

**NORTH CLACKAMAS
PARKS & RECREATION DISTRICT**

Administration

Scott Archer, Director
North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

13

COPY

December 20, 2018

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of an Addendum No. 2 to the Development Agreement between North Clackamas Parks and Recreation District (NCPRD) and Hidden Falls Development, LLC (Developer)

Purpose/ Outcomes	Adds Addendum #2 to the original Development Agreement to incorporate changes to the schedule, planting and irrigation plans and adds \$32,930 to an existing contingency fund.
Dollar Amount and Fiscal Impact	Increase of \$32,930 to the existing contingency fund to the development cost to be paid by NCPRD when the planting and irrigation are complete.
Funding Source	FY 2018/2019 Capital Projects Fund from Zone 3 SDCs <ul style="list-style-type: none"> • Development is 47.99% eligible for Zone 3 SDCs • Remaining 52.01% paid from NCPRD General Fund
Duration	Project completion no later than April 1, 2019.
Previous Board Action	<ul style="list-style-type: none"> • Approval of a Purchase and Sale Agreement and Development Agreement With Hidden Falls Development, LLC (Developer) on July 20, 2017 • Approval of Addendum No. 1 to the Development Agreement with Developer on December 21, 2017
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Ensure safe, healthy and secure communities
Contact Person	Scott Archer, <i>Director</i> , 503-742-4421 Kathryn Krygier, <i>Planning & Development Manager</i> , 503-742-4358

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) is seeking approval of Addendum #2 ("Addendum") to the Development Agreement ("Agreement") with Hidden Falls Development, LLC ("Developer"). This Addendum incorporates changes to the schedule, planting and irrigation plans and adds \$32,930 to an existing \$85,000 contingency fund for a total contingency fund of \$117,930. The funds will be placed in an existing escrow account which provides for additional planting, irrigation, safety fencing and unforeseen conditions. These funds will not be released to the Developer until after the planting and irrigation work is complete.

Addendum #2 provides for the property to close when the Punch List work is complete and before the planting and irrigation work is finished. It is anticipated the property will close in January 2019 and the planting and irrigation work will be complete by approximately April 1, 2019. The property will be opened to the public when the planting and irrigation is complete.

The original Purchase and Sale Agreement and Development Agreement with the Developer was approved at the NCPRD Board Meeting on July 20, 2017. These Agreements enable NCPRD to acquire approximately 21.3 acres of land in a unique, forested natural area bisected by Rock Creek with a waterfall and a 0.84-mile trail improvement including a bridge over the creek with a view of the waterfall which is a segment of the 34-mile Regional Mt. Scott/Scouters Mountain Trail Loop (a multi-use trail). Addendum # 1 to the Development Agreement was approved on December 21, 2017. It provided for an update to the schedule, revised engineering drawings and created an \$85,000 contingency fund. No changes have been made to the Purchase and Sale Agreement.

The original agreements outlined a total project cost of \$2,804,160. Addendum # 1 provided for a contingency fund which increased the development cost by \$85,000. The following table outlines the final negotiated price which includes the increase cost of \$32,930 to an existing contingency fund for the development of the trail and bridge:

	Land Acquisition Cost	Development Trail & Bridge Cost	Total Project Cost
NCPRD SDCs <i>Development 47.99% eligible</i>	\$1,050,279	\$609,774	\$1,660,053
NCPRD General Fund	\$0	\$62,037	\$62,037
Developer Contribution	\$599,721	\$600,279	\$1,200,000
Total Purchase Price	\$1,650,000	\$1,272,090	\$2,922,090

County Counsel has approved the language of Addendum #2 to the Development Agreement.

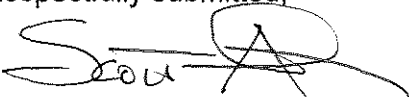
RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners, acting as the governing board of North Clackamas Parks and Recreation District, approve Addendum #2 to the Development Agreement with Hidden Falls Development, LLC.

ATTACHMENTS:

1. Addendum #2 to the Development Agreement
2. Addendum #1 to the Development Agreement
3. Development Agreement

Respectfully submitted,



Scott Archer, Director
North Clackamas Parks and Recreation District

**SECOND ADDENDUM
TO THE
PARK DEVELOPMENT AGREEMENT**

This SECOND ADDENDUM TO THE PARK DEVELOPMENT (this "Addendum 2") is made as of December ____, 2018 by and between HIDDEN FALLS DEVELOPMENT, LLC, an Oregon limited liability company (the "Developer") and NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a county service district established pursuant to Oregon law ("NCPRD").

RECITALS:

A. On or about July 20, 2017, Developer and NCPRD entered into a Park Development Agreement (the "Agreement") pursuant to which Developer agreed to complete certain park improvements for NCPRD and NCPRD agreed to purchase the park improvements from Developer.

B. On or about December 26, 2017, Developer and NCPRD amended the Agreement with an Addendum to the Park Development Agreement (the "Addendum 1").

C. On November 9, 2018, the plat for Hidden Falls 3 was recorded by the Clackamas County clerk.

D. The construction contemplated by the Agreement has been substantially completed, with the exception of the punch list items and the planting and irrigation.

E. Closing of the sale for the Park property will not occur within 30 days of the plat recording, additional time is needed to complete the planting and irrigation, and there have been additional changes to the specifications requested by NCPRD or mandated by the applicable governing agency since the execution of Addendum 1.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants of the parties contained in this Agreement, Developer and NCPRD hereby agree as follows:

1. Revised Attachment Q. The attached Attachment Q "Open Space Planting Plan" dated November 16, 2018 replaces and supersedes the original Attachment Q "HCA Planting Plans."

2. Completed Construction Improvements. NCPRD has completed a completeness inspection and both parties agree that all construction improvements have been completed except the planting and irrigation and the punch list items as shown on Exhibit A to this Addendum 2 (the "Punch List".) In addition, to the extent that the actual construction completed as of the date of this Addendum 2 deviated from the approved engineering, NCPRD acknowledges that they have inspected the construction and waives

any objection to the deviation except as listed on the Punch List.

3. Completion of Punch List & Completion. Developer shall complete all of the items on the Punch List items on or before December 21, 2018. NCPRD will complete a completeness inspection within ten (10) business days after Developer has notified NCPRD that all items on the Punch List are complete. If NCPRD agrees that the items on the Punch List are complete, NCPRD shall purchase the park improvements concurrent with the closing of the Park property.

4. Change Orders and Escrow Account. As per Addendum 1, NCPRD deposited an additional \$85,000 in escrow as a contingency fund for the payment of change orders. The attached Exhibit B "Hidden Falls III – Park Project Credits and Debit" is a summary of the change orders previously approved by NCPRD. The approved change orders exceed the \$85,000 contingency fund by a sum of \$32,930. NCPRD shall deposit an additional \$32,930 in escrow for the payment of the approved change orders as listed on the Exhibit B. The funds released for the payment of change orders shall be in addition to and not be applied to either the purchase price of the Property or the cost of construction as shown on Attachment M (as previously attached to Addendum 1.)

5. Holdback for Planting and Irrigation. The sum of \$117,930 shall remain in escrow until the completion of the planting and the installation of the irrigation system on the Property as shown on Attachment Q (the "Open Space Planting Plan.") The holdback shall only apply to the installation of planting and irrigation on the Property and the Developer shall not have any responsibility to NCPRD to install any planting or irrigation that is not located on the Property, even if shown on Attachment Q. Once NCPRD is notified by the Developer that the planting and irrigation installation is complete, NCPRD will conduct a completion inspection within ten (10) business days. If NCPRD agrees that the Planting and Irrigation is complete, NCPRD shall issue a Notice of Project Completion and shall instruct escrow to release the holdback funds to Developer within five (5) business days. If NCPRD does not agree that the Planting and Irrigation is complete, within five (5) days of the completeness inspection, NCPRD shall provide Developer with a complete list of all items to be done and Developer shall promptly complete any outstanding items.

6. Completion of Planting and Irrigation. Developer shall complete the installation of the planting and installation of the irrigation system on the Property no later than April 1, 2019. If the planting and installation of the irrigation system is not complete by April 1, 2019, the Developer shall credit NCPRD \$10,000 per month for each month thereafter that the work is not complete. Notwithstanding the foregoing, because planting and installation of the irrigation system cannot be completed in temperatures at or below freezing, in the event that there are freezing temperatures that prevent the landscaper from planting and installing the irrigation system, the April 1, 2019 completion date shall be extended one business day for each business day with a temperature at or below freezing that prevents the landscaper from working. The work will be considered complete on the date that Developer notifies NCPRD that such work is complete, regardless of the date the work is inspected by NCPRD, unless NCPRD, upon inspection, NCPRD determines the work is incomplete and provides Developer with a list of outstanding items to complete as per Section 5.

7. Cooperation by NCPRD. NCPRD has requested to review and approve the locations of all plantings prior to installation by Developer. NCPRD acknowledges that such review will require several site inspections to review planned locations of plantings. NCPRD agrees to review landscaper's locations of all plantings and approve or request changes to the locations within two business days after notification by Developer that the locations are ready for inspection. If NCPRD does not approve or request changes to the planting locations within two business days of notification by Developer, an additional business day shall be added to the April 1, 2019 deadline for each business day delay by NCPRD. Business days are defined as Monday – Thursday for any time period within which NCPRD must respond. Developer will provide NCPRD with weekly construction schedules until the Notice of Project Completion is issued. All communications under this agreement should be communicated consistent with paragraph 12(c) of the Development Agreement executed on July 20, 2017. In addition, the parties consent to email delivery of notifications required under this second addendum. Developer shall deliver required notifications to both Scott Archer and Kathryn Krygier.

8. Warranty. Developer shall warranty all work, including landscaping, against defects in materials or workmanship for a period of one (1) year from date of issue of the Notice of Project Completion. Developer shall also be responsible for the maintenance and reporting for all new plantings on the Property for a period of one (1) year from date of issue of the Notice of Project Completion. Thereafter, NCPRD or successor entity shall be responsible for the maintenance and reporting for all plantings as necessary. Upon written notice from NCPRD, Developer shall repair any defects in materials or workmanship which affect the use or the safety of the Park, or which may cause a condition which would affect the use or safety of the Park, as promptly as is commercially reasonable. All repairs will be performed subject to the approval of NCPRD. NCPRD's approval shall not be unreasonably withheld. Approximately 11 months after the date of issue of the Notice of Project Completion, NCPRD shall provide a written list for Developer of any outstanding defects in materials or workmanship which were not previously repaired, and Developer shall repair all such remaining defects within 30 days of receipt of the list of defects from NCPRD. The foregoing shall not cause Developer to be responsible for repair of items damaged by either NCPRD or the public.

9. Conflicts with Agreement. In the event that any specific provision in this Addendum conflicts with the Agreement in any manner, the terms and conditions of this Addendum shall control for all purposes.

10. Definitions. All terms not defined herein shall have the same definitions as assigned in the Agreement.

11. No Other Modification. Except as specifically set forth herein, the Agreement is unmodified and is hereby ratified and remains in full force and effect.

12. Counterparts; Facsimile Signatures. This Addendum may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Addendum had executed the same counterpart. Facsimile signatures shall operate as originals for all purposes under this Addendum.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first above written.

North Clackamas Parks and
Recreation District,
A County Service District

Hidden Falls Development, LLC
an Oregon Limited Liability Company

Chair Bernard

Mark Handris

Date

Date

ATTACHMENTS:

1. Attachment Q – Open Space Planting Plan (to replace original Attachment Q)
2. Exhibit A – NCPRD Punch List
3. Exhibit B – Hidden Falls III – Park Project Credits and Debits



NORTH CLACKAMAS PARKS & RECREATION DISTRICT

Administration

Laura Zentner, BCS Director
North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of a Personal/Professional Services Contract between North Clackamas Parks and Recreation District and Cascadia Northwest Officials, LLC for Basketball Officials

Purpose/ Outcomes	Execution of the contract between NCPRD and Cascadia Northwest Officials, LLC for basketball officiating at NCPRD Hoopers program basketball games.
Dollar Amount and Fiscal Impact	Funding has been budgeted in the FY 2018-19 budget and will carry over through FY 2019-20 budget year. Should all renewals be exercised, funding would be requested for applicable years through FY 2021-22. The agreement is for an amount not to exceed \$60,000 per year. If renewals are exercised, the total three year contract is for an amount not to exceed \$180,000.
Funding Source	113-5400-07717-431920
Duration	Through December 31, 2021 if all renewals exercised.
Previous Board Action/Review	Previous contract was for shorter duration and below board approval threshold.
Strategic Plan Alignment	1. This project supports the Mission of providing community enrichment activities to residents... so they can thrive and prosper in healthy and vibrant communities.
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4421 Joe Loomis, <i>Sports Supervisor</i> , 503-794-3871

BACKGROUND

North Clackamas Parks and Recreation District (NCPRD) operates the Hoopers Basketball program each year from January through March for youth grades 2 through 12. Officiating games in accordance with best practices and league rules (modified Oregon School Activities Association rules) is critical to making the Hoopers program an enriching growth opportunity for the youth and community. To this end, NCPRD would like to enter into an officiating contract with Cascadia Northwest Officials, LLC.

The purpose of this contract is for Cascadia Northwest Officials, LLC to provide reliable and enriching officiating services for the Hoopers Basketball program. The contract has been reviewed by Counsel.

PROCUREMENT PROCESS

NCPRD has previously partnered with Cascadia Northwest Officials, LLC to provide officiating services to the Hoopers Basketball Program. For 2018, NCPRD published a request for quotes

to provide these services for up to three years, including a one-year initial term and two one-year renewals. Although the request for quotes was publically posted and other firms were notified, Cascadia Northwest Officials, LLC was the only organization to respond. After notice of intent to award was issued, NCPRD and Cascadia Northwest Officials, LLC negotiated the final terms of the contract.

RECOMMENDATION

Staff respectfully recommends the Board approve the contract with Cascadia Northwest Officials, LLC and authorize the BCS Director, Deputy Director or designee to sign all documents necessary to effectuate the same.

Respectfully submitted,

Laura Zentner, CPA
Director, Business & Community Services

Placed on the Board Agenda of _____ by the Procurement Division.



PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this “Contract”) is entered into between Cascadia Northwest Officials, LLC (“Contractor”), and North Clackamas Parks and Recreation District, a political subdivision of the State of Oregon (“District”).

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **December 31, 2019**. However, such expiration shall not extinguish or prejudice the District’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured. This contract may be extended for up to two (2) terms of one (1) year each upon the written agreement of both parties.

2. Scope of Work. Contractor will provide the following personal/professional services: Basketball Officiating Services (“Work”), further described in Article III.

3. Consideration. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$180,000.00**, for accomplishing the Work required by this Contract and all possible renewal terms. Annual payments shall not exceed \$60,000.00. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Article III.

4. Travel and Other Expense. Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract and Exhibit A.

6. Contractor Data.

Address: 14584 SE Bonnie Way

Contractor Contract Administrator: Rebecca McGee

Phone No.: 503-652-9478

Email: mb2279@gmail.com

MWESB Certification: DBE # MBE # WBE # ESB #

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** District certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

10. INSURANCE. During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

A. Required by District of Contractor with one or more workers, as defined by ORS 656.027. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

B. **Required by District** **Not required by District**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

- C. Required by District Not required by District

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

- D. Required by District Not required by District

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

- E. **Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the District and Clackamas County, and their officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to District acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

- F. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the District at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the District at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District.

Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax

laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.

22. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the District desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11), shall be deemed to be confidential information of the District ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the District, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the District's request, Contractor will turn over to the District all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the District that cannot adequately be compensated in damages. Accordingly, the District may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the District and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the District to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the District, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the District; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the District.

Contractor shall report, either orally or in writing, to the District any use or disclosure of Confidential Information not authorized by this Contract or in writing by the District, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the District immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the District.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by its breach of its data security or confidentiality provisions hereunder. The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract.

Only those employees, agents, or subcontractors that have met the acceptability standards of the District may perform services under this Contract or be given access to Personal Information, Confidential Information or access to District facilities.

Contractor will not permit any employee who has been convicted of any person-to-person crime, including but not limited to Sexual Offenses such as those specified in § 163 of Oregon Revised Statutes, or otherwise convicted of any felony for which incarceration for more than one (1) year is an authorized penalty, to perform Work under the Contract. The District will conduct background checks, at no cost to Contractor, to ensure Contractor's employees may perform Work under the Contract. Provided, however, that before the District performs a background check on Contractor's employees, Contractor must first obtain all authorizations, approvals, or consent as may be required under applicable law, or as may be required by District in its sole discretion, to permit District to conduct the background check.

ARTICLE III - SCOPE OF WORK

Contractor shall perform Work in accordance with the following tasks and requirements:

1. Contractor shall officiate District Hooper Basketball Program basketball games in accordance with District game rules.
2. Contractor referees shall be onsite at game locations fifteen (15) minutes prior to the start of every game and ready to begin work before all designated game start times.
3. Contractor shall ensure that all staff have uniforms, equipment, and training necessary to complete Work.
4. Contractor shall schedule and guarantee delivery of Contractor's employees to provide uninterrupted service to the District regardless of employee absences, inclement weather, or other reasons.
5. Contractor shall monitor referees to ensure adherence with this Contract.
6. Contractor shall respond within seventy-two (72) hours to the District's request for either employee training or removal. The District retains the right to disallow any of Contractor's employees from performing Work under this contract for any reason including, but not limited to, failure to perform, customer services issues, reliability, unsuitable temperament, or other issues as determined solely by the District. Such disallowance shall in no way be construed as an employment decision.
7. Contractor shall provide a schedule of referees to the Contract Administrator or their designees within two business days prior to that weeks' game.
8. Using the report format provided by District, Contractor shall provide a completed referee report for each game by the first Tuesday following that game.
9. Unless otherwise directed by District, Contractor shall provide the "Default Number of Officials" for each game and specified in the table under the Consideration heading of Article III of this Contract.
10. The District may, in its sole discretion, require Contractor to provide either one (1) or two (2) officials per game for all second grade through high school games regardless of the stated "Default Number of Officials Required".
11. Contractor shall use a referee mentor upon either the request of District or discretion of the Contractor at \$35.00 per game. District reserves the right to determine at any time that contractor shall not use a referee mentor.

District Agrees that:

1. District will provide background checks at no cost to the Contractor.

2. Contractor may refuse to send a Contractor referee to a game if there has been a coach or parent who has repeatedly displayed behavior that is aggressive, used language that is offensive, or has threatened a Contractor referee.
3. District will address in a manner consistent with any applicable policies, practices, or laws, behaviors towards officials that have been deemed aggressive or offensive within a 72 hour time frame.
4. District understands that preparations for addressing the spectators prior to the start of game is not the responsibility of the Contractor referee. Nor is the Contractor referee responsible for making sure that equipment is available for teams coming in to a gym.
5. For High School Rec Games, District will provide blank, paper referee reports and accept the completed paper reports following the end of each game.

The District Contract Administrator for this Contract is: Josh Brandl

CONSIDERATION

- a. Consideration Rates – Time and Material according to the below fee schedules:

Grade Level	Default Number of Officials Required per Game	Fees Per Game
2nd Grade	1	\$25.00*
3rd Grade	2	\$60.00**
4th Grade	2	\$70.00**
5th & 6th Grades	2	\$80.00**
7th & 8th Grades	2	\$85.00**
High School Rec	2	\$85.00**
Mentors	N/A	\$35.00

*Fee shall be double the stated value if District requires Contractor to provide two (“2”) officials.

**Fee shall be fifty percent (“50%”) of stated amount if Contractor only provides one (“1”) official.

Additional Fee Description	Onetime Fee Amount
Insurance Fee	\$700.00
Consultant and Tax Fee	\$200.00

- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$180,000.00** for work performed under this contract and all possible renewal terms. Annual payments shall not exceed \$60,000.00. District shall make advance payments of \$20,000.00 by January 1, 2018 and \$15,000.00 by February 1, 2018. District shall pay any balance due for Services provided according to this Contract by March 31, 2018. Invoices shall be submitted to: Josh Brandl either by email at JBrandl@ncprd.com or by mail at 16223 SE Stadium Way, Clackamas, OR 97015.

- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

