNICATIONS
PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

August 23, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

IN THE MATTER OF AN APPLICATION BY WAVEDIVISION VII, LLC, FOR CONSENT TO A CHANGE OF CONTROL OF ITS PARENT, WAVEDIVISION HOLDINGS, LLC.

WaveDivision VII, LLC d/b/a Wave Broadband ("Wave") currently holds two franchises granted by Clackamas County ("County") to own and operate cable systems in the County in the Sandy, Canby and Molalla areas. Wave is a wholly-owned subsidiary of WaveDivision Holdings, LLC ("Wave Holdings"). Wave Holdings has entered into an agreement that will result in a change in ownership, thus changing the ultimate control of Wave. The franchises require prior approval from the County in the event of a change in control. On June 18, 2012, Wave filed FCC Form 394 with the County.

The ultimate change in control of Wave will result from a sale by Wave Holdings' current private equity investors. On May 30, 2012, OH WDH Holdco, LLC, a Delaware limited liability company ("Oak Hill") affiliated with Oak Hill Capital Partners entered into a definitive agreement to acquire Wave Holdings from its current majority owners, principally three affiliates of Sandler Capital Management. Oak Hill Capital Partners is a San Francisco based private equity company. The other owners of Oak Hill will be WaveDivision Capital, LLC, a Washington limited liability company controlled by Wave Holdings' Chief Executive Officer Steve Weed ("Wave Capital") and an affiliate of GI Partners, a Menlo Park, California based private equity company. While the sale will result in a change in control of Wave because of the new ownership of Wave Holdings, Wave Holdings will continue to be the parent of Wave and there should not be any impact on the management and operation of Wave or the franchises. Upon the closing of the change in ownership, Wave will remain responsible for all obligations and liabilities under the franchises. The ownership of Wave and Wave Parent following the consummation of the proposed transaction is set forth on the attached organization chart.

Federal law sets out a very specific and limited review of a proposed change of control for local governments which provides the County a 120-day period of time to complete. If no action is taken, the change in control is automatically deemed approved. Federal law allows local franchise authorities to inquire into the legal, financial, and technical qualifications of the prospective controlling party.

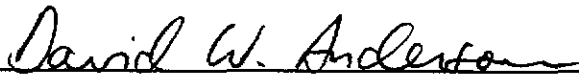
We have had the legal, financial, and technical qualifications of this transaction reviewed in coordination with several other jurisdictions in order to save time and money to ascertain if the new ownership structure impairs these qualifications of Wave Holdings as Wave's parent company. No issues were found for the legal, financial or technical qualifications and based on the review, the transaction will not impair these qualifications.

The County's consent to the transaction is not to be construed to constitute a waiver or release of any rights the County may have under the franchises. Wave must continue to comply with all local laws, agreements and the terms imposed in the franchise agreements consistent with applicable federal and state law and County code.

RECOMMENDATION:

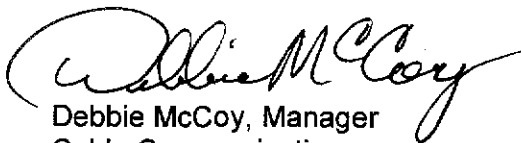
The staff respectfully recommends the Board approve the change of control with conditions to assure that the terms of the current franchises continue to be met.

County Counsel has seen and approved the attached Board Order.



David Anderson, Assistant County Counsel

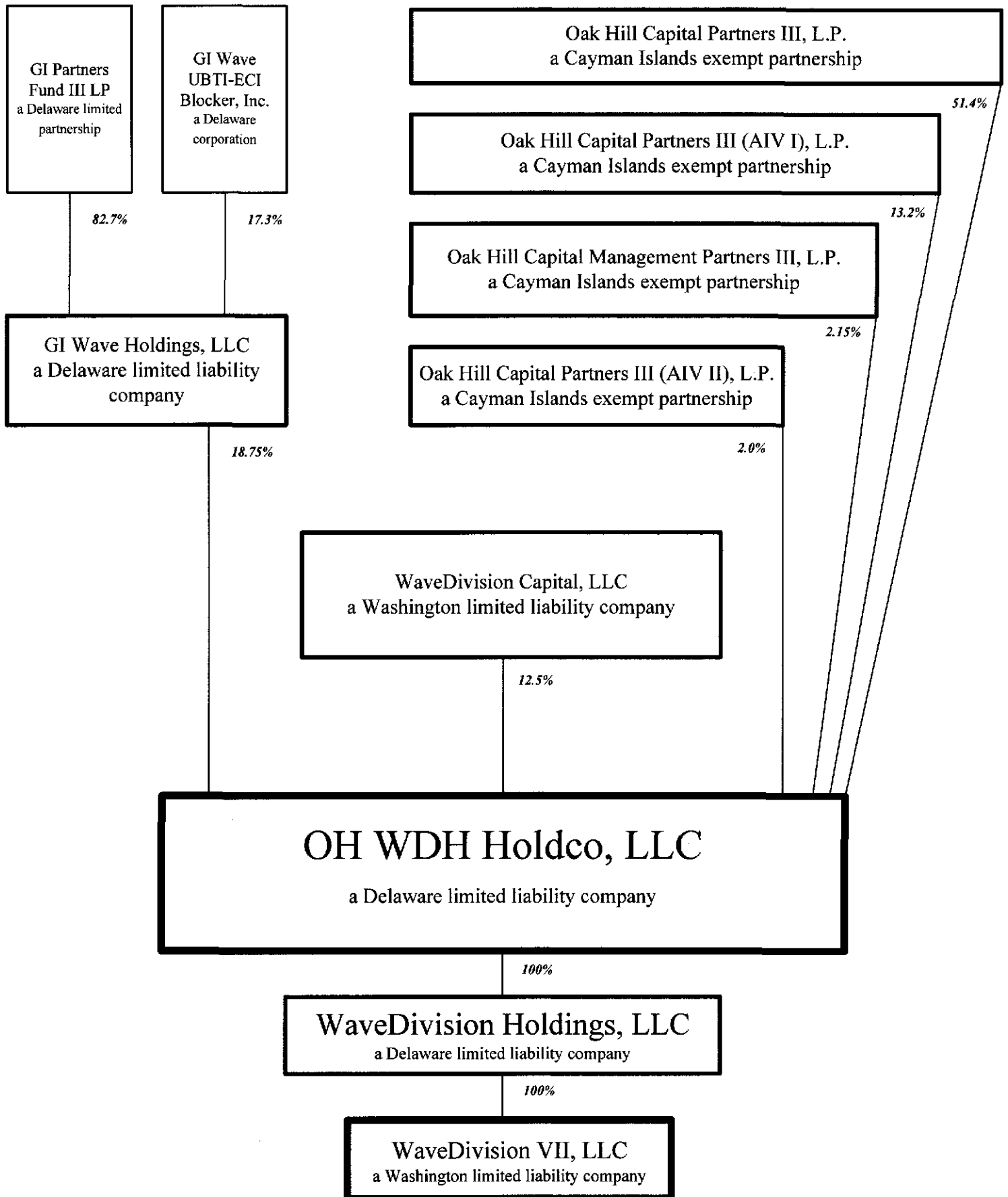
Respectfully submitted,



Debbie McCoy, Manager
Cable Communications

For information on this issue or copies of attachments,
please contact Debbie McCoy at (503) 742-5902.

Organization Chart AFTER Proposed Transaction



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

In the matter of an Application by
WaveDivision VII, LLC, for Consent
to a Change of Control of its Parent,
WaveDivision Holdings, LLC



Order No.

This matter coming on at this time to be heard, and it appearing that Wave Division VII, LLC, a Washington limited liability company d/b/a Wave Broadband ("Wave Broadband") currently holds two franchises granted by Clackamas County, Oregon ("the County") to own and operate a cable system in the County, pursuant to Board Order No. 2012-75 authorizing Wave Broadband to provide service to CUID OR0294 (unincorporated areas outside Molalla) and OR0483 (unincorporated areas outside Canby) and pursuant to Board Order No. 2011-21 authorizing Wave Broadband to provide service to CUID OR0323 (unincorporated areas outside Sandy) (collectively, the "Franchises"); and

It appearing that Wave Broadband is a wholly-owned subsidiary of WaveDivision Holdings, LLC, a Delaware limited liability company ("Wave Parent"); and

It further appearing that on May 30, 2012, OH WDH Holdco, LLC, a Delaware limited liability company affiliated with Oak Hill Capital Partners III, L.P. ("Oak Hill"), in conjunction with (i) WaveDivision Capital, LLC, a Washington limited liability company controlled by Wave Parent's Chief Executive Officer Steve Weed, and (ii) an affiliate of GI Partners, entered into a definitive agreement to acquire Wave Parent from its current majority owners, principally three affiliates of Sandler Capital Management; and

Whereas, Wave Parent and Oak Hill have filed FCC Form 394s with the County and have requested consent by the County to the change of control and have provided the County with all information regarding the change of control as required by applicable law (collectively, the "Application"); and

Whereas, the County has reviewed the Application and has determined that Oak Hill meets the legal, technical, and financial criteria to become the owner of Wave Parent and the indirect owner of Wave Broadband, and that it would be in the best interest of the people of Clackamas County to approve such change of control;

NOW THEREFORE, IT IS HEREBY ORDERED: Approval of the change of control as described above to the extent required by the terms of the Franchises shall be effective immediately, subject to the following conditions: (a) continued operation of the cable system, under all terms of said Board Orders 2012-75 and 2011-21 and effective for the same term; and (b) effective upon the closing of the transaction described in the Application, Wave Broadband shall remain responsible for any obligations and liabilities under the Franchises.

DATED THIS _____ DAY OF AUGUST 2012.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



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Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**AGREEMENT TO FURNISH CONSULTANT SERVICES TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND
THE TRI-CITY SERVICE DISTRICT FOR THE
BLUE HERON REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

Clackamas County Service District No. 1 and the Tri-City Service District (the Districts) have entered into a Prospective Purchaser Agreement/Consent Order (PPA) with the Oregon Department of Environmental Quality (ODEQ) for the Blue Heron Property. As part of the PPA, ODEQ has developed a Scope of Work (SOW) for completion of a Remedial Investigation & Feasibility Study (RI/FS) that the Districts must complete as part of the PPA. Water Environment Services (WES), on behalf of the Districts, solicited proposals to hire a Consultant to provide professional services to complete the RI/FS. Seven proposals were received and, after review by project team, CDM Smith was selected to complete the project.

CDM Smith will work with WES staff to complete all RI/FS activities identified in the PPA Scope of Work (SOW). Each deliverable identified in the SOW is subject to DEQ review and approval before proceeding to the next, therefore, WES is proposing to complete the RI/FS work under this agreement in Phases, with each phase negotiated regarding scope and budget. The following is a summary of the Phases anticipated under this contract:

- Phase 1: Prepare and complete the Remedial Investigation Proposal and Remedial Investigation Work Plan per ODEQ requirements
- Phase 2: Completion of RI Work and submittal of RI report to ODEQ
- Phase 3: Completion of Risk Assessment and Feasibility Study

CDM Smith has provided WES with a scope of work and budget of \$50,000 for Phase 1. WES staff anticipates the entire RI/FS project to be approximately \$250,000. WES staff will present each additional scope and contract for Phases 2 and 3 to the Board for approval.

The Agreement will be funded through the Districts' FY2012-2013 sanitary sewer capital improvement budgets. District Counsel has reviewed the Agreement.

RECOMMENDATION

The District recommends:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 1 and the Tri-City Service District, approve Phase 1 of the Agreement to Furnish Consultant Services to the Districts for the Blue Heron Remedial Investigation/Feasibility Study in the amount of \$50,000; and
2. The Director of Water Environment Services be authorized to sign and execute the Agreements.

Sincerely,



Michael S. Kuenzi
Director

For information on this issue or copies of attachments, please contact Trista Crase at (503) 742-4566

**AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and
TRI-CITY SERVICE DISTRICT
FOR
DEVELOPMENT OF A REMEDIAL INVESTIGATION PROPOSAL AND WORK PLAN
FOR BLUE HERON PROPERTY**

THIS AGREEMENT TO FURNISH PROFESSIONAL SERVICES (this "Agreement"), made and entered into on this _____ day of _____ in the year 2012 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and TRI-CITY SERVICE DISTRICT, both county service districts formed under Oregon Revised Statutes ("ORS") 451 (the "DISTRICT") and CDM Smith, Inc., a Massachusetts corporation (the "CONSULTANT").

RECITALS

WITNESSETH: That whereas the DISTRICT intends to engage the CONSULTANT to perform the professional services described on Exhibit A, on the schedule set forth on Exhibit B, each as attached hereto and incorporated by reference, hereinafter called the "PROJECT."

WHEREAS, the PROJECT consists of developing the Remedial Investigation ("RI") Proposal and the RI work plan. The RI proposal will briefly discuss the proposed approach to the RI, addressing soil, groundwater, surface water, and lagoon sludge. The RI work plan will be developed in accordance with applicable Oregon Administrative Rules (OAR 340-122-0010 through -0115), DEQ guidance and, as appropriate, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01, 1988 (most current versions).

NOW, THEREFORE, the DISTRICT and the CONSULTANT for the considerations hereinafter set forth agree as follows:

ARTICLE 1 - SERVICES OF THE CONSULTANT

The CONSULTANT agrees to perform, in accordance with applicable District, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the PROJECT as stated and defined in Exhibit A (the "Services").

ARTICLE 2 - DISTRICT'S RESPONSIBILITIES

Unless otherwise specifically modified in Exhibit A, the DISTRICT will:

- 2.1 Provide adequate information to the CONSULTANT regarding the DISTRICT's requirements for the PROJECT.
- 2.2 Assist the CONSULTANT by making available all reasonably available information and technical data pertinent to the PROJECT.

- 2.3 Obtain approvals and permits from governmental authorities having jurisdiction over the PROJECT, and such approvals and consents from others as may be necessary for completion of the PROJECT (excepting any personal qualifications or certifications required for CONSULTANT to perform the work contemplated hereunder).

ARTICLE 3 – CONSULTANT’S RESPONSIBILITIES

- 3.1 The CONSULTANT agrees to complete the Services according to the schedule set forth in Exhibit B (the “Schedule”). If the DISTRICT has requested significant modifications or changes in the scope of the PROJECT pursuant to Section 3.3, the time of performance of the CONSULTANT's Services shall be adjusted accordingly.

3.2 Standards of Performance

- 3.2.1 The standard of care for all professional Services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by a competent member of CONSULTANT’s profession.
- 3.2.2 CONSULTANT shall be responsible for the accuracy of its Services and documents resulting there from, and DISTRICT shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation, except to the extent such action is solely attributable to deficiencies in DISTRICT-furnished information.
- 3.2.3 CONSULTANT and DISTRICT shall comply with applicable Laws or Regulations and DISTRICT-mandated standards. Any changes to these requirements during the term of this Agreement shall not be the basis for any modifications to CONSULTANT’s scope of Services, times of performance, or compensation.

3.3 Notice of Changes

In the normal course of administering the work under this Agreement, the DISTRICT may give directives to the CONSULTANT, either written or verbal, which may constitute a change to the Services or Schedule. If an instruction, directive or decision is given that the CONSULTANT believes is a change in scope or Schedule, the CONSULTANT shall notify the DISTRICT within seven (7) calendar days of receiving such directive or instruction. The notice shall state the general nature of the change, but need not include a detailed cost or impact estimate. Failure to give timely written notice relieves the DISTRICT from any obligation to adjust the contract amount, scope or Schedule as an amendment to the Agreement. To the extent District agrees that a change in the Services required or the Schedule has occurred, the parties shall agree to an amendment to this Agreement pursuant to the process set forth in Paragraph 6.24 hereof.

3.4 CONSULTANT's Project Manager

The CONSULTANT shall assign personnel to do the work in the capacities and amounts designated in Exhibit A. The CONSULTANT shall not change these personnel assignments without the prior written consent of the DISTRICT's Project Manager (as defined in Paragraph 4.3), which consent shall not be unreasonably withheld.

ARTICLE 4 - AUTHORIZATION AND PROJECT MANAGER

4.1 Specific authorization to proceed with the Services shall be granted in writing by the DISTRICT within a reasonable time after the execution of this Agreement. The CONSULTANT shall not proceed with the work without such authorization. The DISTRICT's Project Manager shall have authority to give such authorizations.

4.2 This Agreement shall be effective as of the CONSULTANT's receipt of the written authorization to proceed and shall be completed as set forth in the Schedule.

4.3 DISTRICT's Project Manager

The DISTRICT's Project Manager is authorized to approve work and billings hereunder, approve subconsultants, give notices referred to herein, terminate this Agreement as provided herein and carry out any other DISTRICT actions referred to herein. The DISTRICT's Project Manager shall be Leah Johanson.

ARTICLE 5 - PAYMENTS TO CONSULTANT

In accordance with the terms and conditions of this Agreement, the DISTRICT shall compensate the CONSULTANT as follows:

5.1 Compensation

5.1.1 The DISTRICT agrees to pay the CONSULTANT an amount not to exceed FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00) for the Services as billed monthly. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00) without prior written approval of the DISTRICT.

5.1.2 The CONSULTANT is entitled to no compensation for the correction or revision of any errors or deficiencies in the services provided.

5.1.3 The DISTRICT may withhold from payments due the CONSULTANT such sums as are necessary, in the DISTRICT's sole and absolute discretion, to protect the DISTRICT against any loss or damage which may result from negligence or unsatisfactory work by the CONSULTANT, the failure of the CONSULTANT to perform as required under this Agreement, or claims filed against the CONSULTANT or the DISTRICT relating to the CONSULTANT's Services or

work under this Agreement.

5.2 Billing and Payment Procedure

- 5.2.1 The CONSULTANT will provide monthly percentage complete invoices to the DISTRICT for work performed during the preceding month. The percentage complete invoices will be accompanied with a summary cost itemization and supported by a monthly progress report tied to the milestones indicated in the Schedule. The CONSULTANT shall maintain detailed records to support these charges and such records shall be available to the DISTRICT for audit and copying. The DISTRICT shall pay monthly payments to the CONSULTANT within 30 days of the DISTRICT's receipt of the CONSULTANT's monthly statement. Interest on unpaid payments due shall accrue at the rate of 1% per month beginning the 60th day after the DISTRICT's receipt of the CONSULTANT's statement. No interest shall be paid on disputed amounts.

ARTICLE 6 - GENERAL CONDITIONS

6.1 Early Termination of Agreement

- 6.1.1 The DISTRICT and the CONSULTANT, by mutual written agreement, may terminate this Agreement at any time.
- 6.1.2 The DISTRICT, on thirty (30) days' prior written notice to the CONSULTANT, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.1.3 Either the DISTRICT or the CONSULTANT may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving a written notice of termination stating the effective date of the termination.

6.2 Payment on Early Termination

- 6.2.1 In the event of termination under Paragraphs 6.1.1 or 6.1.2, hereof, the DISTRICT shall pay the CONSULTANT for work performed in accordance with the Agreement prior to the termination date.
- 6.2.2 In the event of termination under Paragraph 6.1.3 hereof by the CONSULTANT due to a breach by the DISTRICT, then the DISTRICT shall pay the CONSULTANT as provided in Paragraph 6.3.1.

6.2.3 In the event of termination under Paragraph 6.1.3 hereof by the DISTRICT due to a breach by the CONSULTANT, then the DISTRICT shall pay the CONSULTANT as provided in Paragraph 6.3.1, subject to set off of excess costs, as provided for in Paragraphs 5.1.3 and 6.3.

6.2.4 In the event of early termination, all of the CONSULTANT's work product will become and remain property of the DISTRICT.

6.3 Remedies

6.3.1 In the event of termination under Paragraph 6.1.3 by the DISTRICT due to a breach by the CONSULTANT, the DISTRICT may complete the work either itself, or by agreement with another consultant or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under Paragraph 5.1.1 hereof, then the CONSULTANT shall promptly pay to the DISTRICT the amount of the excess.

6.3.2 The remedies provided to the DISTRICT under Paragraph, 6.1, 6.2, and 6.3 hereof for a breach by the CONSULTANT shall not be exclusive. The DISTRICT also shall be entitled to any other equitable and legal remedies that may be available.

6.3.3 In the event of breach of this Agreement by the DISTRICT, then the CONSULTANT's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraphs 6.1 and 6.2 hereof.

6.4 Indemnification and Insurance

6.4.1 The CONSULTANT agrees to indemnify, save harmless and defend the DISTRICT, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, errors, or omissions of the CONSULTANT or CONSULTANT's officers, owners, employees, agents, or its subcontractors or anyone over which CONSULTANT has a right to control.

6.4.2 The CONSULTANT agrees to furnish the DISTRICT evidence of comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for personal injury and property damage for the protection of the DISTRICT, its officers, commissioners, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the CONSULTANT's, or any subcontractors, in the performance of this Agreement. The insurance shall include the DISTRICT, its officers, commissioners, agents and employees, as additional insureds and refer to and

support the CONSULTANT's obligation to hold harmless the DISTRICT, its officers, commissioners, agents, and employees.

- 6.4.3 The CONSULTANT agrees to furnish the DISTRICT evidence of professional liability insurance coverage (errors and omissions, on a claims-made basis) in the amount of not less than \$1,000,000 because of personal injury, bodily injury, death or damage to property.

6.5 Oregon Law and Forum

- 6.5.1 This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 6.5.2 Any litigation between the DISTRICT and the CONSULTANT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon. The parties agree, however, to resolve any disputes between the parties in the manner described in Paragraph 6.23.

6.6 Workers' Compensation Coverage Requirements

The CONSULTANT is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any workers' compensation coverage under this Agreement. If the CONSULTANT hires subconsultants for the performance of this Agreement, the CONSULTANT agrees to require that the subconsultant(s) shall comply with ORS Chapter 656. The signing of this Agreement shall constitute the declaration of independent contractor status by the CONSULTANT.

- 6.6.1 The CONSULTANT will be solely responsible for payment of any local, state or federal taxes required as a result of this Agreement.
- 6.6.2 This Agreement is not intended to entitle the CONSULTANT to any benefits generally granted to DISTRICT, officers, or employees. Without limitation, but by way of illustration, the benefits not intended to be extended by this contract to the CONSULTANT are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment compensation, or retirement benefits (except so far as benefits are required by law if the CONSULTANT is presently a member of the Public Employees Retirement System).

6.7 Subcontracts

The CONSULTANT shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the DISTRICT. The CONSULTANT shall require subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CONSULTANT as specified in this Agreement. Notwithstanding DISTRICT approval of a subcontractor, the CONSULTANT shall remain obligated for full performance hereunder, and the DISTRICT shall incur no obligation other than its obligations to the CONSULTANT hereunder. The CONSULTANT agrees that if subcontractors are employed in the performance of this Agreement, the CONSULTANT and its subcontractors are subject to the requirements of the Workers' Comp Law.

6.8 Assignment

The CONSULTANT shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the DISTRICT which may be granted or withheld in its sole and absolute discretion. The DISTRICT may assign this Agreement at any time and shall provide CONSULTANT with notice of such assignment within thirty (30) days of such assignment.

6.9 Notice

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the DISTRICT: Clackamas County Service District No. 1
 c/o Water Environment Services
 150 Beavercreek Road, 4th Floor
 Oregon City, Oregon 97045
 ATTN: Leah Johanson

Copy to: County Counsel
 c/o Water Environment Services
 150 Beavercreek Road, 4th Floor
 Oregon City, Oregon 97045
 ATTN: Chris Storey

If to the CONSULTANT: Attn: Darrel M. Stordahl, Technical Director
 CDM Smith Inc.,
 319 SW Washington St.
 Suite 900
 Portland, OR 97205

6.10 Severability

If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

6.11 Integration

This Agreement contains the entire agreement between the DISTRICT and the CONSULTANT and supersedes all prior written or oral discussions or agreements.

6.12 Funds

The DISTRICT certifies that sufficient funds are available and authorized for expenditure pursuant to this Agreement in Fiscal Year 2012-2013. The funds needed for the balance of the Agreement are subject to appropriation by the Board of County Commissioners, acting as the governing body of the DISTRICT (the "Board"), during budget processes. If the Board does not appropriate funds for subsequent fiscal years for the balance of this contract, the DISTRICT may immediately terminate this Agreement by giving written notice of termination to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any work performed after the date of such written termination notice. The DISTRICT shall also have the right to accelerate or decelerate the work to match funding limitations. Any termination for lack of funds shall not constitute an "Early Termination" as such term is used in Paragraph 6.1.

6.13 Estimates of Cost

The estimates of cost for a PROJECT provided for herein are to be prepared by the CONSULTANT through exercise of experience and judgment in applying currently available cost data. The CONSULTANT will keep the DISTRICT apprised of changes throughout the PROJECT that significantly impact the estimated costs provided.

6.14 Ownership of Documents

- 6.14.1 All work the CONSULTANT performs under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the DISTRICT. The DISTRICT shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the CONSULTANT produces in connection with this Agreement. On completion or termination of the Agreement the CONSULTANT shall promptly deliver these materials to the Project Manager.
- 6.14.2 The CONSULTANT may retain for its own records and at its own cost copies of the materials referred to in Paragraph 6.14.1 hereof.

6.14.3 Any use the DISTRICT makes of the materials referred to in Paragraph 6.14.1 hereof, except for purposes of the work contemplated by this Agreement, shall be at the DISTRICT's risk.

6.15 Commencement of Work

The CONSULTANT agrees that work being done pursuant to this Agreement will not be commenced until after:

6.15.1 Workers' compensation insurance is obtained, as specified in Paragraph 6.6.

6.15.2 This Agreement is fully executed by all parties and approved by the Board and/or Director when applicable.

6.15.3 The receipt of a written authorization to proceed from the Project Manager.

6.16 Release of Information

No information relative to the PROJECT shall be released by the CONSULTANT for publication, advertising, communication with the media, the public, other clients of the CONSULTANT, or any other person for any other purpose, without prior written approval of the DISTRICT.

6.17 Maintenance of Records

The CONSULTANT shall maintain books and accounts of payroll costs, travel, subsistence, field contracted services of others and reimbursable expenses pertaining to each PROJECT in accordance with generally accepted professional practices, appropriate accounting procedures and applicable local, state or federal laws, statutes, ordinances, or rules and regulations. The DISTRICT or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the CONSULTANT regarding its billings or any record arising from or related to this Agreement. Records shall be maintained and available until three (3) years after the date of final PROJECT billing or until three (3) years after the date of resolution of any litigation or claim.

6.18 Audit of Payments

6.18.1 The DISTRICT, either directly or through a designated representative, may audit the records of the CONSULTANT at any time during the three (3) year period established by Paragraph 6.17.

6.18.2 If an audit discloses that payments to the CONSULTANT were in excess of the amount to which the CONSULTANT was entitled, then the CONSULTANT shall immediately repay the amount of the excess to the DISTRICT.

6.19 Public Contracting Law

Pursuant to the requirements of ORS Chapters 279A and 279C, the following terms and conditions are made a part of this Agreement:

- 6.19.1 The CONSULTANT agrees that it shall:
 - 6.19.1.1 Make payments promptly, as due, to all persons supplying to CONSULTANT labor or materials for the performance of work contemplated by this Agreement.
 - 6.19.1.2 Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.
 - 6.19.1.3 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167 or its successor statutes.
 - 6.19.1.4 Not permit any lien or claim to be filed or prosecuted against the State of Oregon, Clackamas County, the DISTRICT, any municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished for the performance of work contemplated by this Agreement.
- 6.19.2 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement, as such claim becomes due, the proper office representing 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 the CONSULTANT by reason of this Agreement. Further, the CONSULTANT or any first-tier subcontractor under this Agreement fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement within thirty (30) days after receipt of payment from DISTRICT or the CONSULTANT, as applicable, then such person shall owe the unpaid person the amount due plus interest charges commencing at the end of the ten (10) day period under ORS 279C.580(4) and ending upon final payment unless subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be as set forth in ORS 279C.515(2).
- 6.19.3 No person shall be employed for more than eight (8) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100(5) or as defined in the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday, as specified in ORS 279C.
- 6.19.4 If this Agreement is for personal services as defined in ORS 279C or as defined in

the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

- 6.19.5 The CONSULTANT shall promptly, as due, make payment to any person, partnership, association, corporation, or other entity furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 6.19.6 The CONSULTANT and all employers working under this Agreement are subject employers under ORS 656.017.
- 6.19.7 The CONSULTANT shall demonstrate that an employee drug testing program is in place before commencing work on the Project.

6.20 Equal Employment Opportunity

During the performance of this Agreement, the CONSULTANT agrees as follows:

- 6.20.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap or a national origin. The CONSULTANT agrees that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, age, mental or physical handicap, or national origin. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.
- 6.20.2 The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, marital status, age, physical or mental handicap or national origin.
- 6.20.3 The CONSULTANT will send to each labor union or representative of workers with which CONSULTANT has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the CONSULTANT's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.21 Survival

All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion and/or termination for any reason.

6.22 Headings

The headings used in this Agreement are for general reference only and are not part of the contract language. This Agreement should be construed without giving any meaning to any headings included herein.

6.23 Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration in accordance with the following provisions:

6.23.1 Disputes Covered. The parties agree to arbitrate all disputes of every kind relating to or arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based upon tort or any other causes of action relating to the Agreement or the PROJECT, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties.

6.23.2 Forum. The forum for the arbitration shall be Clackamas County, Oregon.

6.23.3 Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of laws provisions.

6.23.4 Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, DISTRICT shall select one arbitrator and CONSULTANT shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the American Arbitration Association. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties.

6.23.5 Administration. The arbitration shall be administered by the American Arbitration Association.

6.23.6 Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the

provisions of this section, the provisions of this section shall prevail.

6.23.7 Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

6.23.8 Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages.

6.23.9 Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators.

6.23.10 Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

6.24 Amendments

The DISTRICT and the CONSULTANT may amend this Agreement at any time only by written amendment executed by the DISTRICT and the CONSULTANT. Any amendment that increases the amount of compensation payable to the CONSULTANT in excess of the amounts authorized in prior Board approvals shall be subject to approval by the Board. The Director or person designated by Board order may execute amendments to the Agreement to increase compensation within the limits of the authority established by the DISTRICT's Contract Review Board Rules and within the limits authorized by prior Board approvals. The Project Manager may agree to and execute any other amendment on behalf of the DISTRICT.

6.25 Waiver

The DISTRICT and the CONSULTANT shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

6.26 Time is of the essence of this Agreement.

6.27 Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to review insurance coverage without sixty (60) days written notice by the CONSULANT to the DISTRICT.

[Signature Page Follows]



Beyond clean water.

14
Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF A PARTNERSHIP AGREEMENT BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD#1),
AND JOHNSON CREEK WATERSHED COUNCIL (JCWC) FOR
BUFFER ENHANCEMENT AND RESTORATION ACTIVITIES**

The attached Partnership Agreement describes a partnership with funding to perform buffer enhancement and riparian activities within or of benefit to CCSD#1.

The JCWC has completed a Watershed Action Plan for the Johnson Creek Watershed. Targeted and priority stream reaches were identified for enhancement and restoration. Removal of non-native and invasive species and planting of native plants will enhance stream buffer and riparian areas, improve water quality and assist in meeting Watershed Health goals as well as a Total Maximum Daily Load (TMDL) for temperature. This agreement will fund this work in the recommended and prioritized stream reach areas, as well as outreach activities aimed at increasing awareness of issues related to watershed health.

The term of agreement is July 1, 2012 to June 30, 2015. The cost of the work will be \$12,500 for FY1213, \$7,500 annually thereafter and a total of \$27,500 for the three year period. The work for Fiscal Year 2012-2013 is included in the District's Operating budget.

District Counsel has approved the Agreement as to form.

RECOMMENDATION

Staff respectfully recommends that the Board of Commissioners approve the Partnership Agreement between the CCSD#1 and JCWC for buffer enhancement and riparian restoration activities.

Sincerely,

A handwritten signature in black ink that reads "Michael S. Kuenzi". The signature is written in a cursive style with a large initial "M".

Michael S. Kuenzi,
Director

For information on this issue or copies of attachments, please contact Trista Crase at (503) 742-4566

PARTNERSHIP AGREEMENT
between
Clackamas County Service District No. 1 and
Johnson Creek Watershed Council
for
Riparian Buffers, Upland Tree Canopy, and Educational Activities

This partnership agreement ("Agreement") is entered into by and between Johnson Creek Watershed Council ("JCWC") and Clackamas County Service District No. 1 ("CCSD #1"), for the provision of services related to stream and wetland buffer enhancement, riparian restoration, and educational activities.

This Agreement is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

1. Effective Date and Duration. This Agreement shall become effective upon signature of NCUWC and CCSD #1. Unless earlier terminated or extended, this Agreement shall expire on June 30, 2015. Costs may be incurred from July 1, 2012.
2. Statement of Work. The statement of work is attached hereto as Exhibit A and incorporated by reference into this Agreement ("Exhibit A"). NCUWC and CCSD #1 agree to perform the tasks as described in the statement of work ("Work") in partnership and accordance with the terms and conditions of this Agreement.
3. Consideration. CCSD #1 agrees to pay TWELVE THOUSAND FIVE-HUNDRED and 00/100 DOLLARS (\$12,500.00) for FY12-13 and SEVEN THOUSAND FIVE-HUNDRED and 00/100 DOLLARS (\$7,500.00) annually for FY13-14 and FY14-15 for buffer enhancement, riparian restoration and educational activities. For additional Agreement considerations, location tracking, and reporting requirements, see Exhibit B attached hereto and incorporated by reference into this Agreement ("Exhibit B"). Exhibit A, Statement of Work, will be revisited and revised as appropriate annually for remaining fiscal years. In this Agreement, CCSD #1 certifies that sufficient funds are available and authorized for expenditures pursuant to this Agreement in Fiscal Year 2012-2013.
4. Schedule of Performance. The delivery schedule for the provision of these services is also contained in Exhibit A, Statement of Work.
5. Project Sites. The respective staff (Project Managers) of each partnering agency will develop the project sites and activities.
6. Project Managers. Each party has designated a project manager to be the formal representative for this project. All reports, and other communications required relating to performance under this Agreement shall be directed to the appropriate individual.

JCWC
Matt Clark
JCWC
1900 SE Milport Rd
Milwaukie, OR 97222
(503) 652-7477

CCSD #1
Gail Shaloum
Water Environment Services
150 Beavercreek Road, 4th Floor
Oregon City, OR 97045
(503) 742-4597

provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

14. No Third Party Beneficiary. NCUWC and CCSD #1 are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
15. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300 or any successor statutes, each party agrees to indemnify and defend the other and its officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this Partnership Agreement, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors or representatives.

[Signature Page Follows]



Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment
Michael S. Kuenzi, P.E.
Director

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF A PARTNERSHIP AGREEMENT BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD#1),
AND NORTH CLACKAMAS URBAN WATERSHEDS COUNCIL (NCUWC) FOR
BUFFER ENHANCEMENT AND RESTORATION ACTIVITIES**

The attached Partnership Agreement describes a partnership with funding to perform riparian buffer enhancement and riparian activities within CCSD#1.

CCSD#1 recently completed a Watershed Action Plan for the Kellogg-Mt Scott Creeks basin. Targeted and high priority stream reaches were identified for enhancement and restoration. Removal of non-native and invasive species and planting of native plants will enhance stream buffer and riparian areas, improve water quality and assist in meeting Watershed Health goals as well as a Total Maximum Daily Load (TMDL) for temperature. This agreement will fund this work in the recommended and prioritized stream reach areas.

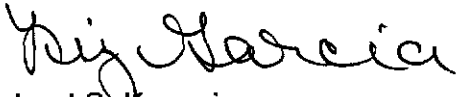
The term of agreement is July 1, 2012 to June 30, 2015. The cost of the work will be \$39,220 for FY1213 and \$10,000 annually for FY1314 and 1415, a total of \$59,220 for the three year period. The work for Fiscal Year 2012-2013 is included in the District's Operating budget.

District Counsel has approved the Agreement as to form.

RECOMMENDATION

Staff respectfully recommends that the Board of Commissioners approve the Partnership Agreement between the CCSD#1 and NCUWC for buffer enhancement and riparian restoration activities.

Sincerely,



Michael S. Kuenzi
Director

For information on this issue or copies of attachments, please contact Trista Crase at (503) 742-4566

PARTNERSHIP AGREEMENT

between

**Clackamas County Service District No. 1 and
North Clackamas Urban Watersheds Council**

for

Riparian Buffers, Upland Tree Canopy, and Educational Activities

This partnership agreement ("Agreement") is entered into by and between North Clackamas Urban Watersheds Council ("NCUWC") and Clackamas County Service District No. 1 ("CCSD #1"), for the provision of services related to stream and wetland buffer enhancement, riparian restoration, and educational activities.

This Agreement is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

1. Effective Date and Duration. This Agreement shall become effective upon signature of NCUWC and CCSD #1. Unless earlier terminated or extended, this Agreement shall expire on June 30, 2015. Costs may be incurred from July 1, 2012.
2. Statement of Work. The statement of work is attached hereto as Exhibit A and incorporated by reference into this Agreement ("Exhibit A"). NCUWC and CCSD #1 agree to perform the tasks as described in the statement of work ("Work") in partnership and accordance with the terms and conditions of this Agreement.
3. Consideration. CCSD #1 agrees to pay THIRTY-NINE THOUSAND TWO-HUNDRED TWENTY-TWO and 00/100 DOLLARS (\$39,220.00) for FY12-13 and TEN THOUSAND and 00/100 DOLLARS (\$10,000.00) annually for FY13-14 and FY14-15 for buffer enhancement, riparian restoration and educational activities. For additional Agreement considerations, location tracking, and reporting requirements, see Exhibit B attached hereto and incorporated by reference into this Agreement ("Exhibit B"). Exhibit A, Statement of Work, will be revisited and revised as appropriate annually for remaining fiscal years. In this Agreement, CCSD #1 certifies that sufficient funds are available and authorized for expenditures pursuant to this Agreement in Fiscal Year 2012-2013.
4. Schedule of Performance. The delivery schedule for the provision of these services is also contained in Exhibit A, Statement of Work.
5. Project Sites. The respective staff (Project Managers) of each partnering agency will develop the project sites and activities. Sites will be based on high priority stream reaches identified in CCSD #1's Watershed Action Plan for Kellogg and Mt Scott Creeks, dated June, 2009, and other tributaries within CCSD #1 that discharge to the watershed.
6. Project Managers. Each party has designated a project manager to be the formal representative for this project. All reports, and other communications required relating to performance under this Agreement shall be directed to the appropriate individual.

NCUWC
Nicole West
NCUWC
11022 SE 37th St
Milwaukie, OR 97222
(503) 867-9936

CCSD #1
Gail Shaloum
Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4597

13. Compliance with Applicable Law. All parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. All party's performance under this Agreement is conditioned upon each party's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.
14. No Third Party Beneficiary. NCUWC and CCSD #1 are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
15. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300 or any successor statutes, each party agrees to indemnify and defend the other and its officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this Partnership Agreement, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors or representatives.

[Signature Page Follows]